

FIRST DIVISION

[G.R. No. 117661, July 15, 1996]

DANIEL VILLANUEVA, TERRY VILLANUEVA-YU, SUSAN VILLANUEVA, EDEN VILLANUEVA AND FRANKIE VILLANUEVA, PETITIONERS, VS. HON. COURT OF APPEALS AND BERNARDINO VILLANUEVA, RESPONDENTS.

D E C I S I O N

HERMOSISIMA, JR., J.

Before us is a petition for review on certiorari of the Decision^[1] of the Court of Appeals^[2] which affirmed an Order^[3] issued en banc by public respondent Securities and Exchange Commission (hereafter, SEC).^[4] That Order, in turn, affirmed the validity of a Temporary Restraining Order (TRO)^[5] issued by a SEC Hearing Panel^[6] upon motion of private respondent who alleged that petitioners had invalidly constituted themselves to be the directors and officers of Filipinas Textile Mills, Inc. (hereafter, FTMI) and had, through misrepresentations and with the use of violence and threats, taken over the actual and physical possession of and control over the FTMI factory in Cainta, Rizal. On the strength of that TRO, petitioners were compelled to evacuate and restore and surrender peacefully to private respondent the actual physical possession of and control over, the premises in question.

The following antecedent facts are hardly in dispute:

On November 22, 1991, private respondent, claiming to be an incorporator and stockholder and the President of FTMI, filed against petitioners an injunction suit with the SEC.

Petitioners Daniel Villanueva, Terry Villanueva-Yu, Susan Villanueva, Eden Villanueva and Frankie Villanueva are stockholders of record of FTMI. Apparently, there is no document in the corporate records to show the transfer of shares to the other petitioners, namely, Artemio Toquero, Mel Dimat, Innocencio Ferrer, Jr., and Peter John Calderon.

Petitioner Daniel Villanueva, also claiming to be the President of FTMI, prepared and sent a notice of special stockholders' meeting to be held on November 23, 1991 at 10:00 a.m. at the Paraiso Restaurant in Cainta, Rizal, on the ground that no regular or special meeting of the stockholders has been called by FTMI for more than five (5) years.

Through the aforecited petition for injunction filed with the SEC, private respondent sought to enjoin petitioners from proceeding with the November 23 meeting on the ground that annual stockholders' meetings were held on January 31, 1988 and January 26, 1991, respectively, in accordance with the constitution and by-laws of

FTMI and that petitioners only jointly own 24% of the outstanding capital stock of FTMI while private respondent and his group own 76% thereof.

The case was assigned to the aforementioned SEC Hearing Panel composed of three hearing officers belonging to the SEC Securities and Investigations Clearing Department (hereafter, SEC SICD). These officers were Juanito Almosa, Macario Mallari and Ysobel Yasay-Murillo.

On November 22, 1991, SEC SICD Hearing Officer Macario Mallari issued a TRO^[7] enjoining petitioners from conducting the said special stockholders' meeting scheduled for November 23, 1991.

On December 12, 1991, the said temporary restraining order lapsed. No writ of preliminary injunction having been issued by the SEC Hearing Panel or any SEC SICD hearing officer, petitioners proceeded with the special stockholders' meeting on January 10, 1992. During the said meeting, several of herein petitioners were elected as directors and/or officers of FTMI. There is no showing, however, that the corresponding general information sheet indicating the names of the officers elected in the said meeting, was filed with the SEC.

On January 25, 1992, FTMI held its regular annual stockholders' meeting. During that meeting, private respondent, among others, was elected to the board of directors of FTMI for the year 1992-1993. The corresponding general information sheet stating the names of the officers elected in the said meeting, was filed with the SEC on January 27, 1992.

Thereupon, thus, there existed two sets of FTMI directors and corporate officers.

Consequently, on January 29, 1992, private respondent filed a Supplemental Petition maintaining the issuance of a writ of preliminary injunction albeit sought under a set of circumstances significantly and substantially distinct from the earlier circumstances which justified the issuance of the earlier TRO issued on November 22, 1991. In that supplemental petition, private respondent assailed the January 10 meeting convened by petitioners as well as their elections to and assumption of, the office of directors and/or officers of FTMI. Private respondent further alleged that petitioners were consequently acting for and on behalf of FTMI and holding themselves as such to the public in general.

