

FIRST DIVISION

[G.R. NO. 160727, June 26, 2007]

UNION BANK OF THE PHILIPPINES, PETITIONER, VS. DANILO L. CONCEPCION, RESPONDENT.

D E C I S I O N

GARCIA, J.:

In this petition for review under Rule 45 of the Rules of Court, petitioner Union Bank of the Philippines (Union Bank) assails and seeks the setting aside of the Decision^[1] dated July 22, 2003 of the Court of Appeals (CA) in *CA-G.R. SP No. 75355*, as effectively reiterated in its Resolution^[2] of November 7, 2003 denying the petitioner's motion for reconsideration.

The records, which include a copy of this Court's Decision dated May 19, 1998 in *G.R. No. 131729* entitled "*Union Bank of the Philippines v. Court of Appeals et al., respondents*,"^[3] yield the following material facts:

On **September 16, 1997**, the EYCO Group of Companies^[4] (EYCO or EYCO Group) filed with the Securities and Exchange Commission (SEC) a *PETITION*^[5] for the declaration of suspension of payment, appointment of a rehabilitation receiver/committee and approval of rehabilitation plan with an alternative prayer for liquidation and dissolution of corporations (Petition for Suspension of Payment, hereinafter). In it, EYCO depicted the Group's composite corporations as having a combined assets that are more than enough to pay off all their debts, but nonetheless unable to pay them as they fall due. Joining EYCO as co-petitioners were Eulogio Yutingco and two other individuals holding controlling interests in the composite corporations (collectively, the Yutingcos).

Finding the petition, docketed as *SEC Case No. 09-97-5764*, to be sufficient in form and substance, the SEC Hearing Panel, by an order of **September 19, 1997**, directed the suspension of all actions, claims and proceedings against EYCO, *et al.* pending before any court, tribunal, board or office^[6] (the Suspension Order). At the same time, the Panel set the petition for hearing.

Meanwhile, a consortium of private banks which had granted credit facilities to EYCO, among them, Union Bank, convened to map out their collective collection options. The formation of a management committee (ManCom) to represent the creditor banks was agreed upon in that meeting.

Subsequently, Union Bank decided to break away from the consortium and, without notifying its members, filed a slew of civil cases against EYCO, *et al.* Of relevance is the first, a complaint for a sum of money instituted on **September 23, 1997** before the Regional Trial Court (RTC) of Makati City, against four (4) members of the EYCO

Group and spouses Eulogio and Bee Kuan Yutingco, as sureties of the corporate obligations, with application for preliminary attachment. This complaint,^[7] docketed as *Civil Case No. 97-2184*, eventually ended up in Branch 148 of the court. The next day, the Makati RTC issued the desired writ of preliminary attachment,^[8] pursuant to which levy on attachment was annotated on the titles, *i.e.*, TCT Nos. V-48192^[9] and V-48193^[10] of the Registry of Deeds of Valenzuela City, of two parcels of land under the name of Nikon Plaza, Inc. and EYCO Properties, Inc., respectively. Also attached, per herein respondent Danilo L. Concepcion (Concepcion, for brevity), without denial from the petitioner, is a parcel of land covered by TCT No. V-49678 of the same registry allegedly held by the Yutingcos in trust for Nikon Industrial Corporation.^[11]

On October 22, 1997, Union Bank moved, on jurisdictional ground, for the dismissal of SEC Case No. 09-97-5764. On the same date, EYCO submitted its rehabilitation plan.

In January 1998, the SEC Hearing Panel appointed the regular members of the newly created ManCom for EYCO.

Meanwhile, Union Bank, without awaiting for the SEC's ruling on its motion to dismiss SEC Case No. 09-97-5764, filed with the CA a petition for *certiorari* to nullify what it tagged as the precipitate September 19, 1997 SEC suspension order ^[12] and its creation of the ManCom. In the same petition, docketed as *CA-G.R. SP No. 45774*, Union Bank alleged that the jurisdiction over the basic petition for declaration of suspension of payment pertains to the RTC under Act No. 1956, as amended, or the *Insolvency Law*.

On December 22, 1997, in *CA-G.R. SP No. 45774*, the CA rendered judgment declaring Union Bank guilty of forum shopping and accordingly dismissed its petition for *certiorari*. This Court, in its Decision^[13] dated May 19, 1998 in *G.R. No. 131729*, in turn affirmed that of the CA, but proceeded further to declare the SEC as possessed of jurisdiction over EYCO's petition for suspension of payments filed pursuant to Section 5(d) of Presidential Decree (P.D.) No. 902-A, but not insofar as the Yutingcos' petition was concerned. With respect to the Yutingcos, the Court held that the SEC's jurisdiction on matters of suspension of payments is confined only to those initiated by corporate entities, as the aforecited section does not allow an individual to file, or join in, the corresponding petition. In line with the rule on misjoinder of parties, the Court directed the SEC to drop the individual petitioners from the petition for suspension of payment.

