

SECOND DIVISION

[G.R. No. 201675, June 19, 2013]

**JUANITO ANG, FOR AND IN BEHALF OF SUNRISE MARKETING
(BACOLOD), INC., * PETITIONER, VS. SPOUSES ROBERTO AND
RACHEL ANG, RESPONDENTS.**

D E C I S I O N

CARPIO, J.:

The Case

This petition for review^[1] assails the Decision^[2] of the Court of Appeals Cebu (CA-Cebu) dated 20 September 2011 in CA-G.R. SP No. 05546. The CA-Cebu reversed and set aside the Order^[3] of the Regional Trial Court, Branch 53, Bacolod City (RTC Bacolod) dated 27 September 2010 in Commercial Court Case No. OQ-070 entitled *Sunrise Marketing (Bacolod), Inc., represented by Juanito Ang v. Spouses Roberto and Rachel Ang*.

The Facts

Sunrise Marketing (Bacolod), Inc. (SMBI) is a duly registered corporation owned by the Ang family.^[4] Its current stockholders and their respective stockholdings are as follows:^[5]

Stockholder	Number of Shares
Juanito Ang	8,750
Anecita Ang	1,250
Jeannevie Ang	2,500
Roberto Ang	8,750
Rachel Ang	3,750
Total	25,000

Juanito Ang (Juanito) and Roberto Ang (Roberto) are siblings. Anecita Limoco-Ang (Anecita) is Juanito's wife and Jeannevie is their daughter. Roberto was elected President of SMBI, while Juanito was elected as its Vice President. Rachel Lu-Ang (Rachel) and Anecita are SMBI's Corporate Secretary and Treasurer, respectively.

On 31 July 1995, Nancy Ang (Nancy), the sister of Juanito and Roberto, and her husband, Theodore Ang (Theodore), agreed to extend a loan to settle the obligations of SMBI and other corporations owned by the Ang family, specifically Bayshore Aqua Culture Corporation, Oceanside Marine Resources and JR Aqua Venture.^[6] Nancy and Theodore issued a check in the amount of \$1,000,000.00

payable to "Juanito Ang and/or Anecita Ang and/or Roberto Ang and/or Rachel Ang." Nancy was a former stockholder of SMBI, but she no longer appears in SMBI's General Information Sheets as early as 1996.^[7] Nancy and Theodore are now currently residing in the United States. There was no written loan agreement, in view of the close relationship between the parties. Part of the loan was also used to purchase real properties for SMBI, for Juanito, and for Roberto.^[8]

On 22 December 2005, SMBI increased its authorized capital stock to P10,000,000.00. The Certificate of Increase of Capital Stock was signed by Juanito, Anecita, Roberto, and Rachel as directors of SMBI.^[9] Juanito claimed, however, that the increase of SMBI's capital stock was done in contravention of the Corporation Code.^[10] According to Juanito, when he and Anecita left for Canada:

x x x Sps. Roberto and Rachel Ang took over the active management of [SMBI]. Through the employment of sugar coated words[,] they were able to successfully manipulate the stocks sharings between themselves at 50-50 under the condition that the procedures mandated by the Corporation Code on increase of capital stock be strictly observed (valid Board Meeting). No such meeting of the Board to increase capital stock materialized. It was more of an accommodation to buy peace x x x.^[11]

Juanito claimed that payments to Nancy and Theodore ceased sometime after 2006. On 24 November 2008, Nancy and Theodore, through their counsel here in the Philippines, sent a demand letter to "Spouses Juanito L. Ang/Anecita L. Ang and Spouses Roberto L. Ang/Rachel L. Ang" for payment of the principal amounting to \$1,000,000.00 plus interest at ten percent (10%) per annum, for a total of \$2,585,577.37 within ten days from receipt of the letter.^[12] Roberto and Rachel then sent a letter to Nancy and Theodore's counsel on 5 January 2009, saying that they are not complying with the demand letter because they have not personally contracted a loan from Nancy and Theodore.

