

THIRD DIVISION

[G.R. No. 94285, August 31, 1999]

JESUS SY, JAIME SY, ESTATE OF JOSE SY, ESTATE OF VICENTE SY, HEIR OF MARCIANO SY REPRESENTED BY JUSTINA VDA. DE SY AND WILLIE SY, PETITIONERS, VS. THE COURT OF APPEALS, INTESTATE ESTATE OF SY YONG HU, SEC. HEARING OFFICER FELIPE TONGCO, SECURITIES AND EXCHANGE COMMISSION, RESPONDENTS.

[G.R. NO. 100313.]

SY YONG HU & SONS, JOHN TAN, BACOLOD CANVAS AND UPHOLSTERY SUPPLY CO., AND NEGROS ISUZU SALES, PETITIONERS, VS. HONORABLE COURT OF APPEALS (11TH DIVISION), INTESTATE ESTATE OF THE LATE SY YONG HU, JOSE FALSIS, JR., AND HON. BETHEL KATALBAS-MOSCARDON, RTC OF NEGROS OCCIDENTAL, BRANCH 51, RESPONDENTS.

D E C I S I O N

PURISIMA, J.:

At bar are two consolidated petitions for review on *certiorari* under Rule 45 of the Revised Rules of Court, docketed as G. R. Nos. 94285 and G.R. No. 100313, respectively, seeking to reinstate the Resolution of the Court of Appeals in CA - G. R. SP No. 17070 and its Decision in CA-G. R. SP No. 24189.

In G. R. No. 94285, the petitioners assail the Resolution^[1] dated June 27, 1990 of the Court of Appeals granting the Motion for Reconsideration interposed by the petitioners (now the private respondents) of its Decision^[2], promulgated on January 15, 1990, which affirmed the Order^[3] issued on January 16, 1989 by the Securities and Exchange Commission (SEC) *en banc* and the Order^[4] of SEC Hearing Officer Felipe Tongco, dated October 5, 1988,

The facts that matter are as follows:

Sy Yong Hu & Sons is a partnership of Sy Yong Hu and his sons, Jose Sy, Jayme Sy, Marciano Sy, Willie Sy, Vicente Sy, and Jesus Sy, registered with the SEC on March 29, 1962, with Jose Sy as managing partner. The partners and their respective shares are reflected in the Amended Articles of Partnership^[5] as follows:

NAMES	AMOUNT CONTRIBUTED
SY YONG HU P	31, 000. 00
JOSE S. SY	205, 000. 00
JAYME S. SY	112, 000. 00
MARCIANO S. SY	143, 000. 00

WILLIE S. SY	85, 000. 00
VICENTE SY	85, 000. 00
JESUS SY	88, 000. 00

Partners Sy Yong Hu, Jose Sy, Vicente Sy, and Marciano Sy died on May 18, 1978, August 12, 1978, December 30, 1979 and August 7, 1987, respectively.^[6] At present, the partnership has valuable assets such as tracts of lands planted to sugar cane and commercial lots in the business district of Bacolod City.

Sometime in September, 1977, during the lifetime of all the partners, Keng Sian brought an action,^[7] docketed as Civil Case No. 13388 before the then Court of First Instance of Negros Occidental, against the partnership as well as against the individual partners for accounting of all the properties allegedly owned in common by Sy Yong Hu and the plaintiff (Keng Sian), and for the delivery or reconveyance of her one-half (1/2) share in said properties and in the fruits thereof. Keng Sian averred that she was the common law wife of partner Sy Yong Hu, that Sy Yong Hu, together with his children,^[8] who were partners in the partnership, connived to deprive her of her share in the properties acquired during her cohabitation with Sy Yong Hu, by diverting such properties to the partnership.^[9]

In their answer dated November 3, 1977, the defendants, including Sy Yong Hu himself, countered that Keng Sian is only a house helper of Sy Yong Hu and his wife, subject properties "are exclusively owned by defendant partnership, and plaintiff has absolutely no right to or interest therein."^[10]

On September 20, 1978, during the pendency of said civil case, Marciano Sy filed a petition for declaratory relief against partners Vicente Sy, Jesus Sy and Jayme Sy, docketed as SEC Case No. 1648, praying that he be appointed managing partner of the partnership, to replace Jose Sy who died on August 12, 1978. Answering the petition, Vicente Sy, Jesus Sy and Jaime Sy, who claim to represent the majority interest in the partnership, sought the dissolution of the partnership and the appointment of Vicente Sy as managing partner. In due time, Hearing Officer Emmanuel Sison came out with a decision^[11] (Sison Decision) dismissing the petition, dissolving the partnership and naming Jesus Sy, in lieu of Vicente Sy who had died earlier, as the managing partner in charge of winding the affairs of the partnership.

