

SECOND DIVISION

[G.R. No. 144476, February 01, 2002]

ONG YONG, JUANITA TAN ONG, WILSON T. ONG, ANNA L. ONG, WILLIAM T. ONG, WILLIE T. ONG, AND JULIE ONG ALONZO, PETITIONERS, VS. DAVID S. TIU, CELY Y. TIU, MOLY YU GAW, BELEN SEE YU, D. TERENCE Y. TIU, JOHN YU, LOURDES C. TIU, INTRALAND RESOURCES DEVELOPMENT CORP., MASAGANA TELAMART, INC., REGISTER OF DEEDS OF PASAY CITY, AND THE SECURITIES AND EXCHANGE COMMISSION, RESPONDENTS.

[G.R. No. 144629. February 1, 2002]

DAVID S. TIU, CELY Y. TIU, MOLY YU GAW, BELEN SEE YU, D. TERENCE Y. TIU, JOHN YU, LOURDES C. TIU, AND INTRALAND RESOURCES DEVELOPMENT CORP., PETITIONERS, VS. ONG YONG, JUANITA TAN ONG, WILSON T. ONG, ANNA L. ONG, WILLIAM T. ONG, WILLIE T. ONG AND JULIA ONG ALONZO, RESPONDENTS.

D E C I S I O N

BUENA, J.:

Consolidated Petitions for Review of 1.) the Decision of the Court of Appeals^[1] in CA-G.R. SP No. 49056 dated October 5, 1999, which affirmed with modifications the Order dated September 11, 1998, issued by the SEC En Banc in SEC Case No. 598 and 601, confirming the rescission of the Pre-Subscription Agreement; and 2.) the Resolution of the Court of Appeals dated August 17, 2000 which denied the motions for reconsideration filed by the private parties herein, except Masagana Telamart, Inc.

The antecedent facts of the case, as summarized by the Court of Appeals are as follows:

"As one traverses Taft Avenue in Pasay City, one will see the Masagana Citimall, a commercial complex owned and managed by the First Landlink Asia Development Corporation (FLADC) (p. 127, 520 and 211, Rollo). It was not long ago when this commercial complex, then unfinished, was threatened with incompleteness when its owner found it in financial distress in the amount of P190,000,000.00 for being indebted to the Philippine National Bank (PNB), (pp. 520 and 212, Rollo). That was in 1994 (Ibid.)

"FLADC was then fully owned by the Tiu Group composed of David S. Tiu, Cely Y. Tiu, Moly Yu Gaw, Belen See Yu, D. Terence Y. Tiu, John Yu and Lourdes C. Tiu (p. 211, Rollo). In order to recover from its floundering finances, the Ong Group composed of Ong Yong, Juanita Tan Ong, Wilson

T. Ong, Anna L. Ong, William T. Ong and Julie Ong Alonzo, were invited by the Tius to invest in FLADC (pp. 211 and 520, Rollo). Hence, the execution of a Pre-Subscription Agreement by and between the Tiu and Ong Groups on August 15, 1994 (pp. 211-216, Rollo).

"By the Pre-Subscription Agreement, both parties agreed to maintain equal shareholdings in FLADC with the Ongs investing cash while the Tius contributing property (pp. 213-214, Rollo). Specifically, the Ongs were to subscribe to 1 million shares of FLADC at a par value of P100.00 per share while the Tius were to subscribe to 549,800 shares more of FLADC at a par value of P100.00 per share over and above their previous subscription of 450,200 shares in order to complete a subscription of 1 million shares (Ibid.). Commensurate to their proposed subscriptions, the Ongs were to pay P100,000,000.00 in cash (p.213, Rollo), while the Tius were to contribute the following properties by way of separate Deeds of Assignments:

"1. A four-storey building described in Transfer Certificate of Title No. 15587 registered in the name of Intraland Resources and Development Corporation (a corporation wholly owned by the Tius) and valued at P20,000,000.00;

"2. A 1,902.30 square meter parcel of land covered by Transfer Certificate of Title No. 15587 in the name of Masagana Telamart, Inc. (also a corporation owned by the Tius) and valued at P30,000,000.00; and

"3. A 151 square meter parcel of land adjacent to the properties covered by Transfer Certificate of Title Nos. 132493 and 132494 and valued at P4,980,000.00 (pp. 212 and 214, Rollo).