On 8 January 2009, Juanito and Anecita executed a Deed of Acknowledgment and Settlement Agreement (Settlement Agreement) and an Extra-Judicial Real Estate Mortgage (Mortgage). Under the foregoing instruments, Juanito and Anecita admitted that they, together with Roberto and Rachel, obtained a loan from Nancy and Theodore for \$1,000,000.00 on 31 July 1995 and such loan shall be secured by:

- a) Juanito and Anecita's fifty percent share over a parcel of land registered in the name of SMBI;
- b) a parcel of land registered in the name of Juanito Ang;
- c) Juanito's fifty percent share in 7 parcels of land registered in his and Roberto's name;
- d) a parcel of land registered in the name of Roberto;
- e) a parcel of land registered in the name of Rachel; and
- f) Roberto and Rachel's fifty percent share in 2 parcels of land registered in the name of their son, Livingstone L. Ang (Livingstone), and in another lot registered in the name of Livingstone and Alvin Limoco Ang.^[13]

A certain Kenneth C. Locsin (Locsin) signed on behalf of Nancy and Theodore, under a Special Power of Attorney which was not attached as part of the Settlement Agreement or the Mortgage, nor included in the records of this case.

Thereafter, Juanito filed a "Stockholder Derivative Suit with prayer for an ex-parte Writ of Attachment/Receivership" (Complaint) before the RTC Bacolod on 29 January 2009. He alleged that "the intentional and malicious refusal of defendant Sps. Roberto and Rachel Ang to [settle] their 50% share x x x [of] the total obligation x x x will definitely affect the financial viability of plaintiff SMBI."^[14] Juanito also claimed that he has been "illegally excluded from the management and participation in the business of [SMBI through] force, violence and intimidation" and that Rachel and Roberto have seized and carted away SMBI's records from its office.^[15]

The Complaint sought the following reliefs:

- a) Issuance of an ex-parte Writ of Attachment and/or Garnishment, with a Break Open Order covering the assets of the spouses Roberto and Rachel Ang, or any interest they may have against third parties;
- b) Placement of SMBI under Receivership pending resolution of the case;
- c) Enforcement of Juanito's right to actively participate in the management of SMBI;
- d) Issuance of an Order compelling the Spouses Roberto and Rachel Ang to:
 - i. Render an accounting of the utilization of the loan amounting to \$2,585,577.37 or P120,229,347.26;
 - ii. Pay fifty percent of the aforementioned loan, amounting to P60,114,673.62;
 - iii. Explain why Nancy was removed as a stockholder as far as SMBI's reportorial requirements with the SEC are concerned;
 - iv. Restore Juanito's right to actively manage the affairs of the corporation; and
 - v. Pay attorney's fees amounting to P20,000.00.

On 29 January 2009, the RTC Bacolod issued an Order^[16] granting the application for an ex-parte writ of attachment and break open order. Atty. Jerry Basiao, who filed an application for appointment as Receiver of SMBI, was directed by the RTC Bacolod to furnish the required Receivership Bond.^[17] On the same date, Roberto and Rachel moved to quash the writ of attachment and set aside the break open order and appointment of receiver.^[18] They claimed that these were issued in violation of their right to due process:

Records of this case would show that the complaint was filed before [the RTC Bacolod] at 2:50 p.m. of January 29, 2009. x x x

x x x x

[C]ounsel for the defendant-spouses went to [the RTC Bacolod] at around 3:00 p.m. on January 29, 2009 [to inquire on] the status of the case and was informed that the last pleading on record is his entry of appearance with the conformity of the defendant Rachel Ang. Counsel was however informed by the clerk of court that the Honorable Judge has already issued an order directing the issuance of the writ of preliminary attachment, receivership and break open order but said order was not officially released yet x x x. Due to the undersigned counsel's insistence, however, said clerk of court of this Honorable Court furnished him a copy of said order x x x. [T]he clerk of court and the clerk in charge of civil cases assured [counsel] that no writ of preliminary attachment was prepared or issued x x x. Despite [such] assurance x x x [and counsel's advice that they shall move to quash the order the following morning], that afternoon, the clerk of court x x x clandestinely, hurriedly and surreptitiously, for reasons known only [to] her, x x x prepared the writ of attachment x x x.^[19]

In her Verified Answer *Ad Cautelam* which was filed on 10 February 2009, Rachel prayed that the Complaint be dismissed as it was not a *bona fide* derivative suit as defined under the Interim Rules of Procedure for Intra-Corporate Controversies^[20] (Interim Rules). According to Rachel, the Complaint, although labelled as a derivative suit, is actually a collection suit since the real party in interest is not SMBI, but Nancy and Theodore:

