

THIRD DIVISION

[G.R. No. 177549, June 18, 2009]

**ANTHONY S. YU, ROSITA G. YU AND JASON G. YU, PETITIONERS,
VS. JOSEPH S. YUKAYGUAN, NANCY L. YUKAYGUAN, JERALD
NERWIN L. YUKAYGUAN, AND JILL NESLIE L. YUKAYGUAN, [ON
THEIR OWN BEHALF AND ON BEHALF OF] WINCHESTER
INDUSTRIAL SUPPLY, INC., RESPONDENTS.**

D E C I S I O N

CHICO-NAZARIO, J.:

Before Us is a Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court, which seeks to reverse and set aside the Resolutions dated 18 July 2006^[2] and 19 April 2007^[3] of the Court of Appeals in CA-G.R. SP No. 00185. Upon herein respondents' motion, the Court of Appeals rendered the assailed Resolution dated 18 July 2006, reconsidering its Decision^[4] dated 15 February 2006; and remanding the case to the Regional Trial Court (RTC) of Cebu City, Branch 11, for necessary proceedings, in effect, reversing the Decision^[5] dated 10 November 2004 of the RTC which dismissed respondents' Complaint in SRC Case No. 022-CEB. Herein petitioners' Motion for Reconsideration of the Resolution dated 18 July 2006 was denied by the appellate court in the other assailed Resolution dated 19 April 2007.

Herein petitioners are members of the Yu Family, particularly, the father, Anthony S. Yu (Anthony); the wife, Rosita G. Yu (Rosita); and their son, Jason G. Yu (Jason).

Herein respondents composed the Yukayguan Family, namely, the father, Joseph S. Yukayguan (Joseph); the wife, Nancy L. Yukayguan (Nancy); and their children Jerald Nerwin L. Yukayguan (Jerald) and Jill Neslie Yukayguan (Jill).

Petitioner Anthony is the older half-brother of respondent Joseph.

Petitioners and the respondents were all stockholders of Winchester Industrial Supply, Inc. (Winchester, Inc.), a domestic corporation engaged in the operation of a general hardware and industrial supply and equipment business.

On 15 October 2002, respondents filed against petitioners a verified Complaint for Accounting, Inspection of Corporate Books and Damages through Embezzlement and Falsification of Corporate Records and Accounts^[6] before the RTC of Cebu. The said Complaint was filed by respondents, in their own behalf and as a derivative suit on behalf of Winchester, Inc., and was docketed as SRC Case No. 022-CEB. The factual background of the Complaint was stated in the attached Affidavit executed by respondent Joseph.

According to respondents,^[7] Winchester, Inc. was established and incorporated on

12 September 1977, with petitioner Anthony as one of the incorporators, holding 1,000 shares of stock worth P100,000.00.^[8] Petitioner Anthony paid for the said shares of stock with respondent Joseph's money, thus, making the former a mere trustee of the shares for the latter. On 14 November 1984, petitioner Anthony ceded 800 of his 1,000 shares of stock in Winchester, Inc. to respondent Joseph, as well as Yu Kay Guan,^[9] Siao So Lan, and John S. Yu.^[10] Petitioner Anthony remained as trustee for respondent Joseph of the 200 shares of stock in Winchester, Inc., still in petitioner Anthony's name.

Respondents then alleged that on 30 June 1985, Winchester, Inc. bought from its incorporators, excluding petitioner Anthony, their accumulated 8,500 shares in the corporation.^[11] Subsequently, on 7 November 1995, Winchester, Inc. sold the same 8,500 shares to other persons, who included respondents Nancy, Jerald, and Jill; and petitioners Rosita and Jason.^[12]

Respondents further averred that although respondent Joseph appeared as the Secretary and Treasurer in the corporate records of Winchester, Inc., petitioners actually controlled and ran the said corporation as if it were their own family business. Petitioner Rosita handled the money market placements of the corporation to the exclusion of respondent Joseph, the designated Treasurer of Winchester, Inc. Petitioners were also misappropriating the funds and properties of Winchester, Inc. by understating the sales, charging their personal and family expenses to the said corporation, and withdrawing stocks for their personal use without paying for the same. Respondents attached to the Complaint various receipts^[13] to prove the personal and family expenses charged by petitioners to Winchester, Inc.