"Also for purposes of equality, the parties agreed that 6 directors of FLADC were to be nominated from the Ong Group, while 5 directors thereof were to be nominated from the Tiu Group (p. 213, Rollo). It was also agreed that the positions of President and Secretary of FLADC shall be held by the Ongs, while the positions of Vice-President and Treasurer thereof shall be held by the Tius (Ibid.).

"In order to liquidate FLADC's outstanding P190,000,000.00 loan from the PNB, the parties to the Pre-Subscription Agreement proposed payment thereof with the P100,000,000.00 cash to be invested by the Ongs to FLADC and with the available funds of FLADC derived from:

"1. Reimbursement of costs of improvements received from tenants on the spaces leased to them;

"2. Receipts from reservations to lease; and

"3. Receipts for deposit or advance rentals from tenants (pp. 213-214, Rollo).

"In order to comply with the Pre-Subscription Agreement, the necessary

increase in capital stock of FLADC was applied for and duly approved (pp. 184-187, Rollo). The Ongs subscribed to 1 million shares thereof at a par value of P100.00 per share, or P100,000,000.00 (p. 185, Rollo). Intraland Resources and Development Corporation executed the requisite Deed of Assignment over a 4-storey building it owned in favor of FLADC and was duly credited with 200,000 shares therefor in FLADC (Ibid; pp. 837-838, Rollo).

"Masagana Telamart, Inc. executed a Deed of Assignment over the 1,902.30 square meter property in favor of FLADC and delivered the owner's copy of the transfer certificate of title of the same as well as the possession thereof to the latter (pp. 221-226, Rollo). Title over the 151 square meter property was also transferred in the name of FLADC (pp. 1062-1063, Rollo).

"FLADC's articles of incorporation were also duly amended increasing the number of its directors from seven (7) to eleven (11), six (6) of which were nominated by the Ong Group, while the rest were nominated by the Tiu Group (pp. 188-189, Rollo). Later, Wilson T. Ong and Juanita Tan Ong were elected President and Secretary, respectively, while David S. Tiu and Cely Yao Tiu were elected Vice-President and Treasurer, respectively (pp. 191-192, Rollo)

"The P190,000,000.00 loan from the PNB was also settled, but not quite in accord with the provisions of the Pre-Subscription Agreement (pp.437-441, Rollo). In lieu of the FLADC funds which were supposed to be used as partial payment for said loan per Pre-Subscription Agreement, the Ongs had to pay P70,000,000.00 more aside from their P100,000,000.00 subscription payment, and the Tius had to advance P20,000,000.00 in cash, which amount was loaned to them by the former (Ibid.).

"The controversy between the two parties arose when the Ongs refused to credit the number of FLADC shares in the name of Masagana Telamart, Inc. commensurate to its 1,902.30 square meter property contribution; also when they refused to credit the number of FLADC shares in favor of the Tius commensurate to their 151 square meter property contribution; and when David S. Tiu and Cely Y. Tiu were proscribed from assuming and performing their duties as Vice-President and Treasurer, respectively of FLADC (pp. 132-136, Rollo). These became the basis of the Tius' unilateral rescission of the Pre-Subscription Agreement on February 23, 1996 (p. 867, rollo)."^[2]

On February 27, 1996, the Tius sought the Securities and Exchange Commission (SEC) confirmation of their rescission of the Pre-Subscription Agreement. Their complaint was docketed as SEC Case No. 02-96-5269.