Acting on this supplemental petition, SEC SICD Hearing Officer Macario Mallari set the hearing on the injunction relief for February 20, 1992 at 2:00 p.m. Private respondent and his lawyers, however, failed to appear at the hearing. Thus, petitioners moved for dismissal of the petition; their motion was granted, and, on the ground of failure to prosecute, the case was dismissed but without prejudice.

On April 22, 1992, private respondent having moved for the reconsideration of the aforementioned dismissal of his supplemental petition, said dismissal was set aside and the said petition reinstated.

On May 4, 1992, private respondent filed an urgent motion^[8] reiterating his prayer that a writ of preliminary injunction be issued. In the said motion, in reference to the FTMI factory in Cainta, Rizal, private respondent specifically alleged that:

"x x x on April 4, 1992 at around 11:00 o'clock in the morning, x x x Daniel Villanueva and Mel Dimat, representing themselves to be representatives/officers and/or agents of Filipinas Textile Mills, Inc., with the aid of several other individuals brandishing armalites, hand guns and other weapons, forced their way in the compound, and with the use of violence, threats, force and intimidation, drove away the security guards and employees and took over the actual and physical possession thereof and took control over the buildings, machineries, equipment and other improvements found therein and looted the premises;

x x x That respondents should be stop (sic) and restrained from further using false pretenses, unauthorized acts and misrepresentations and further acts of dispossession, all inimical and prejudicial to the interest of x x x the Corporation, otherwise, irreparable damage will be further sustained due to the illegal and unlawful acts of the respondents."^[9]

Understandably, private respondent prayed in that urgent motion that a TRO be issued by the SEC enjoining petitioners from "assuming and performing the functions of Directors/Officers of the Corporation, and from acting for and on behalf of FTMI x x x and further acts of dispossession."^[10]

Incidentally, private respondent, in the Notice of Hearing incorporated in the aforecited urgent motion, did not seek, much less schedule, a hearing thereon; he merely asked the Clerk of the SEC SICD to "please submit the foregoing Motion for the resolution and consideration of the Honorable Commission, immediately upon receipt hereof, considering the extreme urgency thereof."^[11]

This matter regarding the said notice of hearing was not lost on petitioners who expectedly filed an Opposition^[12] to the aforecited urgent motion. In addition to the argument that a motion with a defective notice of hearing is a mere scrap of paper, petitioners also contended that private respondent sought in the said motion the issuance of a second TRO, which is prohibited under the law.

On May 13, 1992, private respondent filed an urgent supplemental motion^[13] praying that petitioners "be ordered to evacuate, turn over and surrender peacefully"^[14] to private respondent the actual physical possession of the FTMI factory in Cainta, Rizal, "including all buildings, machineries, equipment and all improvements found therein immediately"^[15] and to restrain from further acts of dispossession. Said urgent supplemental motion contained the same kind of notice of hearing as that in the earlier Urgent Motion dated April 29, 1992.

On May 14, 1992, finding the foregoing two urgent motions sufficient in form and substance, the SEC SICD Hearing Panel issued a TRO^[16] enjoining and restraining petitioners, "their representatives and any and all persons under their direction and all person(s) claiming right under them from assuming and performing the functions of Directors/Officers of the corporation, from acting for and in behalf of Filipinas Textile Mills, Inc., holding and misrepresenting themselves to the public as Directors/Officers of the corporation and to evacuate, vacate, restore, turn-over and surrender peacefully x x x the actual physical possession of the property in question"^[17] to private respondent, "including all buildings, machineries, equipment

and all improvements found therein immediately, as well as further act or acts of dispossession."^[18]

On May 18, 1992, petitioners filed an urgent motion to dissolve the TRO. Opposition thereto was filed by private respondent on May 25, 1992.

Hearings on the application for issuance of the writ of preliminary injunction, were set on May 19, 21, and 25, 1992. During said hearings, both petitioners and private respondent presented testimonial and documentary evidence in support of their respective contentions.