Respondents, therefore, prayed that respondent Joseph be declared the owner of the 200 shares of stock in petitioner Anthony's name. Respondents also prayed that petitioners be ordered to: (1) deposit the corporate books and records of Winchester, Inc. with the Branch Clerk of Court of the RTC for respondents' inspection; (2) render an accounting of all the funds of Winchester, Inc. which petitioners misappropriated; (3) reimburse the personal and family expenses which petitioners charged to Winchester, Inc., as well as the properties of the corporation which petitioners withheld without payment; and (4) pay respondents' attorney's fees and litigation expenses. In the meantime, respondents sought the appointment of a Management Committee and the freezing of all corporate funds by the trial court.

On 13 November 2002, petitioners filed an Answer with Compulsory Counterclaim,^[14] attached to which was petitioner Anthony's Affidavit.^[15] Petitioners vehemently denied the allegation that petitioner Anthony was a mere trustee for respondent Joseph of the 1,000 shares of stock in Winchester, Inc. in petitioner Anthony's name. For the incorporation of Winchester, Inc., petitioner Anthony contributed P25,000.00 paid-up capital, representing 25% of the total par value of the 1,000 shares he subscribed to, the said amount being paid out of petitioner Anthony's personal savings and petitioners Anthony and Rosita's conjugal funds. Winchester, Inc. was being co-managed by petitioners and respondents, and the attached receipts, allegedly evidencing petitioners' use of corporate funds for personal and family expenses, were in fact signed and approved by respondent Joseph.

By way of special and affirmative defenses, petitioners contended in their Answer with Compulsory Counterclaim that respondents had no cause of action against them. Respondents' Complaint was purely intended for harassment. It should be dismissed under Section 1(j), Rule 16^[16] of the Rules of Court for failure to comply with conditions precedent before its filing. *First*, there was no allegation in respondents' Complaint that earnest efforts were exerted to settle the dispute between the parties. *Second*, since respondents' Complaint purportedly constituted a derivative suit, it noticeably failed to allege that respondents exerted effort to exhaust all available remedies in the Articles of Incorporation and By-Laws of Winchester, Inc., as well as in the Corporation Code. And *third*, given that respondents' Complaint was also for inspection of corporate books, it lacked the allegation that respondents made a previous demand upon petitioners to inspect the corporate books but petitioners refused. Prayed for by petitioners, in addition to the dismissal of respondents' Complaint, was payment of moral and exemplary damages, attorney's fees, litigation expenses, and cost of suit.

On 30 October 2002, the hearing on the application for the appointment of a Management Committee was commenced. Respondent Joseph submitted therein, as his direct testimony, the same Affidavit that he executed, which was attached to the respondents' Complaint. On 4 November 2002, respondent Joseph was cross-examined by the counsel for petitioners. Thereafter, the continuation of the hearing was set for 29 November 2002, in order for petitioners to adduce evidence in support of their opposition to the application for the appointment of a Management Committee.^[17]

During the hearing on 29 November 2002, the parties manifested before the RTC that there was an ongoing mediation between them, and so the hearing on the appointment of a Management Committee was reset to another date.

In amicable settlement of their dispute, the petitioners and respondents agreed to a division of the stocks in trade,^[18] the real properties, and the other assets of Winchester, Inc. In partial implementation of the afore-mentioned amicable settlement, the stocks in trade and real properties in the name of Winchester, Inc. were equally distributed among petitioners and respondents. As a result, the stockholders and members of the Board of Directors of Winchester, Inc. passed, on 4 January 2003, a unanimous Resolution^[19] dissolving the corporation as of said date.

On 22 February 2004, respondents filed their pre-trial brief.^[20]

On 25 June 2004, petitioners filed a Manifestation^[21] informing the RTC of the existence of their amicable settlement with respondents. Respondents, however, made their own manifestation before the RTC that they were repudiating said settlement, in view of the failure of the parties thereto to divide the remaining assets of Winchester, Inc. Consequently, respondents moved to have SRC Case No. 022-CEB set for pre-trial.

