

EN BANC

[G.R. No. 153690, February 15, 2011]

DAVID LU, PETITIONER, VS. PATERNO LU YM, SR., PATERNO LU YM, JR., VICTOR LU YM, JOHN LU YM, KELLY LU YM, AND LUDO & LUYM DEVELOPMENT CORPORATION, RESPONDENTS.

[G.R. NO. 157381]

PATERNO LU YM, SR., PATERNO LU YM, JR., VICTOR LU YM, JOHN LU YM, KELLY LU YM, AND LUDO & LUYM DEVELOPMENT CORPORATION, PETITIONERS, VS. DAVID LU, RESPONDENT.

[G.R. NO. 170889]

JOHN LU YM AND LUDO & LUYM DEVELOPMENT CORPORATION, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS OF CEBU CITY (FORMER TWENTIETH DIVISION), DAVID LU, ROSA GO, SILVANO LUDO & CL CORPORATION, RESPONDENTS.

R E S O L U T I O N

CARPIO MORALES, J.:

By Decision of August 26, 2008, the Court^[1] unanimously disposed of the three present petitions as follows:

WHEREFORE, premises considered, the petitions in G.R. Nos. 153690 and 157381 are DENIED for being moot and academic; while the petition in G.R. No. 170889 is DISMISSED for lack of merit. Consequently, the *Status Quo* Order dated January 23, 2006 is hereby LIFTED.

The Court of Appeals is DIRECTED to proceed with CA-G.R. CV No. 81163 and to resolve the same with dispatch.

SO ORDERED[,]^[2]

which Decision was, on motion for reconsideration, the Court voting 4-1,^[3] *reversed* by Resolution of August 4, 2009, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, the Motion for Reconsideration filed by John Lu Ym and Ludo & LuYm Development Corporation is GRANTED. The Decision of this Court dated August 26, 2008 is RECONSIDERED and SET ASIDE. The Complaint in SRC Case No. 021-CEB, now on appeal with the Court of Appeals in CA-G.R. CV No. 81163,

is DISMISSED.

All interlocutory matters challenged in these consolidated petitions are DENIED for being moot and academic.

SO ORDERED.^[4]

David Lu's Motion for Reconsideration and Motion to Refer Resolution to the Court *En Banc* was denied by minute Resolution of September 23, 2009.

Following his receipt on October 19, 2009 of the minute Resolution, David Lu personally filed on October 30, 2009 a Second Motion for Reconsideration and Motion to Refer Resolution to the Court *En Banc*. On even date, he filed through registered mail an "Amended Second Motion for Reconsideration and Motion to Refer Resolution to the Court *En Banc*." And on November 3, 2009, he filed a "Motion for Leave to File [a] Motion for Clarification[, and the] Second Motion for Reconsideration and Motion to Refer Resolution to the Court *En Banc*." He later also filed a "Supplement to Second Motion for Reconsideration with Motion to Dismiss" dated January 6, 2010.

John Lu Ym and Ludo & Luym Development Corporation (LLDC), meanwhile, filed with leave a Motion^[5] for the Issuance of an Entry of Judgment of February 2, 2010, which merited an Opposition from David Lu.

In compliance with the Court's Resolution of January 11, 2010, Kelly Lu Ym, Victor Lu Ym and Paterno Lu Ym, Jr. filed a Comment/Opposition of March 20, 2010, while John Lu Ym and LLDC filed a Consolidated Comment of March 25, 2010, a Supplement thereto of April 20, 2010, and a Manifestation of May 24, 2010.

The present cases were later referred to the Court *en banc* by Resolution of October 20, 2010.

Brief Statement of the Antecedents

The three consolidated cases stemmed from the complaint for "Declaration of Nullity of Share Issue, Receivership and Dissolution" filed on August 14, 2000 before the Regional Trial Court (RTC) of Cebu City by David Lu, et al. against Paterno Lu Ym, Sr. and sons (Lu Ym father and sons) and LLDC.

By Decision of March 1, 2004, Branch 12 of the RTC ruled in favor of David *et al.* by annulling the issuance of the shares of stock subscribed and paid by Lu Ym father and sons at less than par value, and ordering the dissolution and asset liquidation of LLDC. The appeal of the trial court's Decision remains pending with the appellate court in CA-G.R. CV No. 81163.

Several incidents arising from the complaint reached the Court through the present three petitions.

In **G.R. No. 153690** wherein David, *et al.* assailed the appellate court's resolutions dismissing their complaint for its incomplete signatory in the certificate of non-forum shopping and consequently annulling the placing of the subject corporation under

receivership *pendente lite*, the Court, by Decision of August 26, 2008, found the issue to have been mooted by the admission by the trial court of David *et al.*'s Amended Complaint, filed by them pursuant to the trial court's order to conform to the requirements of the Interim Rules of Procedure Governing Intra-Corporate Controversies.

Since an amended pleading supersedes the pleading that it amends, the original complaint of David, *et al.* was deemed withdrawn from the records.

The Court noted in G.R. No. 153690 that both parties admitted the mootness of the issue and that the trial court had already rendered a decision on the merits of the case. It added that the Amended Complaint stands since Lu Ym father and sons availed of an improper mode (via an Urgent Motion filed with this Court) to assail the admission of the Amended Complaint.

In **G.R. No. 157381** wherein Lu Ym father and sons challenged the appellate court's resolution restraining the trial court from proceeding with their motion to lift the receivership order which was filed during the pendency of G.R. No. 153690, the Court, by Decision of August 26, 2008 resolved that the issue was mooted by the amendment of the complaint and by the trial court's decision on the merits. The motion having been filed ancillary to the main action, which main action was already decided on the merits by the trial court, the Court held that there was nothing more to enjoin.