The Sison decision was affirmed *in toto* by the SEC *en banc* in a decision^[12] (Abello decision) dated June 8, 1982, disposing thus:

"WHEREFORE, the Commission en banc affirms the dispositive portion of the decision of the Hearing Officer, but clarifies that: (1) the partnership was dissolved by express will of the majority and not ipso facto because of the death of any partner in view of the stipulation of Articles of Partnership and the provisions of the New Civil Code particularly Art. 1837 ^[2] and Art. 1841. (2) The Managing Partner designated by the majority, namely Jesus Sy, vice Vicente Sy (deceased) shall only act as a manager in liquidation and he shall submit to the Hearing Officer an accounting and a project of partition, within 90 days from receipt of this decision. (3) The petitioner is also required within the same period to submit his counter-project of partition, from date of receipt of the

Managing Partner's project of partition. (4) The case is remanded to the Hearing Officer for evaluation and approval of the accounting and project of partition."

On the basis of the above decision of the SEC *en banc*, Hearing Officer Sison approved a partial partition of certain partnership assets in an order^[13] dated December 2, 1986. Therefrom, respondents seasonably appealed.

In 1982, the children of Keng Sian with Sy Yong Hu, namely, John Keng Seng, Carlos Keng Seng, Tita Sy, Yolanda Sy and Lolita Sy, filed a petition, docketed as SEC Case No 2338, to revoke the certificate of registration of Sy Yong Hu & Sons, and to have its assets reverted to the estate of the late Sy Yong Hu. After hearings, the petition was dismissed by Hearing Officer Bernardo T. Espejo in an Order, dated January 11, 1984, which Order became final since no appeal was taken therefrom.^[14]

After the dismissal of SEC Case No. 2338, the children of Keng Sian sought to intervene in SEC Case No. 1648 but their motion to so intervene was denied in an Order dated May 9, 1985. There was no appeal from said order.^[15]

In the meantime, Branch 43 of the Regional Trial Court of Negros Occidental appointed one Felix Ferrer as a Special Administrator for the Intestate Estate of Sy Yong Hu in Civil Case No. 13388. Then, on August 30, 1985, Alex Ferrer moved to intervene in the proceedings in SEC Case No. 1648, for the partition and distribution of the partnership assets, on behalf of the respondent Intestate Estate.^[16]

It appears that sometime in December, 1985, Special Administrator Ferrer filed an Amended Complaint on behalf of respondent Intestate Estate in Civil Case No. 13388, wherein he joined Keng Sian as plaintiff and thereby withdrew as defendant in the case. Special Administrator Ferrer adopted the theory of Keng Sian that the assets of the partnership belong to Keng Sian and Sy Yong Hu (now represented by the Estate of Sy Yong Hu) in co-ownership, which assets were wrongfully diverted in favor of the defendants.^[17]

The motion to intervene in SEC Case No. 1648, filed by Special Administrator Alex Ferrer on behalf of the respondent Estate, was denied in the order issued on May 9, 1986 by Hearing Officer Sison. With the denial of the motion for reconsideration, private respondent Intestate Estate of Sy Yong Hu appealed to the Commission *en banc*.

In its decision (Sulit decision) on the aforesaid appeal from the Order dated May 9, 1986, and the Order dated December 2, 1986, the SEC *en banc*^[18] ruled:

"WHEREFORE, in the interest of Justice and equity, substantive rights of due process being paramount over the rules of procedure, and in order to avoid multiplicity of suits; the order of the hearing officer below dated May 9, 1986 denying the motion to intervene in SEC Case No. 1648 of appellant herein as well as the order dated December 2, 1986^[19] denying the motion for reconsideration are hereby reversed and the motion to intervene given due course. The instant case is hereby remanded to the hearing officer below for further proceeding on the aspect of partition and/or distribution of partnership assets. The urgent

motion for the issuance of a restraining order is likewise hereby remanded to the hearing officer below for appropriate action.^[20]"

The said decision of the SEC *en banc* reiterated that the Abello decision of June 8, 1982, which upheld the order of dissolution of the partnership, had long become final and executory. No further appeal was taken from the Sulit Decision.

