

MANUEL L. LIMSICO, MAXIMO LIMSICO, GAW KANG, LIM LIAN HONG, LEON LIMSICO AND HAP HONG HARDWARE CO., INC., PETITIONERS, VS. HON. JOSE G. BAUTISTA, PRESIDING JUDGE OF BRANCH VI OF...

G.R. No. L-29141. May 19, 1983

Ponente: TEEHANKEE, Acting C.J.

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TEEHANKEE, Acting C.J.:

The Court sets aside the order dated March 20, 1968 of the Court of First Instance of Manila authorizing the piecemeal and separate sale of choice corporate properties as well as the order dated May 7, 1968 denying reconsideration and approving and confirming the sale executed in favor of third parties by the receiver of the main bulk of the corporate assets consisting of two choice commercial properties, the said orders having been issued arbitrarily and with grave abuse of discretion, since what the parties had agreed upon for the purpose of putting an early end to litigation was to sell all the shares of the corporation or the corporation as a whole to the highest public bidder, with the buyer to assume all the assets and liabilities of the corporation. The Court accordingly sets aside as void the two contracts of sale executed by the receiver pursuant to the vacated orders. The judicial discretion residing in the courts in the appreciation and determination of the most competent and advantageous offer among those submitted by offerors in the receivership sale of corporate shares or properties must not be exercised arbitrarily or capriciously, but reasonably, impartially and in accordance with the demands of justice and the terms agreed by the contending stockholders as parties in interest.

The conflict at bar is between the majority stockholders of the corporation Hap Hong Hardware Co., Inc. headed by petitioners (defendants below) Manuel L. Limsico and Maximo Limsico, who are full blood brothers born of their father, founder of the business, Lim Sico and his first wife and the minority stockholders above-named private respondents (plaintiffs below) headed by respondent Alfredo Limsico who are children born of the late Lim Sico and his second wife, respondent Sy Sing.

In December 1966, Alfredo Limsico, Felix Limsico, Lim Lian Khoan, Lim Lian Sing, Lim Lian Huy, Agnes Yuson, Leonardo Limsico and Sy Sing (hereinafter referred to as the Alfredo Limsico or minority faction), claiming themselves as the minority stockholders of Hap Hong Hardware Co., Inc. (hereinafter referred to as HAP HONG) filed a minority stockholders' complaint with the Court of First Instance of Manila (Branch VI), presided by Judge Gaudencio Cloribel, containing allegations of mismanagement of the business of HAP HONG by the majority stockholders headed by Manuel L. Limsico, president of the corporation, and co-petitioners Maximo Limsico, Gaw Kang, Lim Lian Hong and Leon Limsico (hereinafter referred to as the Manuel L. Limsico or majority group). The minority faction sought "a full and complete accounting of the entire business, income, property and other assets of the corporation from 1958 up to the present" and applied for the issuance of the writ of preliminary injunction to restrain the Manuel L. Limsico group and its representatives "from withdrawing and/or disbursing funds of [HAP HONG] either deposited in its name or as the result of overdraft lines opened in its behalf in any bank or banking institution and from disposing, selling or offering for sale or mortgaging or

offering to mortgage any of the assets or properties of [HAP HONG]." Thereafter, respondent court through Judge Cloribel, in an order dated December 22, 1966, required the majority group to show cause why the application for preliminary injunction should not be granted, but, at the same time, restrained them, ad interim, from committing the acts sought to be enjoined.

The majority group specifically denied, in their answer, the allegations of mismanagement and claimed in defense that the minority faction brought the action with the end in view of destroying HAP HONG for motives of their own," and sought, in a subsequent motion, the dissolution of the restraining order, which motion was opposed by the minority faction.

In the first quarter of 1967, the majority group manifested to the court a quo their offer to purchase the shares of the members of the minority faction at par value plus 20%. The majority group later imposed certain terms and conditions on the offer and amended the rate to the higher amount between P135 per share and the appraisal to be fixed by an independent certified public accountant as the actual value of each share. The minority faction counteroffered to buy the majority's shares at par value plus 20%, likewise subject to certain terms and conditions. On April 29, 1967, Judge Cloribel issued an order directing that "the restraining order should be maintained and no party should attempt to disturb the status quo."

Upon a motion of the minority faction setting forth "the necessity of having [HAP HONG] put back into operating basis" and praying for the appointment of a "receiver pendente lite," followed up by another motion for the same purpose, Judge Cloribel, notwithstanding the repeated opposition of the majority, appointed Rafael Contreras as receiver upon a P10,000.00 bond in an order dated May 23, 1967. The petitioners' motion to set aside the hasty appointment of the receiver was denied by Judge Cloribel in an order dated July 19, 1967.

Respondent Rafael Contreras (hereinafter referred to as the receiver) entered upon his duties as receiver and, the following July, he submitted to the court a quo a number of reports as to his activities - the inventory and appraisal of the assets of HAP HONG, the audit of its books, and the verification of its vouchers and invoices - and the results thereof. In an order dated August 9, 1967, Judge Cloribel in turn required the receiver to submit his recommendation "on what to do with the corporation, whether to sell the same or to divide its assets as well as liabilities among the shareholders." The receiver was quick to propose in his final recommendation dated August 31, 1967, "the immediate liquidation of the company and subsequent sale of its assets and liabilities."