[T]he cause of action does not devolve on the corporation as the alleged harm or wrong pertains to the right of the Sps. Theodore and Nancy Ang, as creditors, to collect the amount allegedly owed to them. x x x

x x x x

That the instant suit is for the benefit of a non-stockholder and not the corporation is obvious when the primary relief prayed for in the Complaint which is for the defendants "to pay the amount of Php 60,114,673.62 plus interest which is 50% of the loan obligations of plaintiff [SMBI] to its creditor Sps. Theodore and Nancy Ang." Otherwise stated, the instant suit is nothing but a complaint for sum of money shamelessly masked as a derivative suit.^[21]

Rachel also argued that the Complaint failed to allege that Juanito "exerted all reasonable efforts to exhaust all intra-corporate remedies available under the articles of incorporation, by-laws, laws or rules governing the corporation to obtain the relief he desires," as required by the Interim Rules.

During cross-examination, Juanito admitted that there was no prior demand for accounting or liquidation nor any written objection to SMBI's increase of capital stock. He also conceded that the loan was extended by persons who are not stockholders of SMBI. Thus, Rachel filed a Motion for Preliminary Hearing on Affirmative Defenses on 27 November 2009, arguing that in view of Juanito's admissions, the Complaint should be dismissed pursuant to Section 1 of the Interim

Rules. Juanito filed his Opposition thereto on 8 January 2010,^[22] arguing that applying this Court's ruling in *Hi-Yield Realty, Inc. v. Court of Appeals*,^[23] the requirement for exhaustion of intra-corporate remedies is no longer needed when the corporation itself is "under the complete control of the persons against whom the suit is filed." Juanito also alleged that he and Anecita were deceived into signing checks to pay off bogus loans purportedly extended by Rachel's relatives in favor of SMBI. Some of the checks were payable to cash, and were allegedly deposited in Rachel's personal account.^[24] He also claimed that Rachel's Motion is disallowed under the Interim Rules.

On 9 February 2009, Juanito moved that Rachel and her daughter, Em Ang (Em), as well as their counsel, Atty. Filomeno Tan, Jr. (Atty. Tan) be held in contempt. Juanito claimed that on the date the writ of attachment and break open order were issued, Atty. Tan, accompanied by Rachel and Em, "arrogantly demanded from the Clerk in charge of Civil Cases that he be furnished a copy of the [said orders] x x x otherwise he will tear the records of the subject commercial case." Juanito also accused Atty. Tan of surreptitiously photocopying the said orders prior to service of the summons, Complaint, Writ of Attachment and Attachment Bond. According to Juanito, the purpose of obtaining a copy of the orders was to thwart its implementation. Thus, when the authorities proceeded to the SMBI premises to enforce the orders, they found that the place was padlocked, and that all corporate documents and records were missing. On 14 December 2010, the Sheriff and other RTC Bacolod employees then filed a Verified Complaint against Atty. Tan before this Court, which also contained the foregoing allegations.^[25]

Rachel then filed a Reply on 27 January 2010, claiming that Juanito's reliance on the *Hi-Yield* case is misplaced:

The facts x x x of this case are strikingly different from that in *Hi-Yield Realty*. In that case, the Supreme Court noted that the complaining stockholder was a minority stockholder. However, in the case at bar, Juanito Ang is one of the biggest stockholders of [SMBI]. x x x [H]e is a member of [SMBI's] Board of Directors and is even the vice-president thereof. Furthermore, in *Hi-Yield Realty*, the Supreme Court noted that the complaining stockholder was excluded from the affairs of the corporation. However, the evidence thus far presented, particularly Juanito Ang's admission, show that he and his wife, Anecita, participate in the disbursement of [SMBI's] funds x x x.^[26]

Juanito filed his Rejoinder on 2 March 2010.

The Ruling of the RTC Bacolod

On 27 September 2010, the RTC Bacolod issued an Order which stated that:

WHEREFORE, premises considered[,] the court hereby rules that the present action is a DERIVATIVE SUIT and [the] Motion to Dismiss based on Affirmative Defenses raised by defendants is DENIED for lack of merit.

^[27]