

## THIRD DIVISION

[ G.R. No. 165876, October 04, 2010 ]

**WESTMONT INVESTMENT CORPORATION, PETITIONER, VS.  
FARMIX FERTILIZER CORPORATION, PEARLBANK SECURITIES,  
INC., MANUEL N. TANKIANSEE AND JUANITA U. TAN,  
RESPONDENTS.**

### DECISION

**VILLARAMA, JR., J.:**

On appeal is the Decision<sup>[1]</sup> dated October 29, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 82198. The CA had dismissed petitioner Westmont Investment Corporation's petition for certiorari and mandamus assailing the Decision<sup>[2]</sup> dated February 2, 2004 of the Regional Trial Court (RTC) of Manila, Branch 46 in Civil Case No. 02-103160.

The facts are as follows:

Sometime in 1999, when Westmont Bank had to undergo rehabilitation and financial assistance under a plan approved by the Bangko Sentral ng Pilipinas (BSP) and Philippine Deposit Insurance Corporation (PDIC), United Overseas Bank Limited (UOBL) expressed interest in acquiring the controlling interest of Westmont or up to 67% of its voting stock.<sup>[3]</sup> At the time, the following were the controlling shareholders of Westmont (hereinafter "the former controlling shareholders"):

- a. The Espiritu Group, composed of petitioner Westmont Investment Corporation (petitioner WINCORP), John B. Espiritu,<sup>[4]</sup> Sta. Lucia Realty and Development Corporation, Golden Era Holdings, Inc. and Exchange Equity Corporation;
- b. The Cua Group, composed of Victor Say, Lory Cua, Santiago Cua, Sr., Santiago Cua, Jr., Simeon S. Cua, Henry T. Cua Loping, Vicente T. Cua Loping and ACL Development Corporation;
- c. The Farmix Group, composed of respondents Farmix Fertilizer Corporation and Pearlbank Securities, Inc.;
- d. The Tankiansee Group, composed of respondents Manuel N. Tankiansee and Juanita U. Tan; and
- e. The Tan Caktiong Group, composed of Tony Tan Caktiong and William Tan Untiong.<sup>[5]</sup>

Under the Transfer Agreement, the former controlling shareholders shall sell to

UOBL, through a leveraged buy-out and quasi-reorganization of the bank, their interest in the amount of P1.4 billion.

Under the leveraged buy-out, UOBL and the former controlling stockholders agreed that the mode of payment to the latter would be done by an assignment of certain receivables from the bank's portfolio, which UOBL considered as "political loans," equivalent to P1.4 billion. Thereafter, their shares would be diluted to enable UOBL to acquire the controlling interest through a subscription of shares in the bank. The bank's trust department will act as collecting agent of the former controlling stockholders and all monies collected on the P1.4 billion receivables would be reinvested in the bank through the subscription of common shares of the bank. The intended result would be that 67% will be held by UOBL, and of the remaining 33%, 28% shall be held in trust by the Tan Caktiong Group for the former controlling shareholders and the remaining 5% shall be held by the Tan Caktiong Group for its own account. To facilitate the buy-out, a trust agreement was executed by the former controlling stockholders in favor of the Tan Caktiong Group.

After the dilution of the interest of the former controlling shareholders, the paid-up capital of the bank was increased by P3.5 billion and new shares were issued by the bank, now named United Overseas Bank of the Philippines (UOBP).

On February 23, 2000, the BSP approved Board Resolution No. 305 directing the bank to reinstate the P1.4 billion receivables in its books within thirty (30) days from receipt of the said resolution and to take positive steps to recover the P1.4 billion assets transferred to the former controlling shareholders.

As a result of the BSP Resolution, UOBL did not pay the former controlling stockholders the consideration due them under the agreement and UOBP reinstated the P1.4 billion receivables in its books.

Because of this development, the Espiritu Group revoked its trust agreement with the Tan Caktiong Group. Then, on March 25, 2002, John B. Espiritu, representing the Espiritu and Tan Caktiong Groups, filed a petition<sup>[6]</sup> against UOBL, UOBP, Manta Ray Holdings, Inc., the UOBL Directors, and UOBP Corporate Secretary Marianne Malate-Guerrero (hereinafter the UOB Group) to compel the issuance of shares of stock and/or return of management and control. The petition was brought under the Interim Rules of Procedure for Intra-Corporate Controversies.<sup>[7]</sup> Answers<sup>[8]</sup> to the petition were filed by respondents on May 2, 2002.

