

THIRD DIVISION

[G.R. No. 112941, February 18, 1999]

**NEUGENE MARKETING INC., LEONCIO TAN, NICANOR MARTIN,
SONNY MORENO, JOHNSON LEE AND SECURITIES AND
EXCHANGE COMMISSION, PETITIONERS, VS. COURT OF
APPEALS, ARSENIO YANG, JR., CHARLES O. SY, LOK CHUN SUEN,
BAN HUA U. FLORES, BAN HA U. CHUA AND ROGER REYES,
RESPONDENTS.**

DECISION

PURISIMA, J.:

At bar is a petition for review of the decision^[1] of the Special Fifth Division of the Court of Appeals which reversed the decision of the Securities and Exchange Commission (SEC) annulling the dissolution of Neugene Marketing, Inc. (*NEUGENE*, for short).

The SEC Hearing Panel gathered the fact, as follows:

"On January 27, 1978, NEUGENE was duly registered with this Commission to engage in trading business for a term of fifty (50) years with the following as incorporators/directors, namely:

- 1. Johnson Lee (one of the petitioners);*
- 2. Lok Chun Suen (one of the respondents);*
- 3. Charles O. Sy (one of the respondents);*
- 4. Eugenio Flores, Jr. (husband of respondent Ban Hua U. Flores)*
- 5. Arsenio Yang, Jr. (one of the respondents)*

The authorized capital stock of NEUGENE is THREE MILLION PESOS (P3,000,000.00) divided into THIRTY THOUSAND (30,000) shares with a par value of ONE HUNDRED PESOS (P100.00) each. Out of this authorized capital stock, SIX HUNDRED THOUSAND PESOS (P600,000.00) had been subscribed by the following subscribers, namely:

<u>NAME</u>	<u>NO. OF SHARES</u>	<u>AMOUNT SUBSCRIBED</u>
Johnson Lee	600	P 60,000.00
Lok Chun Suen	1,200	120,000.00

Charles O. Sy	1,800	180,000.00
Eugenio Flores, Jr.	2,100	210,000.00
Arsenio Yang, Jr.	300	30,000.00
TOTAL	6,000 =====	P600,000.00 =====

Out of the aforesaid subscription, ONE HUNDRED FIFTY THOUSAND PESOS (P150,000.00) had been paid by the following subscribers as follows:

<u>NAME</u>	<u>AMOUNT PAID UP</u>
Johnson Lee	P15,000.00
Lok Chun Suen	30,000.00
Charles O. Sy	45,000.00
Eugenio Flores, Jr	52,500.00
Arsenio Yang, Jr.	7,500.00
TOTAL	P150,000.00 =====

The original shareholdings of the incorporators/stockholders of NEUGENE were increased by ten percent (10%) each by virtue of stock dividend declaration in the amount of SIXTY THOUSAND PESOS (P60,000.00) made by its board of directors in a special meeting held on June 7, 1980.
x x x

Again, on May 2, 1981, the Board of directors of NEUGENE declared a stock dividend in the amount of FORTY THOUSAND PESOS (P40,000.00) in proportion to the shareholdings of the stockholders of record of NEUGENE as of April 30, 1981. x x x

x x x x x x x x x

The outstanding capital stock of NEUGENE became SEVEN HUNDRED THOUSAND PESOS (P700,000.00) represented by SEVEN THOUSAND (7,000) shares.

On May 15, 1986, Eugenio Flores, Jr. assigned, transferred and conveyed his entire shareholdings of TWO THOUSAND FOUR HUNDRED FIFTY (2,450) shares in NEUGENE to the following, to wit:

Pet. Sonny Moreno	1,050 shares (Exh. "B")
Resp. Arsenio Yang, Jr.	700 shares (Exh. "C")
Resp. Charles O. Sy	700 shares (Exh. "D")
TOTAL	2,450 =====

Thus, immediately after the assignment of the entire shareholdings of Eugenio Flores, Jr. to petitioner Sonny Moreno and respondents Arsenio Yang, Jr., and Charles O. Sy, the stockholders of record of NEUGENE, as appearing in the Stock and Transfer Book (Exhibit "A"), particularly Exhibits "A-8" to A-12" thereof, were as follows:

<u>NAME</u>	<u>NO. OF SHARES</u>
Johnson Lee	700
Lok Chun Suen	1,400
Sonny Moreno	1,050
Charles O. Sy	2,800
Arsenio Yang, Jr.	1,050
TOTAL	7,000 ^[2]
	=====

On October 24, 1987, the private respondents, Charles O. Sy, Arsenio Yang, Jr. and Lok Chun Suen, holders of 5,250 shares of NEUGENE (*representing at least two-thirds (2/3) of the outstanding capital stock of 7,000 shares*) sent notice to the directors of NEUGENE for a board meeting to be held on November 30, 1987. They also sent notice for a special stockholders' meeting on the same day, November 30, 1987, to consider the dissolution of NEUGENE.

At the said meetings held on November 30, 1987, the private respondents, Charles O. Sy, Arsenio Yang, Jr. and Lok Chun Suen, the directors and stockholders then present, voted for and approved a resolution dissolving NEUGENE.