On September 23, 1967, Judge Cloribel, by order, required the receiver "to proceed with the liquidation of the affairs" of HAP HONG and to devise ways and means to obtain the most advantageous offer to buy the corporation as a whole on cash basis thru public bidding to be conducted within sixty (60) days from [date], the buyer to assume all the assets and liabilities of the corporation." (Italics supplied) The minority faction, taking exception to that portion of the court directive to the receiver to sell HAP HONG, sought the modification of the order. On October 3, 1967, Judge Cloribel, notwithstanding petitioners' opposition to the modification, decreed the "dissolution" of HAP HONG and required the receiver "to proceed with the liquidation of the affairs of the corporation, especially pertaining to the settlement of its indebtedness and payment of necessary expenses in order to determine the assets that will remain to be divided among the stockholders of the corporation in proportion to their respective shares."

In November 1967, the receiver advertised the sale of the following properties of HAP HONG:

"A. Property consisting of land, building and other improvements thereon located at Dasmariñas corner Rosario Street, District of Binondo, Manila;

"B. Property consisting of land, building and other improvements thereon located at Nos. 520-534 Solana corner San Francisco and Legaspi Street, Intramuros, Manila;

"C. The entire stock of Hardware Merchandise, including three (3) delivery trucks; and

"D. Office equipment and supplies, including all fixtures."

The notice of sale also stated that "(A)ny single offer to buy the whole property consisting of the four (4) items above enumerated will be considered."

On December 20, 1967, the receiver, by motion, apprised the court a quo of the results of the sale notice. The receiver observed that the three (3) offers submitted should not be accorded consideration: Manuel L. Limsico's offer of P1,100,000 for all the four (4) items for being "much too low," F.M. Raya and Co.'s offer for being "fictitious," and Mariano C. Reyes' offer for, among others, not being in accordance with the terms of the notice of sale and being "low". The receiver also sought authority from the court a quo (1) to negotiate the sale of HAP HONG's properties, separately or as a whole, to offerors with cash offers in amounts not below the upset prices set in the motion; and (2) to arrange with the mortgagee banks for the release of their liens on the mortgaged properties with the court a quo's assurance that these prior liens would be recognized and that these claims would be satisfied from the proceeds of the sale. He likewise asked the court a quo to authorize the upset prices of P775,000 for the Binondo realty, P575,000 for the Intramuros realty, P236,000 for the stock and merchandise, P7,000 for the transportation equipment, and P9,000 for the office and store equipment. (Italics supplied)

Judge Cloribel in an order dated December 23, 1967 forthwith empowered the receiver (1) "to make further negotiations with any interested party, including those who have already submitted offers to him, for the sale in whole or in part of the corporate properties" in cash in amounts not lower than the prescribed upset prices, with the buyer either (a) assuming the obligations secured by the properties for sale and paying the respective balances in cash to the receiver, or (b) paying the respective purchase prices agreed upon to the receiver; and (2) "to make suitable arrangements with the China Banking Corporation and the Philippine Bank of Communications to release their respective liens over the real properties mortgaged to them without loss of their preference as creditors and immediate satisfaction of their claims from the proceeds of the sale that may be consummated." Judge Cloribel also authorized the upset prices set forth in the receiver's motion and required him to submit his report on the offers submitted as well as his recommendations on or before January 15, 1968.

On January 15, 1968, the receiver submitted to the court a quo his report on the offers proposed, mentioning therein that, among others, the minority faction Alfredo Limsico, et al. offered to buy separately, the Binondo realty for P750,000 and the Intramuros realty for P540,000 while the majority group Manuel L. Limsico, et al. sought to purchase, collectively, all the properties of HAP HONG as provided in Judge Cloribel's above-cited basic orders - the Binondo and Intramuros realties, the stock and merchandise, and the transportation, office and store equipment - inclusive of the acquisition of all accounts receivable and the assumption of all accounts payable, for the net sum of P1,261,150. (Italics supplied) The receiver, however, asked for court authority (1) to accept the separate offer of Continental Bank in the amount of P800,000 for the Binondo realty, that of GAB Investment Corporation in the amount of P590,000 for the Intramuros realty, and that of Homer V. Dillera in the amount of P230,000 for the stock and merchandise as well as the transportation, office and store equipment; (2) to make final arrangements with the mortgagee banks to effect the settlement of the mortgage obligations; and (3) to execute the necessary documents of sale. This was promptly opposed by petitioners in their Opposition of January 19, 1968 who pointed out that their offer to purchase collectively all the properties and assets with full assumption of all accounts payable would terminate the proceedings once and for all as well as the receivership which would not have anything to do with the collection of the receivables and payment of accounts due.

The receiver later amended twice his recommendation. In his first supplemental recommendation, he averred that after January 15, 1968, Leocadio de Asis offered the amount of P850,000 for the Binondo realty and that

Continental Bank "upped" its offer for the same property to P850,000. He thus recommended to the court a quo the sale of the Binondo realty to Continental Bank for the amount of P850,000, considering that the said bank "made the most advantageous offer within the time limit fixed by the (c)ourt." In his second supplemental recommendation, the receiver stated that likewise after January 15, 1968, Saint Rico Investment Corporation offered the amount of P610,000 for the Intramuros realty, a bid higher than that of GAB Investment Corporation in the sum of P590,000. He then recommended to the court a quo the sale of the Intramuros realty either (1) to GAB Investment Corporation for the raised amount of P610,000 should the said corporation be ready and willing to pay the increased price; or (2) to Saint Rico Investment Corporation for the amount of P610,000 should the said GAB Investment Corporation be unwilling to increase its P590,000 original offer.

Petitioners opposed the receiver's above recommendations, impugning the latter's basis in prompting respondent court to accept the respective separate offers of Continental Bank, GAB Investment Corporation and Dillera, and pressed for acceptance of its offer dated January 9, 1968 in the amount of P1,261,150 for all the properties of HAP HONG, including accounts receivable and payable.