On 23 August 2004, petitioners filed their pre-trial brief.^[22]

On 26 August 2004, instead of holding a formal pre-trial conference and resuming

the hearing on the application for the appointment of a Management Committee, petitioners and respondents agreed that the RTC may already render a judgment based on the pleadings. In accordance with the agreement of the parties, the RTC issued, on even date, an Order^[23] which stated:

ORDER

During the pre-trial conference held on August 26, 2004, counsels of the parties manifested, agreed and suggested that a judgment may be rendered by the Court in this case based on the pleadings, affidavits, and other evidences on record, or to be submitted by them, pursuant to the provision of Rule 4, Section 4 of the Rule on Intra-Corporate Controversies. The suggestion of counsels was approved by the Court.

Accordingly, the Court hereby orders the counsels of the parties to file simultaneously their respective memoranda within a non-extendible period of twenty (20) days from notice hereof. Thereafter, the instant case will be deemed submitted for resolution.

x x x x

Cebu City, August 26, 2004.

(signed)
SILVESTRE A. MAAMO, JR.
Acting Presiding Judge

Petitioners and respondents duly filed their respective Memoranda,^[24] discussing the arguments already set forth in the pleadings they had previously submitted to the RTC. Respondents, though, attached to their Memorandum a Supplemental Affidavit^[25] of respondent Joseph, containing assertions that refuted the allegations in petitioner Anthony's Affidavit, which was earlier submitted with petitioners' Answer with Compulsory Counterclaim. Respondents also appended to their Memorandum additional documentary evidence,^[26] consisting of original and duplicate cash invoices and cash disbursement receipts issued by Winchester, Inc., to further substantiate their claim that petitioners were understating sales and charging their personal expenses to the corporate funds.

The RTC subsequently promulgated its Decision on 10 November 2004 dismissing SRC Case No. 022-CEB. The dispositive portion of said Decision reads:

WHEREFORE, in view of the foregoing premises and for lack of merit, this Court hereby renders judgment in this case **DISMISSING** the complaint filed by the [herein respondents].

The Court also hereby dismisses the [herein petitioners'] counterclaim because it has not been indubitably shown that the filing by the [respondents] of the latter's complaint was done in bad faith and with malice.^[27]

The RTC declared that respondents failed to show that they had complied with the essential requisites for filing a derivative suit as set forth in Rule 8 of the Interim

Rules of Procedure Governing Intra-Corporate Controversies:

- (1) He was a stockholder or member at the time the acts or transactions subject of the action occurred and at the time the action was filed;
- (2) He exerted all reasonable efforts, and alleges the same with particularity in the complaint, to exhaust all remedies available under the articles of incorporation, by-laws, laws or rules governing the corporation or partnership to obtain the relief he desires;
- (3) No appraisal rights are available for the act or acts complained of; and
- (4) The suit is not a nuisance or harassment suit.

As to respondents' prayer for the inspection of corporate books and records, the RTC adjudged that they had likewise failed to comply with the requisites entitling them to the same. Section 2, Rule 7 of the Interim Rules of Procedure Governing Intra-Corporate Controversies requires that the complaint for inspection of corporate books or records must state that:

- (1) The case is for the enforcement of plaintiff's right of inspection of corporate orders or records and/or to be furnished with financial statements under Sections 74 and 75 of the Corporation Code of the Philippines;
- (2) A demand for inspection and copying of books and records and/or to be furnished with financial statements made by the plaintiff upon defendant;
- (3) The refusal of defendant to grant the demands of the plaintiff and the reasons given for such refusals, if any; and
- (4) The reasons why the refusal of defendant to grant the demands of the plaintiff is unjustified and illegal, stating the law and jurisprudence in support thereof.

The RTC further noted that respondent Joseph was the corporate secretary of Winchester, Inc. and, as such, he was supposed to be the custodian of the corporate books and records; therefore, a court order for respondents' inspection of the same was no longer necessary. The RTC similarly denied respondents' demand for accounting as it was clear that Winchester, Inc. had been engaging the services of an audit firm. Respondent Joseph himself described the audit firm as competent and independent, and believed that the audited financial statements the said audit firm prepared were true, faithful, and correct.

Finding the claims of the parties for damages against each other to be unsubstantiated, the RTC thereby dismissed the same.

Respondents challenged the foregoing RTC Decision before the Court of Appeals *via* a Petition for Review under Rule 43 of the Rules of Court, docketed as CA-G.R. SP No. 00185.