

## **FIRST DIVISION**

**[ G.R. Nos. 117018-19, June 17, 1996 ]**

**BENJAMIN D. YNSON, PETITIONER-APPELLANT, VS. THE HON.  
COURT OF APPEALS, FELIPE YULIENCO AND EMERITO M. SALVA,  
RESPONDENTS-APPELLEES.**

**[G.R. NO. 117327. JUNE 17, 1996]**

**FELIPE YULIENCO AND EMERITO M. SALVA, PETITIONERS, VS.  
THE HONORABLE COURT OF APPEALS AND BENJAMIN D. YNSON,  
RESPONDENTS.**

### **D E C I S I O N**

**HERMOSISIMA, JR., J.:**

Before us are two petitions to review the Amended Decision of respondent Court of Appeals in two consolidated cases, (CA-G.R. SP. No. 30734 and CA-G.R. SP No. 31571), promulgated on September 6. 1994.

The relevant antecedents:

Petitioner Benjamin D. Ynson is the controlling stockholder and the President and Chief Executive Officer of PHESCO, Incorporated, a construction corporation duly organized and existing under the laws of the Philippines, while private respondent Felipe Yulienco, the elder brother of petitioner's wife, is a registered stockholder and had been the Vice-President and Treasurer of the said corporation.

Prior to 1986, petitioner Ynson, as President and Chief Executive Officer of the firm, and in order to cut down on what he thought was excessive overhead expenses of the corporation, issued a memorandum circular to the effect that henceforth only expenses for entertainment, fuel and motor vehicle repairs expenses, salaries and wages directly connected with actual business operations of the company shall be allowed. The circular was vehemently objected to by private respondent Felipe Yulienco who, feeling that the retrenchment actions of the petitioner President were directed at him, started opposing the management decisions of the petitioner with the help of respondent lawyer Emerito Salva

On June 16, 1987, private respondents Yulienco and Salva filed a petition before the Securities and Exchange Commission (SEC) alleging mismanagement of the corporation by petitioner Ynson and praying for damages, supposed unaccounted profits, and attorney's fees and litigation expenses.

Before the petitioner could file his answer, herein private respondents sent to the petitioner written proposals for a compromise, which included payment to private respondent Yulienco of various amounts like profit-sharing, bonuses, and an offer to

leave PHESCO by selling all the shares of stock in the firm registered in the names of private respondents Yulienco and Salva at a price to be determined and fixed by a mutually designated appraiser, AEA Development Corporation.

This proposal was accepted by petitioner Ynson. On October 15, 1987, both parties submitted to the SEC a JOINT MOTION FOR JUDGMENT BY COMPROMISE, the salient portions of which read:

"COMPROMISE AGREEMENT"

"1. In complete and full settlement of petitioner [private respondent herein] Felipe Yulienco's claim for bonuses and profits sharing from Phesco, Incorporated, Phesco shall pay to petitioner Yulienco the sum of PESOS: FOUR MILLION FORTY FIVE THOUSAND SEVEN HUNDRED EIGHTY TWO AND 42/100 (P4,045,782.42), Philippine Currency, broken down as follows:

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2. Also, for the complete, full and unconditional settlement of this controversy between the parties, petitioners Felipe Yulienco and Emerito M. Salva shall sell, convey, transfer and deliver to Phesco, Incorporated all the shares of stock in the corporation owned by or registered in their names in the books of the corporation numbering ninety-six thousand five hundred thirty-four (96,534) shares in all, of which ninety-six thousand four hundred twenty (96,420) is owned by or registered in the name of petitioner Felipe Yulienco and one hundred fourteen (114) shares is owned or registered in the name of petitioner Emerito M. Salva, at their fair market value in relation to the 1986-87 audited financial statement and the assets/properties of Phesco, Inc., x x x the appraisal, determination and/or fixing of which fair market value shall be made by a mutually appointed appraiser, the AEA Development Corporation, in consultation with J.S. Zulueta & Co., but payable and subject to the following conditions:

a. A downpayment equivalent to fifteen (15%)percent of the sales price of the shares shall be paid to the petitioners Felipe Yulienco and Emerito M. Salva upon the final determination and submission of the appraisal report of AEA Development Corporation;

b. The balance of the purchase price, or the remaining eighty-five (85%) percent, shall be paid without interest by way of postdated checks within five (5) years in ten (10) equal semi-annual amortization, with the first installment commencing one (1) month after the payment of the initial downpayment mentioned herein-above, until the full purchase price of the

shares shall have been paid to the petitioners;

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3. It is hereby agreed that the fair market value of the shares of stocks owned by Felipe Yulienco and Emerito M. Salva as determined and/or fixed by AEA Development Corporation shall be final, irrevocable and binding upon the parties and non-appealable.

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xxx"<sup>[1]</sup>

Subsequently, on October 20, 1987, the SEC rendered judgment approving in toto the said Compromise Agreement submitted by the parties in this manner:

"WHEREFORE, finding the foregoing Compromise Agreement not contrary to law, morals and public policy, judgment is hereby rendered in accordance therewith and the parties are enjoined to comply with the provisions thereof.

SO ORDERED."<sup>[2]</sup>

Immediately thereafter, private respondents were paid by petitioner the amount of P4,045,782.42, while Felipe Yulienco resigned from the position of Senior Vice-President and Treasurer of PHESCO, Inc. effective October 31, 1987, pursuant to the said Compromise Judgment.