Respondents Alfredo Limsico, Felix Limsico and their mother Sy Sing, on the other hand, submitted two (2) alternatives to the court a quo for consideration: (1) an offer to buy the Binondo and Intramuros realties, the stock and merchandise, and the transportation, store and office equipment for the total amount of P1,610,000; or (2) an offer to buy the same above-enumerated properties including all accounts receivable, with the assumption of all liabilities of HAP HONG, viz, loans secured by the Binondo and Intramuros realties, accounts payable, and real estate taxes, for the total amount of P1,311,150.

Meanwhile, the majority through petitioner Manuel L. Limsico modified their previous offer to purchase collectively all the corporate properties of HAP HONG including all accounts receivable and payable by increasing their bid to the total amount of P1,318,475. The minority faction in the same vein modified its second alternative by increasing its bid to the total amount of P1,328,475.

On February 14, 1968, the receiver submitted to the court a quo his final recommendation wherein he reiterated his previous recommendation regarding the sale of the Binondo realty to Continental Bank for the amount of P850,000 and of the Intramuros realty to Saint Rico Investment Corporation for the sum of P610,000.

On March 7, 1968, the court a quo required the two groups, petitioner Manuel L. Limsico and respondents Alfredo Limsico, et al. to submit detailed statements of their respective offers for the properties of HAP HONG.

Petitioner Manuel L. Limsico, in his Manifestation dated March 8, 1968, offered a total gross bid in the amount of P2,634,124 for all the properties of HAP HONG, the said amount broken down as follows:

Binondo realty

P1,000,000

Intramuros realty

725,608

Stock and merchandise

236,000

Transportation, store and office equipment

16,500

Accounts receivable (Trade)

77,017

Accounts receivable (Stockholders and Employees)

578,999

As to the plan of payment, Manuel L. Limsico proposed to pay, from the amount of P2,634,124, the following liabilities of HAP HONG:

Loan and interest due the China Banking Corporation as of March 7, 1968

P392,062

Loan and interest due the Philippine Bank of Communications as of March 7, 1968

392,025

Trust receipts, interests and bank commissions due the Philippine Bank of Communications as of March 7, 1968

58,574

Accounts payable (Trade)

128,923

Accounts payable (Salaries, fees, and separation and retirement pay)

392,869

Real estate taxes, interests and fines

8,521

These liabilities, totalling to the amount of P1,372,974, Manuel L. Limsico proposed to deduct from the amount of P2,634,124 (corresponding to his total gross bid), leaving the sum of P1,261,150. He likewise proposed to deduct from i.e. apply to the amount of P1,261,150 "the amount of P578,999 due the company from the stockholders, leaving the amount of P682,151 as the net figure belonging to the stockholders after setting off obligations against assets." Manuel L. Limsico submitted the written conformity of the Philippine Bank of Communications to his assumption of the obligations of HAP HONG with the said Bank, and the availability of the amount of P840,000 in the form of a loan from the same bank, for use in his proposal of payment.

Respondents Alfredo Limsico, et al. in their Manifestation likewise dated March 8, 1968, tendered the following offer:

Binondo realty

P850,000

Intramuros realty

610,000

"The stocks and equipment"

50,000

Respondents claimed the availability, as attested by the Continental Bank in a letter attached to their Manifestation, of the amount of P1,000,000 for disposition in connection with their offer. However, they made no offer to assume or buy the accounts receivable and payable, for, according to them, "these are not actually things to be bought or sold, but matters to be properly attended to by the receiver in the liquidation of the funds and affairs of Hap Hong Hardware Co., Inc." Said respondents prayed that the court a quo "should it not feel disposed to grant the recommendations of the receiver, consider the foregoing offer of undersigned plaintiffs as acceptable under the circumstances" or "authorize the receiver to enter into contracts with them."

On March 20, 1968, the court a quo now presided by respondent Judge Jose G. Bautista who replaced Judge Cloribel, after the latter was suspended from office (Record, page 1) issued the following order:

"Considering the final recommendation of the receiver dated February 14, 1968 to be well taken; considering that the offer of Manuel Limsico is questionable in many aspects, not to mention his lack of cash to pay for the Dasmariñas and Intramuros properties; considering that it is paradoxical that while Manuel Limsico could make an offer to buy the entire properties, yet he is not in a position to pay in cash the two (2) lots proposed to be sold; considering that the immediate sale would stop the payment of enormous interest which would accrue to the benefit of all the parties; and considering finally that the most satisfactory arrangement under the circumstances in view of the strained relations among the parties, is to order the sale to disinterested parties;

"WHEREFORE, the recommendation of the receiver is approved and he is hereby directed and authorized to enter into contracts of sale for cash of the Dasmariñas property to the Continental Bank for P850,000.00 and the Intramuros property to Saint Rico Investment Corporation for P610,000.00."

Petitioners urged respondent court to reconsider its above order of March 20, 1968 and to set the case for trial on the merits, which was countered by respondents opposition.

On April 4, 1968, the receiver despite the pendency of petitioners' above motion for reconsideration sought ex parte court approval of the contract of sale of the Binondo realty, with assumption of mortgage, that he executed with Continental Bank for the amount of P850,000. The majority group duly interposed its objection to the receiver's motion, upon learning of the receiver's ex parte motion.

But on May 7, 1968, respondent court issued an order denying the majority group's motion for reconsideration of the order dated March 20, 1968 and approving and confirming the "Deed of Sale with Assumption of Mortgage" in favor of the Continental Bank as well as the "Unconditional Deed of Sale with Assumption of Mortgage" that the receiver executed for P610,000 in favor of Saint Rico Investment Corporation. Respondent court held that petitioners' contention that it was their "consistent position for agreeing to dissolve the company by offering for sale the corporation as a whole on cash basis thru public bidding and for the buyer to assume all assets and

liabilities of the corporation" was not "well taken" and quoting Judge Cloribel's Order of December 23, 1967 held that "it is clear from the (said) Order that the sale in whole or in part' of the corporate properties of the Hap Hong Hardware Co., Inc. is within the agreement and understanding of the parties." Respondent court further held that "(T)he main bulk of the properties of the corporation is the Dasmariñas and Intramuros properties. A substantial liquidation would be accomplished by their disposition with consequent benefits to all shareholders of the corporation, which would thus be relieved of enormous interest on the mortgage."