On May 19, 1997, after the Tiu Group, Masagana Telamart, Inc., Intraland Resources and Development Corporation, the Ong Group and FLADC were heard on their respective claims regarding the propriety of the Pre-Subscription Agreement's rescission, SEC Hearing Officer Rolando G. Andaya, Jr., rendered a decision thereon confirming the rescission as follows:

"WHEREFORE, judgment is hereby rendered confirming the rescission of the Pre-Subscription Agreement, and consequently ordering:

- "(a) The cancellation of the 1,000,000 shares subscription of the individual defendants in FLADC;
- "(b) FLADC to pay the amount of P170,000,000.00 to the individual defendants representing the return of their contribution for 1,000,000 shares of FLADC;
- "(c) The plaintiffs to submit with the Securities and Exchange Commission amended articles of incorporation of FLADC to conform with this decision;
- "(d) The defendants to surrender to the plaintiffs TCT Nos. 132493, 132494, 134066 (formerly 15587), 135325 and 134204 and any other title or deed in the name of FLADC, failing in which said titles are declared void;
- "(e) The Register of Deeds to issue new certificates of titles in favor of the plaintiffs and to cancel the annotation of the Pre-Subscription Agreement dated 15 August 1994 on TCT No. 134066 (formerly 15587).
- "(f) The individual defendants, individually and collectively, their agents and representatives, to desist from exercising or performing any and all acts pertaining to stockholder, director or officer of FLADC or in any manner intervene in the management and affairs of FLADC;
- "(g) The individual defendants, jointly and severally, to return to FLADC interest payment in the amount of P8,866,669.00 and all interest payments as well as any payments on principal received from the P70,000,000.00 inexistent loan, plus the legal rate of interest thereon from the date of their receipt of such payment, until fully paid;
- "(h) The plaintiff David Tiu to pay individual defendants the sum of P20,000,000.00 representing his loan from said defendants plus legal interest from the date of receipt of such amount.

"SO ORDERED."^[3]

On motion of the Ong Group, the aforequoted decision was later partially reconsidered in an omnibus order issued by SEC Hearing Officer Manolito S. Soller on November 24, 1997, the decretal portion of which in part reads:

"WHEREFORE, premises considered, judgment is hereby rendered as follows:

"1. The Decision of this Commission dated May 19, 1997 is partially reconsidered only insofar as the investment amounting to P70 million which is hereby declared not as premium on capital stock but a liability of FLADC or advances of the defendants made in favor of FLADC, and that the interest paid on account thereof is hereby declared legal and valid;

"x x x

x x x

x x x

"SO ORDERED."^[4]

Both the Ong and Tiu Groups appealed the aforequoted Omnibus Order to the SEC *en banc*. Their respective appeals were docketed as SEC Case Nos. 598 and 601. On September 11, 1998, the SEC *en banc* issued an order, the decretal portion of which reads:

"WHEREFORE, judgment is hereby rendered CONFIRMING the omnibus Order dated 24 November 1997 insofar as it confirms the rescission of the Pre-Subscription Agreement and REVERSING the same insofar as it held that the seventy million (P70 M) paid by the Ong Group over and above the par value of the one million (1,000,000) shares of stocks of FLADC which they had subscribed as loan and not premium.

"Accordingly,

- "1. The subscription contract entered into by the Ong group and the corporation is hereby declared rescinded, the latter is ordered to cancel the one million (1,000,000) shares subscription of the Ong Group in FLADC, and FLADC shall return the amount of one hundred and seventy million pesos (P170 M) to the Ong Group;
- "2. The Tiu Group shall pay the twenty million pesos (P20 M) to the Ong group which was loaned to them by the latter;
- "3. The Ong Group, individually and collectively, their agents and representatives, are hereby ordered to desist from exercising or performing any and all acts pertaining to stockholders, directors or officers of FLADC or in any manner intervening in the management and affairs of FLADC;
- "4. The Ong Group, jointly and severally, are hereby ordered to return to FLADC the interest payment on the seventy million pesos (P70 M) in the amount of eight million and eight hundred sixty-six thousand, and six hundred sixty-nine pesos (P8,866,669.00) and all additional interest payments thereafter, as well as any payments on the principal received for the seventy million pesos (P70M) inexistent loan.

"No pronouncement as to cost and damages.