On March 1, 1988, acting upon private respondents's Petition for Dissolution, SEC issued a Certificate of Dissolution of NEUGENE.

On March 22, 1988, the petitioners brought an action to annul or set aside the said SEC Certification on the Dissolution of Neugene. In their Amended Petition, petitioners stated, among others, that they are the majority stockholders of NEUGENE, owning eighty percent (80%) of its outstanding capital stock, at the time of the adoption and approval of the Resolution for the Dissolution of NEUGENE, on November 30, 1987; that prior thereto or on July 1, 1987, to be precise, the private respondents had divested themselves of their stockholdings when they endorsed their stock certificates in blank and delivered the same to the Uy Family, the beneficial owners of NEUGENE; that at the meetings held on February 11, 12 and 13, 1987, in order to settle family squabbles, the Uy family agreed to award NEUGENE's stock certificates to Johnny K. H. Uy, who, in turn, authorized Johnson Lee to dispose of the same; and that Johnson Lee sold the said shares of stock to the petitioners, Leoncio Tan and Nicanor Martin, such that, as reflected in the Stock and Transfer Book of NEUGENE, respondent Lok Chun Suen had assigned all of his 1,400 shares of stock to petitioner Nicanor Martin, respondents Charles O. Sy assigned 2,100 shares out of his 2,800 shares of stock to petitioner Leoncio Tan, and respondent Arsenio Yang, Jr. assigned 350 shares of his 1,050 shares of stock to petitioner Leoncio Tan; that in view of the said transfers of shares of stock, private respondents Arsenio Yang, Jr., and Charles O. Sy (*each the holder of only 700 shares or 10% each of the outstanding capital stock of NEUGENE*) and Lok Chun

Suen (*who had ceased to be a stockholder as of July 1, 1987*) could no longer validly vote for the dissolution of NEUGENE on November 30, 1987, under Section 118 of the Corporation Code, and all the proceedings of the meetings held on November 30, 1987, which were improperly called and held without a quorum, are null and void.^[3]

On the other hand, the private respondents, Charles O. Sy, Arsenio Yang, Jr. and Lok Chun Suen, theorized that the alleged assignments of shares of stock in favor of petitioners were simulated and fraudulently effected, as there never was any agreement entered into by the Uy family to award NEUGENE'S stock certificates to Johnny K.H. Uy, because subject stock certificates of the private respondents covering their shares of stock were endorsed in blank by them and delivered to the Uy family, who were the beneficial owners of NEUGENE, for safe keeping and the said certificates of stock were kept inside the confidential vault of the Uy family at 225 D. Tuazon St., Quezon City, but the same were stolen by the spouses, Johnny K. H. Uy and Magdalena Go-Uy, without the knowledge and authority of the Uy family; that petitioner Sonny Moreno, a co-conspirator in such fraudulent transfer of stocks in question, recorded the simulated and fraudulent assignments in the Stock and Transfer Book of the corporation, which book he obtained from Johnny K.H. Uy and Magdalena Go-Uy, together with other corporate records of NEUGENE, including the stock certificates endorsed in blank by petitioner Johnson Lee and respondents Arsenio Yang, Jr., Charles O. Sy and Lok Chun Suen; that the petitioners, Nicanor Martin and Leoncio Tan, are co-conspirators of Johnson Lee and Sonny Moreno in effecting the said simulated and fraudulent transfer of shares of stock; that the private respondents never sold their shares of stock in NEUGENE to any of the petitioners or other stockholders of record, prior to the dissolution of the corporation, so that they (private respondents) represented at least two-thirds (2/3) of the outstanding capital stock of NEUGENE when they voted to dissolve NEUGENE, on November 30, 1987.^[4]

In its decision of June 19, 1990, the SEC Panel of Hearing Officers nullified the Certification on the Dissolution of NEUGENE issued by SEC, holding that the private respondents were no longer holders of at least two-thirds (2/3) of the outstanding capital stock of NEUGENE at the time they presented the petition for dissolution, as required under Section 118 of the Corporation Code. (*Annex "O"*) The said decision of the SEC Panel of Hearing Officers was affirmed *in toto* by the SEC En Banc in a Decision promulgated on January 14, 1993.^[5] Portions of the decision of the SEC Hearing Panel read:

"The resolution to dissolve NEUGENE was adopted by only two (2) of its incumbent directors, namely: respondents Charles O. Sy and Arsenio Yang, Jr. Respondent Lok Chun Suen had already ceased to be a stockholder of NEUGENE as of July 1, 1987, by the endorsement and delivery and cancellation of his stock certificates (Exhs. "E", "F", and "G") and the entries in the Stock and Transfer Book (Exhs. "A", "A-1", to "A-24"). Hence, there was no quorum at said board of directors' meeting on November 30, 1987. There was no quorum also at the November 30, 1987 meeting of the stockholders of NEUGENE since only the following stockholders, namely: respondents Charles O. Sy and Arsenio Yang, Jr., who own 10% each of the stockholding of NEUGENE, could be considered officially present at said meeting. On this score alone, the case for the