Hence, petitioners filed on June 19, 1968 the petition at bar assailing the following actions of respondent court, to wit:

- The so-called Temporary Restraining Order dated December 22, 1966 ordering "the defendants (petitioners at bar), their attorneys-in-fact, agents and other persons acting in their names or in their behalf to refrain from withdrawing or disbursing funds of the plaintiff corporation either deposited in its name or as the result of overdraft lines opened in its behalf in any bank or banking institution and from disposing, selling or offering for sale or mortgaging or offering to mortgage any of the assets or properties of the plaintiff corporation;" and the Order dated April 29, 1967 decreeing that "the restraining order should be maintained and no party should attempt to disturb the status quo;"
- The Order dated May 23, 1967 appointing Rafael Contreras as receiver and the Order dated July 19, 1967 denying petitioners' motion for reconsideration to set aside the appointment of the receiver and to discharge him;
- The Order dated March 20, 1968 (a) approving the recommendation of the receiver in his "Manifestation and Final Recommendation" dated February 14, 1968 that the "Dasmariñas property be sold to the Continental Bank for P850,000 and the Intramuros property be sold to Saint Rico Investment Corporation for P610,000;" and (b) authorizing the receiver "to enter into contracts for sale for cash" of the said properties; and
- The Order dated May 7, 1968 (a) denying petitioners' "Motion for Reconsideration and to Set Case for Trial on the Merits" dated March 27, 1968; and (b) approving and confirming the "Deed of Sale with Assumption of Mortgage" executed on April 3, 1968 by the receiver for P850,000 in favor of the Continental Bank and the "Unconditional Deed of Sale with Assumption of Mortgage in favor of Saint Rico Investment Corporation" for P610,000.

Petitioners claim that respondent court acted with grave abuse of discretion amounting to lack of jurisdiction in issuing the aforementioned orders and ask the Court to nullify these orders as well as the Deed of Absolute Sale with Assumption of Mortgage dated April 3, 1968 of the corporation's Binondo property and the Unconditional Deed of Sale with Assumption of Mortgage of the corporation's Intramuros property, as executed by the receiver.[1] The petitioners likewise ask the Court to declare Manuel L. Limsico "as the highest bidder and to award in his favor the sale of the entire assets of [HAP HONG] with [the said Limsico] assuming all the obligations of the company.

Petitioners also seek the issuance of the writ of preliminary mandatory injunction, upon a bond in the amount fixed by the Court, (1) to stay the effects of the challenged Orders dated December 22, 1966, April 29, 1967, May 23, 1967, July 19, 1967, March 20, 1968 and May 7, 1968;[2] (2) to restrain the receiver from executing any deed of sale in favor of Saint Rico Investment Corporation covering the Intramuros realty and from disposing or offering for sale the corporate properties of HAP HONG (since the receiver had not at the time submitted such deed of sale); (3) to prohibit Continental Bank and Saint Rico Investment Corporation from committing or exercising any act of ownership over the corporation's Binondo and Intramuros realties, respectively; and (4) to order the return, pending the resolution of the petition at bar, of HAP HONG to the former management headed by petitioner Manuel L. Limsico to obviate "further losses and damage to all the company's stockholders."

On June 28, 1968, the Court issued the writ of preliminary injunction directed to the Presiding Judge of respondent court,[3] the receiver, Continental Bank, Saint Rico Investment Corporation and the members of the minority faction restraining them "(1) from enforcing and giving effect to the Orders of May 7, 1968 and March 20, 1968, more particularly the receiver, Rafael Contreras, from executing the Deed of Sale in favor of Saint Rico Investment Corporation and from disposing or offering for sale any and all the corporate properties of Hap Hong Hardware Co., Inc.; and (2) from enforcing and giving effect to the Order dated December 22, 1966; Order dated April 29, 1967; Order dated May 23, 1967, and the Order dated July 19, 1967, subject matter of Civil Case No. 67948 of the Court of First Instance of Manila." The writ likewise restrained Continental Bank and Saint Rico Investment Corporation "from committing or exercising any act of ownership over the properties located at 201 Dasmariñas corner Rosario Streets, Binondo, Manila; and the property in Intramuros, Manila."

On July 13, 1968, the respondents members of the minority faction on their own behalf and that of respondent court answered the petition, praying for its dismissal, and moved for the dissolution of the writ of preliminary injunction, upon a counterbond in the amount that may be fixed by the Court. Two days later, Continental Bank filed its separate answer to the petition, asking the Court to dismiss it also and to lift the writ of preliminary injunction previously issued. The receiver likewise filed his separate answer on July 16, 1968 seeking the same reliefs as the other respondents.

On July 17, 1968, Continental Bank applied, by motion, to the Court for the immediate dissolution of the writ of preliminary injunction "in view of the insufficiency of the petition" and "considering that [the] continuance [of the writ] would cause great damage to the respondents." Continental Bank also filed with the Court a bond in the amount of P20,000 to answer for "all damages which the petitioners may suffer by the dissolution of the injunction." The next day, July 18, 1968, the receiver followed suit and urged the Court, by motion, to dissolve the writ of preliminary injunction, upon a counterbond in the amount that may be fixed by the Court, claiming greater injury that HAP HONG and all the parties concerned would suffer if the Court allowed the writ to subsist and continue. On July 30, 1968, Saint Rico Investment Corporation filed its answer to the petition, aiming at its dismissal.