On February 5, 1988, the third-party appraiser, AEA Development Corporation, submitted a report to the SEC and to the contending parties fixing the fair market value of the private respondents' shares of stock in PHESCO, Inc. at Three Hundred Eleven Pesos and Thirty-Two Centavos (P311.32) per share.

On February 22, 1988, petitioner Ynson filed with the SEC a Motion for Execution of the Compromise Judgment with a tender of the checks to pay for the private respondents' shares of stock in accordance with the agreement.

Surprisingly, the private respondents opposed the Motion for Execution alleging that fraud was employed in the preparation of the 1986-1987 Financial Statement of PHESCO, since various assets were not included therein, assets which could probably increase the value of PHESCO's shares of stock. This posture inevitably called for the setting aside of the appraisal report submitted by AEA Development Corporation and the appointment of a new audit team to prepare a new financial statement for fiscal year 1986- 1987. On August 29, 1988, the Panel of Hearing Officers organized by the SEC for the purpose and before which the motion was submitted, issued an OMNIBUS ORDER, dated August 29, 1988, granting the Motion for Execution filed by petitioner Ynson.

On September 30, 1988, private respondents appealed to the SEC En Banc from said Omnibus Order.

After four years of protracted hearing, the SEC En Banc rendered a Resolution, dated December 1, 1992, dismissing the private respondents' appeal and affirming the issuance of the Writ of Execution by the Panel of Hearing Officers.

Strangely, however, the SEC Resolution contained an "obiter" in the opinion portion thereof that legal interest on the said appraised fair market value of the private respondents' shares of stock in PHESCO, Incorporated shall be paid from the time the Compromise Judgment became final until paid, viz:

"However, petitioners are entitled to the total amount of P 30,052,964.88 **plus the legal interest the same might have earned from the time the compromise agreement became final until paid**, since said amount is due to them pursuant to the appraisal made in accordance with the compromise agreement."<sup>[3]</sup>

Considering that the payment of legal interest was not in the dispositive part of the SEC Resolution, petitioner Ynson filed on December 14, 1993 a Motion for Clarification of the aforementioned resolution of December 1, 1992 and, in effect, contested the payment of interest. On April 12, 1993, the SEC En Banc denied the Motion for Clarification of the herein petitioner and affirmed the award of legal interest in favor of the private respondents.

On July 30, 1993, petitioner Ynson filed before the respondent Court of Appeals a Petition for Review, docketed as CA-G.R. SP No. 31571, assailing as contrary to jurisprudence and law the Resolutions of the SEC En Banc, dated December 1, 1992 and April 12, 1993, in regard to the payment of interest.

Likewise, herein private respondents Yulienco and Salva filed a petition before the Court of Appeals, docketed as CA-G.R. SP No. 30734, for a review of the SEC En Banc's Resolution of December 1, 1992 which dismissed their appeal from the Omnibus Order of August 29, 1988, insisting that the Compromise Judgment dated October 20, 1987 has not yet attained finality, and therefore the appraisal made by AEA Development Corporation can still be set aside on the ground of fraud and a new audit team be appointed.

These two petitions for review of the herein petitioner and that of the private respondents were ordered consolidated by the respondent Court of Appeals.

After hearing, the court a quo rendered judgment on November 29, 1993, to wit:

"WHEREFORE, we find the Petition for Review filed by Felipe Yulienco and Attorney M. Salva to be with merit and accordingly, we rule that:

1. The compromise judgment dated October 20, 1987 has not attained finality upon the submission of the AEA Development Corporation's Appraisal Report dated February 5, 1988.
2. The instant case is remanded to the Securities and Exchange Commission En Banc for the determination of the fair market value of the

shares of stock of Felipe Yulienco and Attorney Emerito M. Salva in relation to the audited financial statements of PHESCO, Inc. for fiscal year 1986-1987. Accordingly, the SEC En Banc is hereby ordered to create a new audit team to examine the books of accounts and other records and documents of PHESCO, Inc. and pursuant thereto, prepare a new audited financial statements for fiscal year 1986-1987.

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On the other hand, the petition for review filed by respondent Ynson [petitioner herein] docketed as CA-G.R. SP No. 31571 is hereby DISMISSED.

SO ORDERED."<sup>[4]</sup>

On December 20, 1993, petitioner Ynson filed with the respondent Court, a Motion for Reconsideration of the said appellate court's decision.

After oral argument, respondent appellate court rendered an Amended Decision, dated September 6, 1994, affirming in all respects its earlier decision dated November 29, 1993, except that the last paragraph of the dispositive portion thereof now reads:

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5. The petition filed by Benjamin Ynson in CA-G.R. SP. No. 31572, is also GRANTED. The Order dated April 12, 1993 and the Resolution dated July 22, 1993 are hereby ANNULLED and SET ASIDE. Consequently, the total amount of the shares of stocks which petitioners under the compromise agreement are bound to convey and transfer to PHESCO, Inc. **shall be paid without interest.**"<sup>[5]</sup>

Both parties filed respective Petitions for Review before us assailing the Amended Decision of respondent Court of Appeals.

Petitioner Ynson assigns the following errors committed by the appellate court insofar as it ruled that the Compromise Judgment dated October 20, 1987 has not attained finality and therefore can still be set aside.

## I

"The Honorable Court of Appeals Erred in Ruling that the determination of the fair market value of the shares by the appraiser mutually appointed by the parties required approval by the parties and the Court.

## II