During the continuation of the proceedings in SEC Case No. 1648, now presided over by Hearing Officer Felipe S. Tongco who had substituted Hearing Officer Sison, the propriety of placing the Partnership under receivership was taken up. The parties brought to the attention of the Hearing Officer the fact of existence of Civil Case No. 903 (formerly Civil Case No. 13388) pending before the Regional Trial Court of Negros Occidental. They also agreed that during the pendency of the aforesaid court case, there will be no disposition of the partnership assets.^[21] On October 5, 1988, Hearing Officer Tongco came out with an Order^[22] (Tongco Order) incorporating the above submissions of the parties and placing^[23] the partnership under a receivership committee, explaining that *"it is the most equitable fair and just manner to preserve the assets of the partnership during the pendency of the civil case in the Regional Trial Court of Bacolod City."*

On October 22, 1988, a joint Notice of Appeal to the SEC *en banc* was filed by herein petitioners Jayme Sy, Jesus Sy, Estate of Jose Sy, Estate of Vicente Sy, Heirs of Marciano Sy (represented by Justina Vda. de Sy), and Willie Sy, against the Intervenor (now private respondent). In an order (Lopez Order) dated January 16, 1989, the SEC *en banc*^[24] affirmed the Tongco Order.

With the denial of their Motion for Reconsideration,^[25] petitioners filed a special civil action for *certiorari* with the Court of Appeals.

On January 15, 1990, the Court of Appeals granted the petition and set aside the Tongco and Lopez Orders, and remanded the case for further execution of the 1982 Abello and 1988 Sulit Decisions, ordering the partition and distribution of the partnership properties.^[26]

Private respondent seasonably interposed a motion for reconsideration of such decision of the Court of Appeals.

Acting thereupon on June 27, 1990, the Court of Appeals issued its assailed Resolution, reversing its Decision of January 15, 1990, and remanding the case to the SEC for the formation of a receivership committee, as envisioned in the Tongco Order.

G. R. No. 100313 came about in view of the dismissal by the Court of Appeals^[27] of the Petition for *Certiorari* with a Prayer for Preliminary Injunction, docketed as CA-G. R. SP No. 24189, seeking to annul and set aside the orders, dated January 24, 1991 and April 19, 1989, respectively, in Civil Case No. 5326 before the Regional Trial Court of Bacolod City.

The antecedent facts are as follows:

Sometime in June of 1988, petitioner Sy Yong Hu & Sons through its Managing Partner, Jesus Sy, applied for a building permit to reconstruct its building called *Sy Yong Hu & Sons Building*, located in the central business district of Bacolod City, which had been destroyed by fire in the late 70's. On July 5, 1988, respondent City Engineer issued Building Permit No. 4936 for the reconstruction of the first two floors of the building. Soon thereafter, reconstruction work began. In January, 1989, upon completion of its reconstruction, the building was occupied by the herein petitioners, Bacolod and Upholstery Supply Company and Negros Isuzu Sales, which businesses are owned by successors-in-interest of the deceased partners Jose Sy and Vicente Sy. Petitioner John Tan, who is also an occupant of the reconstructed building, is the brother-in-law of deceased partner Marciano Sy.^[28]

From the records on hand, it can be gleaned that the Tongco Order^[29], dated October 5, 1988, in SEC Case No. 1648, had, among others, denied a similar petition of the intervenors therein (now private respondents) for a restraining order and/or injunction to enjoin the reconstruction of the same building. However, on October 10, 1988, respondent Intestate Estate sent a letter to the City Engineer claiming that Jesus Sy is not authorized to act for petitioners Sy Yong Hu & Sons with respect to the reconstruction or renovation of the property of the partnership. This was followed by a letter dated November 11, 1988, requesting the revocation of Building Permit No. 4936.

Respondent City Engineer inquired^[30] later from Jesus Sy for an "authority to sign for and on behalf of Sy Yong Hu & Sons" to justify the latter's signature in the application for the building permit, informing him that absent any proof of his authority, he would not be issued an occupancy permit.^[31] On December 27, 1988, respondent Intestate Estate reiterated its objection to the authority of Jesus Sy to apply for a building permit and pointing out that in view of the creation of a receivership committee, Jesus Sy no longer had any authority to act for the partnership.^[32]

In reply, Jesus Sy informed the City Engineer that the Tongco Order had been elevated to the SEC *en banc*, making him still the authorized manager of the partnership. He then requested that an occupancy permit be issued as Sy Yong Hu & Sons had complied with the requirements of the City Engineer's Office and the National Building Code.^[33]

Unable to convince the respondent City Engineer to revoke subject building permit, respondent Intestate Estate brought a "*Petition for Mandamus with prayer for a Writ of Preliminary Injunction*," docketed as Civil Case No 5326 before the Regional Trial Court of Bacolod City and entitled "*Intestate Estate of the Late Sy Yong Hu vs. Engineer Jose P. Falsis, Jr.*"^[34] The Complaint concluded with the following prayer:

"WHEREFORE PREMISES CONSIDERED, it is respectfully prayed of the Honorable Court that:

1. A writ of Preliminary Injunction be issued to the respondent, after preliminary hearing is had. compelling his office to padlock the premises occupied, without the requisite Certificate of Occupancy; to stop all construction activities, and barricade the same premises so that the unwary public will not be subject to undue hazards due