On August 17, 1968, petitioners filed their consolidated opposition to the motions for the dissolution of the writ of preliminary injunction filed separately by respondents, as above stated. Subsequently, the minority faction and Continental Bank filed their respective replies to petitioners' consolidated opposition.

The case was set for hearing on September 20, 1968 and the parties, after leave of court, submitted their respective memoranda in lieu of oral argument.

On December 12, 1968, respondent Saint Rico Investment Corporation filed a motion to dissolve the writ of preliminary injunction, which was duly opposed by petitioners. Subsequently, on August 18, 1969, said respondent Saint Rico Investment Corporation filed with the Court an urgent motion for the partial dissolution or modification of the writ of preliminary injunction, upon a bond in the amount fixed by the Court, so that it could "exercise acts of ownership" over the Intramuros realty, which petitioners contested with their opposition of August 20, 1969.

Thereafter, the Court issued a resolution on August 22, 1969 providing that—

"Upon consideration of respondent Saint Rico Investment Corporation's motion praying for the dissolution of the writ of preliminary injunction issued . . ., the opposition thereto filed by petitioners, the reply to said opposition, the urgent motion for at least partial dissolution or modification of preliminary injunction dated August 15, 1969 of the same respondent as well as petitioners' opposition to said urgent motion, and it appearing that by limiting the said injunction to the disposal and encumbrance of the properties in question, the

interests of petitioner will still be adequately protected, particularly, if the said respondent files a bond in favor of petitioner to answer for all damages which said petitioner may suffer by the said limitation or partial lifting of the injunction herein, since, anyway, said damages may be fully compensated, while, on the other hand, said respondent stands to suffer great damage as a result of its continuation, the Court resolved to GRANT the urgent motion to modify or partially dissolve the injunction, in the sense that the same should be considered as only enjoining respondent Saint Rico Investment Corporation from selling, alienating, encumbering or otherwise disposing of the so-called Intramuros properties referred to in the motion of said respondent provided that said respondent files a bond, acceptable to this Court, in the amount of P30,000, in favor of petitioners, conditioned that said respondent will pay all damages which petitioners may suffer by this partial dissolution of the injunction herein."

On September 3, 1969, the Court issued, upon a bond in the amount of P30,000 submitted by Saint Rico Investment Corporation, the corresponding "partial dissolution of writ of preliminary injunction." Petitioners' motion for reconsideration was denied in the Court's resolution of September 10, 1969.

In February 1970, the minority faction and respondent judge in a consolidated motion, and respondents Continental Bank and the receiver, in separate motions, renewed their motions for the complete dissolution of the writ of preliminary injunction. Petitioners strongly opposed the aforesaid motions. An exchange between the parties of manifestations and counter-manifestations, all relating to the dissolution or modification of the writ of preliminary injunction, ensued.

On September 20, 1971, Continental Bank reiterated its application and plea for the dissolution of the writ of preliminary injunction. The minority faction of Alfredo Limsico subsequently filed with the Court their manifestation expressing no objection to the dissolution of the writ of preliminary injunction as urged by the said bank. Again, petitioners resisted the concerted moves of said respondents.

The memoranda in lieu of oral argument filed by the parties and their tug-of-war with regard to lifting or maintaining the Court's injunction served but to heighten and focus on the fact that the key issue to the determination of the dispute was which of the conflicting offers was the most advantageous for all concerned, petitioners' offer in pursuance of their original and consistent proposal for one group to buy out the other and purchase collectively all the properties of the corporation with assumption of all its accounts payable of some P1,372,000 leaving a net sum of P1,261,150^[4] or the receiver's (with the support of respondents minority faction) piece-meal sale of the corporation's two choice commercial properties for a total gross of P1,460,000, which as per respondent court's own appraisal constituted "the main bulk of the properties of the corporation," and leaving the receiver to handle the collection of receivables and payment of the corporation's substantial accounts payable.

On January 14, 1972, the Court accordingly issued its resolution requiring the contending parties to submit "their respective supplementary memoranda on the sole question of why the last offer of petitioner Manuel L. Limsico to purchase the whole Hap Hong Hardware Company business lock, stock and barrel, for P2,634,124 should not be considered more advantageous to all concerned than the proposal of the receiver approved by the court a quo in its impugned order of March 20, 1968." The text of the Resolution read as follows:

"... the deliberations so far not having resulted in a consensus sufficient for a decision, the Court resolved to REQUIRE the parties, excluding the respondents Judge, Continental Bank and Saint Rico Investment Corporation, to file within ten (10) days from notice hereof their respective supplementary memoranda on the sole question of why the last offer of petitioner Manuel Limsico to purchase the whole Hap Hong Hardware Company business lock, stock and barrel, for P2,634,124,00, should not be considered more advantageous to all concerned than the proposal of the receiver approved by the court a quo in its impugned order of March 20, 1968; upon the filing of the said memoranda, this case shall be considered submitted for decision."

The petitioners majority group, respondents minority faction and the receiver thereafter submitted in compliance their respective supplemental memoranda.

Stated in other words, the core question for resolution relates to whether or not respondent court, in issuing its order dated March 20, 1968 approving the recommendation of the receiver for the separate sale of HAP HONG's Binondo and Intramuros realties to Continental Bank and Saint Rico Investment Corporation, respectively, and rejecting the lock, stack and barrel offer of petitioner Manuel L. Limsico, soundly exercised its discretion in the interest of fairness and with due regard for the rights of all parties involved.