Notwithstanding such offer of evidence by both parties, however, the SEC SICD Hearing Panel concluded that neither of the parties presented convincing and adequate evidence to justify the grant of relief to either. Thus in its Order,^[19] dated June 2, 1992, the hearing panel held that:

"x x x this Hearing Panel was not indubitably shown by the herein parties that their individual claims of being the majority group is without any shred of doubt. The onus probandi vital on this matter certainly rests on the parties and the appreciation of the Hearing Panel during the hearing of the injunctive relief is that there is no sufficient evidence to sway us to a favorable ruling. While the parties succeeded in showing us that they are stockholders of record of the corporation, the requisite quantum of proof to show the composition/member of the majority block is deficient for us to sanction and grant favorably the ancillary remedy prayed for, sans prejudice for a more thorough disclosure of facts and evidence appurtenant thereto on the trial on the merits."^[20]

It did not, however, forget to address the matter of the validity of the TRO issued by the hearing panel on May 14, 1992, coming as it does on the heels of an earlier TRO issued by SEC SICD Hearing Officer Macario Mallari on November 22, 1991. On this issue, the hearing panel ruled that:

"x x x on the x x x opposition to the issuance of the present Temporary Restraining Order (TRO), the propriety of the issuance thereof, and the motion to lift TRO, this Hearing Panel finds no credit in the contention x x x.

In the perusal of the first Temporary Restraining Order of 22 November 1991, then issued and penned solely by Hearing Officer Macario Mallari x x x the same was issued to enjoin the x x x Special Stockholders' Meeting on 23 November 1991.

In the present TRO by the Hearing Panel, the respondents (petitioners herein) were restrained from acting and representing themselves as directors of Filipinas Textile Mills and by virtue of their use of force, intimidation, violence and guns in taking over the premises of the corporation after the annual Stockholders' meeting was held and after the election of a new set of directors, which has remained unrebutted by the respondents (petitioners herein). There is neither a factual and or (sic) legal similarity between the two events that resulted in the issuance of the first and second TRO."^[21]

Nonetheless, the hearing panel concluded that the issue regarding the validity of the TRO dated May 14, 1992 is rendered moot and academic by what the panel considered as the ultimately appropriate remedy to the situation confronting it: receivership.

"A fortiori, persuaded as we are by the attendant facts, the supervening (sic) event of an extra-judicial foreclosure over the corporation's properties, and the patent rift and strained relationships of the parties, constrained us to hold that the proper and equitable remedy under the premises lies not with the provisional remedy of injunction, but in the appointment, *motu proprio*, of a committee to act as 'Receiver,' pursuant to PD 902-A, as amended by PD 1799.

The Receiver herein appointed (sic) shall be tasked to preserve the assets of the corporation for and in relation to its creditors, majority stockholders and other stockholders, the affected general public, to deter further prejudice and injury, *pendente lite*; it appearing that the corporation has ceased its operations in 1985, the eminent danger of dissipation, loss or wastage or destruction of its corporate assets before the controversy/matters at hand can be fully resolved, is a valid and legitimate apprehension shared presently by both the petitioners and respondents herein.

In furtherance to and as a direct consequence of the appointment of a Receiver by this Hearing Panel, both petitioner (private respondent herein) and respondents (petitioners herein) being stockholders of record, are required under the law not only to relate with, aid and cooperate with the receiver in the performance of his duties, but, likewise, to desist and refrain from actively pursuing the affairs of the corporation, dispossession or alienation of corporate assets, paying off claims and indebtedness of the corporation, as well as to account for all corporation proprieties (sic) which are in the name of the corporation and the precise location thereof.

It is not amiss to point out at this juncture, and we are aware of the opinion and so hold, that by the appointment of a Receiver justice is better served, the rights of parties fully protected, and foremost, that this Forum is ever so cautious in the imposition and granting of the provisional remedy of injunction and interfering needlessly with the substantive rights of the parties.

xxx xxx xxx

Accordingly, pursuant to PD 902-A, as amended by P.D. No. 17999, Atty. Ruben Ladia is hereby appointed as Chairman of the Committee, Atty. Teresita Siao and Atty. Julito Bajan, as members thereof, all of the Securities and Exchange Commission, who shall have the following functions, duties and responsibilities, viz.:

1. To take custody of, and control over all the existing assets and properties in the name of Filipinas Textile Mills, Inc.;