On May 23, 2002, the Regional Trial Court (RTC) issued a Notice of Pre-Trial<sup>[9]</sup> ordering the parties to file their respective briefs and scheduling the pre-trial on June 26, 2002. On June 26, 2002, however, the pre-trial was cancelled and reset to July 19, 2002.<sup>[10]</sup>

On June 27, 2002, the Farmix and Tankiansee Groups filed a Motion for Leave to File and Admit Attached Petition in Intervention<sup>[11]</sup> for the purpose of enforcing their 10.36% share in the P1.4 billion receivables. Said petition was admitted by the trial court.<sup>[12]</sup>

In the meantime, the parties filed their respective pre-trial briefs and resorted to different modes of discovery.

On July 5, 2002, the Espiritu and Tan Caktiong Groups and the UOB Group executed a compromise agreement. Consequently, on July 17, 2002, said parties filed a Joint Motion to Dismiss with Prejudice on the ground that they have agreed to amicably settle the dispute which gave rise to the filing of the Petition and Answers with Counterclaims. The scheduled pre-trial on July 19, 2002 no longer pushed through because of this development.

After the parties were heard, the RTC by Order<sup>[13]</sup> dated August 19, 2002, granted the Joint Motion to Dismiss with Prejudice. The Farmix Group, however, claimed that the settlement was not disclosed to the Farmix and Tankiansee Groups.

Thus, on September 23, 2002, the RTC issued another Notice of Pre-trial<sup>[14]</sup> again directing the parties to file their respective briefs and setting the pre-trial on October 8, 2002. On October 8, 2002 however, on motion of the Farmix and Tankiansee Groups, the pre-trial was postponed until further notice.<sup>[15]</sup> The date of pre-trial was reset several times more until the parties agreed to hold it on January 31, 2003.<sup>[16]</sup>

In the meantime, on November 12, 2002, the Farmix Group had filed an amended petition-in-intervention. The same was admitted by the RTC on November 25, 2002.<sup>[17]</sup> Said amended pleading was also adopted by manifestation by the Tankiansee Group. But after a few months, the Tankiansee Group filed an omnibus motion for the withdrawal of said manifestation, for the issuance of protective orders to prevent the taking of deposition upon oral examination of its group and for the early setting of the pre-trial conference. Said motion was granted by the trial court, but, the pre-trial was ordered to proceed as scheduled.

On January 31, 2003, the pre-trial scheduled on the said day was again cancelled. It was reset seven (7) times more, the last date being November 14, 2003.

On **November 12, 2003**, the RTC issued an Order<sup>[18]</sup> cancelling the scheduled pre-trial on November 14, 2003. It ruled that "[a]fter careful evaluation of the pleadings, affidavits and documentary evidence presented by the parties, the Court believes that the issues in this case may [already] be resolved as warranted by Section 4, Rule 4 of the Interim Rules of Procedure [for] Intra-Corporate Controversies." The RTC ordered the parties to submit their respective memoranda without prejudice to the reception of additional evidence or conduct of clarificatory hearings as may be determined by the court. Thereafter, the case shall be deemed submitted for decision.

The UOB Group (except Manta Ray Holdings, Inc.) moved to reconsider<sup>[19]</sup> the November 12, 2003 Order, arguing that there were still issues of fact that could only be resolved through summary trial. The Tan Caktiong Group, through a Manifestation,<sup>[20]</sup> adopted the UOB Group's motion for reconsideration. The Espiritu Group through a Manifestation and Motion,<sup>[21]</sup> also adopted the UOB Group's motion for reconsideration but also raised additional arguments.

On **December 3, 2003**, the RTC issued an Order<sup>[22]</sup> denying the motion for

reconsideration filed by the UOB Group. The RTC ruled:

The Court once again carefully evaluated the voluminous pleadings, affidavits and documents submitted before it and is convinced that a decision may already be rendered by the Court, whether full or otherwise, after submission by the parties of their respective memoranda pursuant to Section 4, Rule 4 of the Interim Rules. The Court reiterates that this is without prejudice to the reception of additional evidence and/or the conduct of clarificatory hearing(s) as may be determined by the Court after the submission of the parties' memoranda.<sup>[23]</sup>

The RTC then reiterated its directive for the parties to file their respective memoranda. The parties complied.