G.R. No. 170889 involved the denial by the appellate court of Lu Ym father and sons' application in CA-G.R. CV No. 81163 for a writ of preliminary injunction. By August 26, 2008 Decision, the Court dismissed the petition after finding no merit on their argument - which they raised for the *first* time in their motion for reconsideration before the appellate court - of lack of jurisdiction for non-payment of the correct RTC docket fees.

As reflected early on, the Court, in a turnaround, by Resolution of August 4, 2009, reconsidered its position on the matter of docket fees. It ruled that the trial court did not acquire jurisdiction over the case for David Lu, *et al.*'s failure to pay the correct docket fees, hence, all interlocutory matters and incidents subject of the present petitions must consequently be denied.

Taking Cognizance of the Present Incidents

The Internal Rules of the Supreme Court (IRSC) states that the Court *en banc* shall act on the following matters and cases:

- (a) cases in which the constitutionality or validity of any treaty, international or executive agreement, law, executive order, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question;
- (b) criminal cases in which the appealed decision imposes the death penalty or *reclusion perpetua*;
- (c) cases raising novel questions of law;

- (d) cases affecting ambassadors, other public ministers, and consuls;
- (e) cases involving decisions, resolutions, and orders of the Civil Service Commission, the Commission on Elections, and the Commission on Audit;
- (f) cases where the penalty recommended or imposed is the dismissal of a judge, the disbarment of a lawyer, the suspension of any of them for a period of more than one year, or a fine exceeding forty thousand pesos;
- (g) cases covered by the preceding paragraph and involving the reinstatement in the judiciary of a dismissed judge, the reinstatement of a lawyer in the roll of attorneys, or the lifting of a judge's suspension or a lawyer's suspension from the practice of law;
- (h) cases involving the discipline of a Member of the Court, or a Presiding Justice, or any Associate Justice of the collegial appellate court;
- (i) cases where a doctrine or principle laid down by the Court *en banc* or by a Division may be modified or reversed;
- (j) cases involving conflicting decisions of two or more divisions;
- (k) cases where three votes in a Division cannot be obtained;
- (l) Division cases where the subject matter has a huge financial impact on businesses or affects the welfare of a community;
- (m) Subject to Section 11 (b) of this rule, other division cases that, in the opinion of at least three Members of the Division who are voting and present, are appropriate for transfer to the Court *en banc*;
- (n) cases that the Court *en banc* deems of sufficient importance to merit its attention; and
- (o) all matters involving policy decisions in the administrative supervision of all courts and their personnel.^[6] (underscoring supplied)

The enumeration is an amalgamation of SC Circular No. 2-89 (February 7, 1989), as amended by *En Banc* Resolution of November 18, 1993, and the amplifications introduced by Resolution of January 18, 2000 in A.M. No. 99-12-08-SC with respect to administrative cases and matters.

The present cases fall under at least three types of cases for consideration by the Court *En Banc*. At least three members of the Court's Second Division (to which the present cases were transferred,^[7] they being assigned to a Member thereof) found, by Resolution of October 20, 2010, that the cases were appropriate for referral-transfer to the Court *En Banc* which subsequently accepted^[8] the referral in view of the sufficiently important reason **to resolve all doubts on the validity of the challenged resolutions as they appear to modify or reverse doctrines or**

principles of law.

In *Firestone Ceramics v. Court of Appeals*,^[9] the Court treated the consolidated cases as *En Banc* cases and set the therein petitioners' motion for oral argument, after finding that the cases were of sufficient importance to merit the Court *En Banc*'s attention. It ruled that the Court's action is a **legitimate and valid exercise of its residual power**.^[10]

In *Limketkai Sons Milling, Inc. v. Court of Appeals*, the Court conceded that it is not infallible. Should any error of judgment be perceived, it does not blindly adhere to such error, and the parties adversely affected thereby are not precluded from seeking relief therefrom, by way of a motion for reconsideration. In this jurisdiction, rectification of an error, more than anything else, is of paramount importance.

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It bears stressing that where, as in the present case, the Court *En Banc* entertains a case for its resolution and disposition, it does so without implying that the Division of origin is incapable of rendering objective and fair justice. The action of the Court simply means that the nature of the cases calls for *en banc* attention and consideration. Neither can it be concluded that the Court has taken undue advantage of sheer voting strength. It was merely guided by the well-studied finding and sustainable opinion of the majority of its actual membership- that, indeed, subject cases are of sufficient importance meriting the action and decision of the whole Court. It is, of course, beyond cavil that all the members of this highest Court of the land are always imbued with the noblest of intentions in interpreting and applying the germane provisions of law, jurisprudence, rules and Resolutions of the Court- to the end that public interest be duly safeguarded and rule of law be observed.^[11]

It is argued that the assailed Resolutions in the present cases have already become final,^[12] since a *second* motion for reconsideration is prohibited except for extraordinarily persuasive reasons and only upon express leave first obtained;^[13] and that once a judgment attains finality, it thereby becomes immutable and unalterable, however unjust the result of error may appear.

The contention, however, misses an important point. The doctrine of *immutability of decisions* applies only to final and executory decisions. Since the present cases may involve a modification or reversal of a Court-ordained doctrine or principle, the judgment rendered by the Special Third Division may be considered unconstitutional, hence, it can never become final. It finds mooring in the deliberations of the framers of the Constitution:

On proposed Section 3(4), Commissioner Natividad asked what the effect would be of a decision that violates the proviso that "no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court *en banc*."