

FIRST DIVISION

[G.R. NO. 164958, January 27, 2006]

SY CHIM AND FELICIDAD CHAN SY, PETITIONERS, VS. SY SIY HO & SONS, INC., DOING BUSINESS UNDER THE NAME AND STYLE GUAN YIAC HARDWARE, RESPONDENTS.

D E C I S I O N

CALLEJO, SR., J.:

The Sy Siy Ho & Sons, Inc. (hereinafter referred to as the corporation) is a domestic corporation which was organized in the 1940s,^[1] engaged primarily in importing, buying and selling hardware, machineries, spare parts, supplies and other allied products and merchandise to be sold exclusively on wholesale basis. It was doing business under the name and style Guan Yiac Hardware^[2] with office at No. 453-455 T. Pinpin Street, Binondo, Manila.

The corporation was owned and controlled by Sy Chim and his children. Sometime in 1990, a controversy ensued between Sy Chim's two sons, Sy Tiong Shiou and Sy Tiong Bio who was then the Vice President for Finance. Sy Chim sided with Sy Tiong Shiou. The intra-corporate dispute reached the Securities and Exchange Commission (SEC), docketed as SEC Case No. 04443.

On May 31, 1993, the stockholders of record, Sy Chim and Sy Tiong Shiou (Sy Chim Group), on the one hand, and Sy Tiong Bio, Sy Tiong Gue, Sy Tiong Sim, Sy Tiong Han and Sy Tiong Yan (Sy Tiong Bio Group), on the other, executed a Compromise Agreement,^[3] where the latter group relinquished their shares to Sy Chim. The parties also agreed to divide and distribute the assets and liabilities of the corporation as follows:

(a) Mr. SY CHIM GROUP – Four (4) parts, or three (3) parts Sy Chim, one (1) part Sy Tiong Shiou.

(b) Mr. SY TIONG BIO GROUP – Five (5) parts at the rate of one (1) each.

^[4]

Some of the shares of stocks were assigned to Felicidad Chan Sy, wife of Sy Chim. The spouses Sy Chim and Felicidad Chan Sy, and spouses Sy Tiong Shiou and Juanita Tan Sy, and their children, Charlie, Romer and Jesse James Tan, then became stockholders and members of the Board of Directors of the corporation. The officers of the corporation were as follows: Sy Chim, President; Felicidad Chan Sy, Assistant Treasurer; Sy Tiong Shiou, Vice President and General Manager; Juanita Tan Sy (wife of Sy Tiong Shiou), Corporate Treasurer; and Charlie Tan (son of spouses Sy Tiong Shiou), Assistant General Manager.

As of the year 2000, the corporation had a gross profit of P45,084,908.11 and

P42,954,252.32 in 2001.^[5] As of April 19, 2002, it had a capital stock of P150,000,000.00, divided into 150,000 shares, with a par value of P1,000.00 per share. The treasury stocks amounted to P70,720,000.00. It had a subscribed and paid-up capital of 103,733 shares and P103,733,000.00 respectively. The stockholders and the respective shareholdings were as follows:

<u>Stockholder</u>	<u>No. of Shares Subscribed</u>	<u>Amount Subscribed and Paid (PHP)</u>
SY CHIM	35,013	35,013,000
FELICIDAD CHAN SY	17,509	17,509,000
CHARLIE TAN	20,338	20,338,000
ROMER TAN	19,636	19,636,000
JESSE JAMES TAN	11,233	11,233,000
SY TIONG SHIOU	2	2,000
JUANITA TAN SY	<u>2</u>	<u>2,000</u>
TOTAL	103,733	PHP103,733,000^[6]