As a general rule, in any judicial or forced sale, the determination of whether or not an offer constitutes the most advantageous bid rests largely in the sound discretion of the court ordering or overseeing the sale. Such discretion must be impartially and reasonably exercised with a just regard for the rights and interests of all parties concerned and the demands of justice and fairness, and particularly in accordance with the terms agreed by the contending stockholders, since basically the sale was based on the parties' agreement and submittal to obtain the most advantageous offer to buy the corporation as a whole on cash basis thru public bidding to be conducted within sixty (60) days from date, the buyer to assume all the assets and liabilities of the corporation," as set forth in the basic Order of September 23, 1967. The process of determination proceeding from such exercise of discretion will generally not be disturbed by the Court on review. However, where facts and circumstances establish plainly that respondent court abused or otherwise exercised arbitrarily its discretion to the prejudice of a party, then the process of determination would be subject to this Court's scrutiny and remedy. Thus, where respondent court, in acting upon the report and recommendation of the person so appointed to conduct the sale, applies or interprets arbitrarily the terms prescribed for the said sale, effecting the exclusion or rejection of a responsible offeror's manifestly more advantageous bid, then its process and result of the determination of the most advantageous offer would be open to this Court's review and reversal.

The Court accordingly finds that petitioners' offer was by far the most advantageous and therefore grants the petition.

- In the simplest arithmetical terms, even if the corporation's two realty properties constituting the main bulk of its properties were to be sold separately, as decreed by respondent court, petitioners' offers of P1,000,000 for the Binondo property and P725,608 for the Intramuros property were unquestionably by far higher and plainly more in terms of pesos than that of the receiver's buyers, Continental Bank's price of P850,000 for the Binondo property and Saint Rico's price of P610,000 for the Intramuros property, respectively. Said lower prices were supported by the minority faction who, as above stated, made the same offer their own, should respondent court "not feel disposed to grant the recommendations of the receiver." [5] Petitioners' above total offer of P1,725,608 as against the receiver's buyers' much lesser total offer of P1,460,000 was formally made in their Manifestation of March 7, 1968. [6] While petitioners consistently submitted that such piece-meal separate sale of the corporation's choice properties would dismember the corporation and strip it of the main bulk of its assets leaving an empty shell with the total price barely enough to discharge its liabilities of some P1,372,000, still they made it clear and reiterated at the pre-trial conference held by respondent court on March 7, 1968 that their firm offer for the two realty properties, if respondent court maintained its stance of selling them separately, was as above stated for a total price of P1,725,608. Incomprehensibly, respondent court arbitrarily swept aside petitioners' much higher offer and approved the receiver's recommendation to sell the properties for the much lesser total of P1,460,000 per its Order of March 20, 1968, the rationale whereof is hereinbelow quoted once more for ready reference, as follows:

"Considering the final recommendation of the receiver dated February 14, 1968 to be well taken; considering that the offer of Manuel Limsico is questionable in many aspects, not to mention his lack of cash to pay for the Dasmariñas and Intramuros properties; considering that it is paradoxical that while Manuel Limsico could

make an offer to buy the entire properties, yet he is not in a position to pay in cash the two (2) lots proposed to be sold; considering that the immediate sale would stop the payment of enormous interest which would accrue to the benefit of all the parties; and considering finally that the most satisfactory arrangement under the circumstances in view of the strained relations among the parties, is to order the sale to disinterested third parties . . . "[7]

- The transcript of the pre-trial hearing of March 7, 1968 bears out the unqualified offer of petitioner Manuel Limsico to pay the much higher total price of P1,725,608 for the two properties as against the receiver's 'recommended buyers' much lesser total offer of P1,460,000, so much so that the presiding judge of respondent court could find no flaw in the higher price and the receiver himself spontaneously declared that "As a matter of fact, I am going to recommend at this very moment the acceptance of his (petitioner's) offer."

"COURT:

This offer of the Continental Bank for the Dasmariñas property - P850,000.00. What is your bid?

LIMSICO:

P1,000,000.00.

COURT:

P850,000.00 - Intramuros property?

LIMSICO:

P725,608.00.

COURT:

As against P610,000.00 of Saint Rico Investment Corporation?

LIMSICO:

Yes, Your Honor.

COURT:

Are those statements of yours included in the manifestation attached to the record?

LIMSICO:

I can make out a statement to prove my manifestation.

COURT:

Is there anything more to say?

LIMSICO:

That's about all. (pp. 28-29, TSN)"

"MR. CONTRERAS:

The net offer of Mr. Limsico is based on figures that are imaginary, Your Honor. That is why it is hard to believe. In the first place he did not name a definite price for this property which are for sale. For example for the Intramuros property, for the merchandise and other items, Your Honor.

He has made an overall offer and he is the one who made the computation by himself.

COURT:

You can ask him now.

MR. CONTRERAS:

What he did in his computation is that he undervalued the accounts receivable.

COURT:

The Dasmariñas property has an offer of P1,000,000.00 while the offer of Continental Bank is only P850,000.00. What is the flaw in that statement of Mr. (Limsico)?

MR. CONTRERAS:

I would recommend the approval if he will pay that for the two (2) properties here in cash or assume payment of the obligations and the balance paid in cash so that we can deposit whatever is the balance.

COURT:

You heard what the receiver said. He is willing that you purchase if you can pay the amount you manifested in open court.

MR. CONTRERAS:

The trouble is that Mr. Limsico has not made any definite statement whether he is willing to pay in cash the two (2) properties we are talking about. The Dasmariñas and Intramuros properties.

LIMSICO:

After deducting the loan with the bank, the balance of the money will have to be paid to the stockholders and the creditors will be paid in cash.

COURT:

The question asked of you is this, if this Dasmariñas and Intramuros property are sold to you, will you pay in cash?