Conformably with this Court's Decision aforementioned, the Makati RTC issued, in Civil Case No. 97-2184, an *Order*^[14] dated August 17, 1998 thereunder indefinitely suspending the proceedings in that collection suit until further orders. The *fallo* of the RTC's order reads:

WHEREFORE, ... the complaint filed by the plaintiff [Union Bank] against defendant-corporation [EYCO 4] ... is hereby INDEFINITELY SUSPENDED **until further Orders** from this Court in view of the existing petition for Suspension of Payment before the [SEC]. On the other hand, the defendant's motion to dismiss complaint against the individual-

defendants, namely: Spouses Eulogio and Bee Kuan Yutingco, is hereby DENIED for lack of merit.

Consequently, in order to give defendant-Spouses [Yutingcos] ample time to prepare for whatever defense they may raise, they are hereby given a new fifteen (15) days period from receipt of this Order within which to file their answer to the complaint against them.

SO ORDERED. (Words in brackets and emphasis supplied.)

In a related development, the SEC Hearing Panel, over the objection of the consortium of EYCO's creditor banks, approved, on December 18, 1998, the rehabilitation plan prepared by the Strategies and Alliance Corporation for EYCO. The consortium lost no time in appealing to the SEC en banc the Hearing Panel's approval order and prayed for the liquidation and dissolution of EYCO, the appellate recourse docketed as SEC AC No. 649.

On September 14, 1999, the SEC *en banc* issued in SEC AC No. 649 an order finding for the consortium, disposing as follows:

WHEREFORE, ... the appeal is, as it is hereby granted and the Order dated 18 December 1998 is set aside. The Petition to be Declared in State of Suspension of Payment is hereby disapproved and the SAC Plan terminated. Consequently, all committees, conservator/receivers created pursuant to said Order are dissolved. xxx

The Commission, likewise, orders the liquidation and dissolution of the [EYCO Group]. **The case is hereby remanded to the hearing panel below for that purpose.** xxx (Words in brackets and emphasis supplied.)

Another *en banc* order^[15] of March 31, 2001 followed, with the SEC this time appointing respondent Concepcion to act, vice the dissolved Liquidation Committee, as EYCO Liquidator. Among Concepcion's first act as such liquidator was to file, on March 8, 2002, in Civil Case No. 97-2184, a *Motion to Intervene and To Admit Motion to Set Aside Order of Attachment* ^[16] (Motion to Intervene, for brevity). Three days later, Concepcion submitted before the SEC a Liquidation Plan^[17] for the EYCO Group.

After due proceedings, the SEC approved, on April 11, 2002, the Concepcion-submitted Liquidation Plan.^[18] Concepcion's motion to intervene, however, met a different fate. For, by Order ^[19] of August 8, 2002, the Makati RTC denied Concepcion's motion to intervene in Civil Case No. 97-2184 on the ground of lack of standing to intervene, his appointment as Liquidator being, according to the court, of doubtful validity. The order, in addition, granted Union Bank's earlier motion to declare EYCO in default, and set a date for the *ex- parte* reception of Union Bank's evidence.

Concepcion then moved for reconsideration questioning the basis of the denial of his motion to intervene. Questioned, too, was the default aspect of the order, Concepcion arguing in this regard that the collection proceedings were suspended

"until further Orders from this Court" ^[20] and the RTC of Makati has yet to issue the suspension-lifting order. The Makati RTC denied the motion on December 16, 2002.

Earlier, however, Union Bank presented evidence *ex parte*, on the basis of which the Makati RTC rendered, on December 27, 2002, **partial judgment**^[21] ordering EYCO to pay the bank P400 million plus interests and attorney's fees.

Via a petition for *certiorari* and prohibition before the CA, Concepcion challenged the RTC's partial judgment aforementioned and its earlier order denying the motion to intervene. His recourse was docketed as *CA-G.R. SP No. 75355*.

The appellate court eventually issued the herein assailed Decision^[22] reversing the Makati RTC's impugned issuances and allowing Concepcion to intervene, thus:

WHEREFORE, foregoing premises considered, the petition is **GRANTED**. The assailed orders and partial judgment are hereby **ANNULLED and SET ASIDE**. Public respondent [RTC Judge Oscar Pimentel, Branch 148, Makati City] is ordered to allow petitioner [Concepcion] to intervene in Civil Case No. 97-2184.