After almost a decade later, another intra-corporate dispute ensued, this time between Sy Chim and his wife, on the one hand, and their son Sy Tiong Shiou, on the other. In a letter addressed to the corporation dated February 3, 2003, Corporate Treasurer Juanita Tan Sy requested that she immediately be "removed from all responsibilities and obligations pertaining to all corporate funds" of the corporation, considering that Felicidad Chan Sy was the one who handled and managed all deposits and funds while Sy Chim supervised all expenditures. She further reported that Felicidad Chan Sy did not make any cash deposit to any bank from November 1, 2002 to January 31, 2003, and that the total amount of cash as reflected in the bank statements is far less than that reported in the corporation's financial statements and other records. She then proposed that the Board call a special meeting to discuss these matters.^[7] Thus, on March 24, 2003, a special meeting of the board of directors was held with the spouses Sy Tiong Shiou and Juanita Tan Sy and their sons Charlie, Romer and Jesse James Tan in attendance. In two separate resolutions, Juanita Tan Sy was removed as corporate treasurer and relieved of all responsibilities; the spouses Sy Chim were held accountable for the undeposited money; and a new external auditor was hired to make a complete audit of all books and records.^[8] Banaria Banaria and Company then submitted Financial Reports covering 2001 and 2002.^[9]

In a Letter^[10] dated April 15, 2003, Sy Tiong Shiou informed his parents of the corporation's cash balance shortage as of March 31, 2003 (as reflected in the auditor's report) and that there was also an undeposited amount of P2,000,000.00 for the current salary and emergency funds, and they had several postdated checks in their possession. Sy Tiong Shiou requested that the shortage be accounted for, and that the undeposited funds be remitted. He also requested that the postdated

checks and original receipts for all disbursements of corporate funds be turned over to Corporate Treasurer Juanita Tan Sy. The spouses Sy Chim did not respond.

Spouses Sy Tiong Shiou and Juanita Tan Sy, their three sons held another meeting on April 21, 2003, again without written notice to the spouses Sy Chim, and approved a resolution^[11] authorizing Romer Tan to file a complaint for and in behalf of the corporation against the said spouses in the Regional Trial Court (RTC) of Manila. Sy Tiong Shiou was elected President of the corporation.

The complaint^[12] for accounting and damages against the spouses Sy Chim was filed on May 6, 2003. The complaint alleged that Felicidad Chan Sy, as custodian of all cash collections, had been depositing amounts less than those appearing in the financial statements which are in the defendants' custody and that no deposits were made in the corporation's account from November 1, 2002 to January 31, 2003. Based on the accountant's report, Felicidad Chan Sy failed to account for P67,117,230.30. Plaintiff further alleged that, based on the corporation's General Information Sheet for 2003, the subscribed shares of the corporation were as follows:

Name of Subscriber	No. of Shares Subscribed	Amount Paid-Up
Sy Tiong Shiou	27,987	P 27,987,000.00
Juanita Tan	32,017	32,017,000.00
Charlie Tan	12,512	12,512,000.00
Romer Tan	12,079	12,079,000.00
Jesse James Tan	6,910	6,910,000.00
Sy Chim	21,539	21,539,000.00
Felicidad Chan Sy	10,771	10,771,000.00
Total	123,815	P123,815,000.00 ^[13]

Plaintiff prayed that, after due proceedings, judgment be rendered in its favor, as follows:

- a. Ordering defendants to render a full, complete and true accounting of all the amounts, proceeds and funds paid to, received and earned by the plaintiff since 1993 and to restitute to the plaintiff, jointly and severally, all such amounts, proceeds and funds that they have misappropriated;
- b. Ordering defendants to pay, jointly and severally, the plaintiff the amount of One Million (P1,000,000.00) Pesos by way of exemplary damages, and One Million (P1,000,000.00) Pesos by way of attorney's fees plus Five Thousand (P5,000.00) Pesos per court appearance and litigation expenses in the amount of not less than One Hundred Thousand (P100,000.00) Pesos;

c. Cost of suit.

Plaintiff further prays for such other reliefs [it] deems just and equitable in the premises.^[14]

In their answer^[15] to the complaint, defendants averred, *inter alia*, that any unaccounted cash account and irregularities in the management of the corporation, if any, were the full responsibility of Sy Tiong Shiou, Romer Tan's own father, since he has direct and actual management of the corporation under the by-laws. Sy Chim, as corporate president, was a mere figurehead, who only had general supervision over the corporation's officers. Juanita Tan Sy, as corporate treasurer, had custody of the corporation's funds and should have kept a complete and accurate record of receipts, disbursements, and other commercial transactions of the corporation. Felicidad Chan Sy merely performed clerical work and acted as Corporate Treasurer only in the absence of Juanita Tan Sy and under the latter's close supervision. They averred that any and all meetings of the stockholders and members of the corporation's Board of Directors were null and void as they violated the corporate by-laws as well as the Corporation Code. Defendants further denied executing any deed or document authorizing the transfer of their shares, or that treasury shares had been issued by the corporation. Assuming that treasury shares were validly issued in 2002 as claimed in the complaint, defendants should have been allowed to exercise their pre-emptive rights over such shares.