On February 2, 2004, the RTC rendered a Decision after determining that there were only two (2) principal issues to be resolved, to wit:

- a) Is the proportionate share of intervenors in the Php 1.4 Billion receivables 7.66% or 10.36%?
- b) Are the intervenors entitled to their alleged proportional share in the thirty-three (33%) percent of the common shares (equivalent to 1,713,510 shares) issued in UOBP [and] registered in the name of the Tan Caktiong Group?<sup>[24]</sup>

The dispositive portion of the decision reads:

WHEREFORE, judgment is hereby rendered:

1. Ordering UOBL to pay intervenors the amount of Php 99, 870,400.00 representing their 10.36% collective interest in the Php 1.4 Billion receivables which is valued at Php 964 Million with 12% interest from the time of filing of the petition-in-intervention until full payment;
2. Ordering UOBL to pay intervenors the amount of Php 30,766,060.58 representing the value of intervenors' 10.36% [share] of the 28% share/equity in UOBP held in trust by the Tan Caktiong Group for and in behalf of former Westmont Bank Shareholders based on the Php 350 Million valuation stated in the settlement agreements, plus 12% interest from the time of filing of the petition-in-intervention until fully paid;
3. Ordering UOBL to pay intervenors the amount of P5,000,000.00 as and by way of attorney's fees;
4. Ordering UOBL to pay the costs of suit[;]
5. On the cross-claim, ordering the Espiritu Group to reimburse and indemnify UOBL of the total amount due to intervenors in excess of Php

62,776,040.00.

All other cross-claim and counterclaims are hereby denied.

IT IS SO ORDERED.<sup>[25]</sup>

On February 13, 2004, the Espiritu Group, except petitioner WINCORP, through its attorney-in-fact, John B. Espiritu, filed a Notice of Appeal<sup>[26]</sup> with the RTC alleging that the February 2, 2004 Decision was contrary to law and evidence on record. On the same day, petitioner WINCORP, through the same attorney-in-fact, John B. Espiritu and by the same counsel, Angara Abello Concepcion Regala and Cruz (ACCRA), filed an *Ex Abundanti Ad Cautelam* Notice of Appeal<sup>[27]</sup> assailing the RTC Decision for being contrary to law and evidence, but without waiving any of its remedies against the decision. True enough, also on February 13, 2004, WINCORP filed a petition for certiorari and mandamus with the CA seeking to annul the February 2, 2004 Decision of the RTC. WINCORP alleged that:

A

THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION, AMOUNTING TO LACK OR EXCESS OF JURISDICTION, IN ISSUING THE ASSAILED DECISION, CONSIDERING THAT:

1. THE JUDGMENT BEFORE PRE-TRIAL IS PREMATURE BECAUSE OF THE MANY OUTSTANDING FACTUAL ISSUES IN THE CASE, WHICH CAN ONLY BE RESOLVED AFTER TRIAL ON THE MERITS.
2. THE PUBLIC RESPONDENT MADE FINDINGS OF FACTS IN ITS ASSAILED DECISION BASED ON THE SELF-SERVING ALLEGATIONS OF THE FARMIX AND TANKIANSEE GROUPS, WITHOUT GIVING PETITIONER THE RIGHT TO CROSS-EXAMINE THEM ON SUCH ALLEGATIONS, AND THUS, DEPRIVING THEM OF THEIR RIGHT TO DUE PROCESS.

B

THE PUBLIC RESPONDENT GRAVELY AND UNLAWFULLY NEGLECTED TO PERFORM HIS LEGAL DUTY TO PROCEED WITH THE TRIAL ON THE DISPUTE AND CONTROVERTED FACTS, THEREBY DEPRIVING PETITIONER DUE PROCESS OF LAW.<sup>[28]</sup>

WINCORP prayed that:

1. Upon filing of th[e] Petition, a Temporary Restraining Order/Writ of Preliminary Injunction be issued enjoining the Regional Trial Court of Manila, Branch 46, from implementing the Assailed Decision, including the issuance of any writ of execution in connection therewith;