SO ORDERED.

Following the denial of its motion for reconsideration, ^[23] Union Bank has interposed this petition ascribing to the CA the following errors:

1. In ruling in favor of respondent Concepcion's right to intervene in Civil Case No. 97-2184 pending in the lower court despite his lack of legal interest in the matter in litigation.
2. In ruling in favor of respondent Concepcion's right to intervene in said Civil Case No. 97-2184 despite his lack of legal personality, his appointment by the SEC as liquidator of EYCO being null and void for lack of jurisdiction; and
3. In giving due course to respondent Concepcion's petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure despite its being the improper remedy.

We **DENY**.

As the Court distinctly notes, the petitioner does not assail the CA's judgment insofar as it nullified the RTC's partial judgment or its default order. As thus couched, the petition particularly sets its sight on that part of the appellate court's ruling allowing respondent Concepcion to intervene in Civil Case No. 97-2184. Of the three errors assigned, the more critical relates to the challenged validity of the respondent's appointment by the SEC as liquidator of the EYCO Group, his right to intervene predicated as it is on his being such liquidator.

It is the petitioner's posture, following the Makati RTC's line, that the respondent's appointment as liquidator of EYCO was invalid for lack of jurisdiction on the part of SEC to preside, in first place, over EYCO's liquidation and dissolution. Pressing on, the petitioner states that EYCO is already insolvent and insolvency proceedings fall

under the jurisdiction of regular courts under the *Insolvency Law* (Act No. 1956, as amended) in relation to the pertinent provision of R.A. No. 8799, otherwise known as the *Securities Regulation Code*.

We are not persuaded.

As it were, the underlying petition^[24] EYCO filed with and over which the SEC assumed jurisdiction was one for declaration of suspension of payment, appointment of a rehabilitation receiver/committee, approval of rehabilitation plan with alternative prayer for liquidation and dissolution. That the SEC, along the way, ordained EYCO's liquidation and dissolution did not, without more, strip the SEC of jurisdiction over the liquidation process. Albeit jurisdiction over a petition to declare a corporation in a state of insolvency strictly lies with regular courts, the SEC possessed, during the period material, ample power under P.D. No. 902-A,^[25] as amended, to declare a corporation insolvent as an incident of and in continuation of its already acquired jurisdiction over the petition to be declared in the state of suspension of payments in the two instances provided in Section 5(d) thereof.^[26] Said Section 5(d)^[27] vests the SEC with exclusive and original jurisdiction over petitions for suspension of payments which may either be: (a) a simple petition for suspension of payments based on the provisions of the *Insolvency Law*, *i.e.*, the petitioning corporation has sufficient assets to cover all its debts, but foresees the impossibility of meeting the obligations as they fall due, or (b) a similar petition filed by an insolvent corporation accompanied by a prayer for the creation of a management committee and/or rehabilitation receiver based on the provisions of P.D. No. 902-A, as amended by P.D. No. 1758.^[28]

In the case at bench, EYCO's petition for suspension of payment was, at bottom, a mix of both situations adverted to above. For, while EYCO, in the said petition, alleged being solvent but illiquid, it nonetheless pleaded for the constitution of a rehabilitation receiver/committee, with an alternative prayer for liquidation, if warranted. Clearly then, the SEC has, from the start, jurisdiction over EYCO's petition for suspension of payment, such jurisdiction, following *Ching*,^[29] continuing for purposes of liquidation after it (SEC) declared EYCO insolvent. The SEC appeared to be aware of the continuity angle as it even ordered the remand to the SEC Hearing Panel of SEC Case No. 09-97-5764 for purposes of liquidating and dissolving the EYCO Group.

If the SEC contextually retained jurisdiction over the liquidation of EYCO, is it not but logical then that it has competence to appoint the respondent – or any qualified individual for that matter – as liquidator?

And lest it be overlooked, the Court had, in *G.R. No. 131729*, already rejected the petitioner's thesis about the SEC's purported lack of jurisdiction over EYCO's suspension of payment case owing to its supervening insolvency. Therein, the Court stated:

We are of course aware of the argument [of] ... petitioner [Union Bank] that the petition of [EYCO] should be entirely dismissed and taken out of the SEC's jurisdiction on account of the alleged insolvency of [the latter]. In this regard, petitioner theorizes that [EYCO has] already become insolvent when [the composite corporations] allegedly disposed of a