Defendants prayed that they be granted the following reliefs:

- (1) Dismissing the instant Complaint for utter lack of merit;
- (2) Ordering Plaintiff Mr. Romer S. Tan to pay the following:
 - (a) **Three Million Pesos (PHP3,000,000.00)**, by way of moral damages;
 - (b) **Three Million Pesos (PHP3,000,000.00)**, by way of exemplary damages;
 - (c) **Two Million Pesos (PHP2,000,000.00)**, by way of attorney's fees;
 - (d) Costs of suit.

Other reliefs just and equitable under the premises are, likewise prayed for.^[16]

Feeling aggrieved, the spouses Sy Chim and Felicidad Chan Sy filed a criminal complaint in the Office of the City Prosecutor of Makati against the spouses Sy Tiong Shiou and their children for violation of Section 74 of the Corporation Code.

In the meantime, Sy Chim, as corporate president, called for a stockholders' meeting on June 11, 2003. An amended complaint was filed on July 1, 2003, praying for the issuance of a temporary restraining order and/or writ of preliminary prohibitory injunction. It was alleged, among others, that on April 15, 2003, defendant Sy Chim and his other children and the siblings of Sy Tiong Shiou,

namely, Sy Yu Hui-Pabilona, Sy Tiong Gue, Sy Tiong Yan, Sy Yu San, Sy Yu Siong, Sy Yu Bun and her son, Bryan Lim, with two armed unidentified men, forcibly entered the office and took P6,500,000.00 in cash and postdated checks and other important documents, including five boxes of Hennessy X.O. wine. Since defendant Sy Chim abandoned his duties and responsibilities as president, the board of directors elected Sy Tiong Shiou as president during a special meeting on May 6, 2003. Sy Chim issued a Notice of Stockholders' Meeting on June 11, 2003 although he was no longer the president of the corporation. The amended complaint further alleged that a criminal complaint for robbery was filed against the culprits in the Office of the City Prosecutor of Manila.

The plaintiff corporation prayed for that the court grant injunctive relief, as follows:

- a. **An order be issued making the preliminary injunction permanent;**
- b. Ordering defendants to render a full, complete and true accounting of all the amounts, proceeds and funds paid to, received and earned by the plaintiff since 1993 and to restitute to the plaintiff, jointly and severally, all such amounts, proceeds and funds that they have misappropriated;
- c. Ordering defendants to pay, jointly and severally, the plaintiff the amount of One Million (P1,000,000.00) Pesos by way of exemplary damages, and One Million (P1,000,000.00) Pesos by way of attorney's fees plus Five Thousand (P5,000.00) Pesos per court appearance and litigation expenses in the amount of not less than One Hundred Thousand (P100,000.00) Pesos;
- d. Cost of suit.

Plaintiff further prays for such other reliefs [it] deems just and equitable in the premises.^[17]

During the hearing of plaintiff's petition for injunctive relief, defendants submitted the following to the court: a Joint Affidavit,^[18] the Joint Supporting Affidavit^[19] of See Cha and See Su Pe, and the Complaint-Affidavit^[20] of Felicidad Chan Sy for violation of Section 74 of the Corporation Code against the spouses Sy Tiong Shiou and Juanita Tan Sy, Jolie Ross Tan, Charlie Tan, Romer Tan and Jesse James Tan filed in the Office of the City Prosecutor.

On August 6, 2003, the RTC issued an Order^[21] granting the plea for a writ of preliminary injunction on a bond of P500,000.00, and enjoined defendant Sy Chim or any person acting for and in his behalf from "calling or holding a stockholders' and/or Board of Directors' meetings' of the corporation. This was followed by a writ of preliminary injunction.^[22]

On July 18, 2003, defendants filed a "Motion for Production and Inspection of Documents"^[23] (all the corporate books, accounting records, financial statements and other documents mentioned in, and pertinent to, the allegations of the complaint), praying that they be permitted to inspect, examine and photocopy such