LIMSICO:

Yes, Your Honor.

COURT:

How much will you pay?

LIMSICO:

P1,725,608.00.

COURT:

P260,000.00 difference. Do you object?

MR. CONTRERAS:

If paid in cash.

LIMSICO:

The cash will go immediately to the stockholders.

MR. CONTRERAS:

The cash shall be deposited. He is responsible to pay the balance in cash. Our responsibility is to deposit that in the bank. If he is willing to pay that amount, I completely agree. As a matter of fact, I am going to recommend at this very moment the acceptance of his offer.

COURT:

The court will require you to put in writing and verify all these you made in court then the court will study. Any objection?

ATTY. HIDALGO:

I would like to assist Mr. Limsico, I would like to explain to you if there be any documents now, we are talking only of two (2) properties. The Dasmariñas and Intramuros properties. There is nothing in all the documents here with respect to the receivables and payables.

COURT:

The question of the court is how much is his offer for the Dasmariñas and Intramuros properties. He said that he will pay the two (2) properties for P1,725,608.00. (pp. 29-35)

COURT:

Your client manifested in open court that if Mr. Limsico would really carry out his proposal, he has no objection to the same and he will recommend its approval.

ATTY. HIDALGO:

Two properties only. It has nothing to do with accounts receivable and payable, Your Honor. (pp. 42-43)"
(Italics supplied)

Parenthetically, the receiver's lawyer, as above recorded, stepped in to "assist" said petitioner by interjecting that "we are talking only of two (2) properties It has nothing to do with accounts receivables and payable." This was a worthless and incomprehensible observation of excluding the assumption of accounts receivable and payable, for as already indicated above, the separate disposition of the corporation's two choice realties would practically dismember the corporation and strip it of the main bulk of its assets, leaving practically nothing for the stockholders after having to discharge its liabilities of over P1,372,000. We shall specifically deal with this aspect hereafter.

- Strangely, however, respondent court's above-quoted Order of March 20, 1968 came out in reverse. Despite the receiver's recommendation for the acceptance of petitioner Manuel Limsico's offer for the two realties at a much higher price, respondent court approved his earlier "final recommendation" of February 4, 1968 to sell the said realties to the recommended buyers for a much lesser price. The least that could be said is that the questioned Order's general statement of conclusion without any specific facts or particulars to support the same, viz "that it is paradoxical that while Manuel Limsico could make an offer to buy the entire properties [for the gross price of P2,634.124], yet he is not in a position to pay in cash the two (2) lots proposed to be sold," was based on respondent court's gross misapprehension of the facts and failure to comprehend its terms and mechanics. Respondents minority faction owns only 43.39% of the corporation's capital stock, with petitioners owning the majority stock.[8] The mechanics of petitioner's plan of payment, assuming that all assets were realized and liabilities discharged, estimated a net figure of some P682,000 belonging to the stockholders, majority and minority, in proportion to their shareholdings as above stated. No other figure has been submitted by respondents. It will readily be seen that Manuel Limsico's personal resources besides the readily available loan accommodation in the cash amount of P840,000 as certified by the Philippine Bank of Communications which likewise agreed in writing to said petitioner's assumption of the corporation's obligations to it leave no doubt as to his being in a position to pay cash for the two realties. Being the majority shareholder entitled to the greater share of the net proceeds of the sale of the two realties, Manuel Limsico need not pay cash to himself or to the receiver from such share of the sales proceeds, like taking money out of one packet to put into the other. Or put in another way, petitioner Manuel Limsico as a major stockholder who had actively managed the business since the beginning with his father, would be buyer and part seller, and in the mechanics of the transaction the amounts to be paid by him as buyer would be offset with the amounts due him as part seller.[9]

- Prescinding from the foregoing, respondent court in disregarding petitioner's much higher offer for the two realties in its questioned Order on his supposed "lack of cash to pay for the Dasmariñas and Intramuros properties" acted arbitrarily and whimsically in applying a cash criterion for petitioner in its March 20, 1968 Order while it itself had adopted a non-cash criterion in its earlier Order of December 23, 1967 and allowed the receiver to use such other non-cash criterion for his recommended buyers for a lesser price.

Per its Order of December 23, 1967, respondent court authorized the receiver "to make further negotiations with any interested party, including those who have already, submitted offers to him, for the sale in whole or in part of the corporate properties of [HAP HONG] for cash which should not be lower than the 'upset prices' set out in his motion and with the buyer assuming the corporate obligations secured by the properties to be bought, the balance to be paid in cash by the buyer to the receiver, or paying the purchase price as may be agreed upon to the receiver." Respondent court through the said Order allowed the sale although not as a full cash operation, since it gave the purchaser the option to assume the obligations secured by the corporate properties and to pay the balance in cash to the receiver. In other words, respondent court, in the case of the receiver's buyers made no exaction for

the direct payment of the full purchase price in cash, but exacted such cash payment as a requirement in arbitrarily disregarding the higher offer of petitioner for alleged "lack of cash" to pay for the properties.

- The record thus evinces, regarding the questioned sales of the Binondo and Intramuros realties to the receiver's recommended buyers, Continental Bank and Saint Rico Investment Corporation, respectively, that the former (Continental Bank) paid actually to the receiver only the cash sum or balance in the amount of P436,988.40[10] (equivalent to the difference between the Binondo realty purchase price of P850,000 and the outstanding HAP HONG account with the China Banking Corporation for which account the said Binondo realty stands as security), opting to assume HAP HONG's outstanding account with the China Banking Corporation;[11] and that the latter (Saint Rico) actually paid to the receiver only the cash sum or balance in the amount of P161,239.89[12] (equivalent to the difference between the Intramuros realty purchase price of P610,000 and the outstanding HAP HONG obligation with the Philippine Bank of Communications for which obligation the Intramuros realty stands as security), electing to assume HAP HONG's obligation with the Philippine Bank of Communications.[13]

The total cash outlay of the receiver's two buyers, after assuming the corporation's obligations with the banks as secured by the two properties amounted to a total of only P598,288.29 (P436,988.40 paid by Continental Bank and P161,239.89 paid by Saint Rico to the receiver). Such total was clearly within the available credit of P840,000 held by petitioner, as certified by the Philippine Bank of Communications.

- This brings us to the core issue as concretized by the parties and the court as per the January 14, 1972 Resolution[14], to wit, why petitioner's offer to purchase the whole corporate business lock, stock and barrel, for P2,634,124 should not be considered more advantageous to all than the receiver's proposal approved by respondent court in its impugned March 20, 1968 Order for the sale of the two real properties for a total sum of P1,460,000. In plain figures, petitioner's offer is manifestly far superior to the receiver's proposal. Said receiver's proposal which dismembers the corporation and strips its two choice real properties leaving only an empty corporate shell would bring in only a net sum of P598,288.29 (with the buyers' assumption of the obligations with two banks secured by the said properties), as stated in the preceding paragraph. This hardly is adequate to discharge the corporation's net liabilities of P588,887 (after deducting from its gross liabilities of P1,372,974 its obligations to the banks as secured by the properties and assumed by the buyers in the total of P784,087 [P392,062 owing to the China Bank and P392,025 owing to the Philippine Bank of Communications]).[15] Under the receiver's proposal, a net of less than P10,000 would be left for the stockholders as against a net of P682,000 under the said petitioner's offer. There seem to be nothing left to be realized from the stock and merchandise in view of their dissipation, during the stoppages of business with respondent court's first orders of December 22, 1966, et al. (Annexes D, E, F and G of petition) issuing a restraining order practically paralyzing the corporation's business operations and appointing the receiver.

Indeed, as indicated above under paragraph 2 hereof, the most advantageous proposal for all concerned would be the purchase of the whole business or assets with assumption of all liabilities and accounts receivable and payable. Petitioner was the only offeror willing to assume the risk of being able to collect the receivable accounts of the corporation and hope to pay out with them the accounts payable. Both the receiver and the supporters, the respondents minority faction, were against themselves taking the risk of such assumption of receivables and payables and made no offer to do so. All they did was to offer to buy the choice properties and dismember the corporation. But they were incomprehensibly against the higher offer of petitioner which furthermore undertook the risk of such assumption of all accounts receivable and payable.

- In objecting to petitioner's offer, the receiver claimed that the receivables were arbitrarily undervalued while the payables were overvalued, and that the inclusion of assumption of such receivables and payables would have delayed the transaction (of selling the choice commercial properties) as against the urgent necessity to conclude

the transaction because of respondent court's announced intention to end the case as soon as possible.[16] These were among the general speculative objections of respondents which apparently misled respondent court to arbitrarily declare without particulars or justifying premises in its March 20, 1968 order that petitioner's offer was "questionable in many aspects." The contrary appears to be much closer to reality. Thus, the receiver's report for a period of three years from May 1, 1968 to July 10, 1972 shows that he made a net collection of P220.00 from a gross of P2,800.00 showing the untenability of the receiver's claim of undervaluation of the receivables. It should readily be appreciated that a proposal such as petitioner's to purchase the whole business lock, stock and barrel is by far the most advantageous. It terminates the case once and for all, as well as the receivership. The stockholders have no worry about the accounts receivable and payable which have been assumed by the buyer. At the same time, the preference and right in fairness and equity of a major stockholder such as petitioner to acquire the business that he had built up and managed through the years as against outsiders, all things being equal and more so when his offer is by far the most advantageous to all the other stockholders, will be respected and upheld. To order "the sale at a lesser price to disinterested third parties" of the corporation's choice real properties and destroy its business and goodwill "in view of the strained relations among the parties" is to arbitrarily impose an unjust sanction and penalty of petitioners simply because they are of the majority group.

- In view of the resolution herein of the core issue upholding petitioners' offer as far more advantageous than the receiver's proposal pursuant to the Court's January 14, 1972 Resolution, it is unnecessary to dwell in detail on respondent court's orders issuing a restraining order against petitioners' operation of the business and appointing the receiver. The same were improvidently and precipitately issued. The restraining order was issued ex parte upon the filing by respondents of their complaint without any urgent necessity therefor and with dire consequences for the business operations. The receivership was likewise improperly imposed in violation of the basic principle that the appointment of a receiver, because of its drastic nature and burdensome character, should be exercised with great caution and only in extreme cases and on a clear showing of necessity therefor such as the prevention, not imposition, of grave and irremediable loss or damage. Respondents' allegations of estoppel and laches on petitioners' part in bringing this action, aside from being baseless, since petitioners could come up here only after respondent court had issued its questioned orders of March 20, and May 7, both in 1968 rejecting their offer and allowing the corporation's decimation with the sale of the two choice properties to the receiver's buyers at much lower prices than those of petitioners, have been rendered moot in view of the results reached.

ACCORDINGLY, the totality of all the foregoing facts and considerations affords strong basis and justification for granting the petition and its submission that respondent court gravely abused its discretion amounting to excess of jurisdiction in disregarding and rejecting petitioner Manuel L. Limsico's offer to buy the whole business lock, stock and barrel and plan of payment at the net proceeds to the stockholders, translated into specific terms in his Manifestation dated March 8, 1968. The same was manifestly the most advantageous for all concerned and is hereby so upheld. Consequently, the questioned Order dated March 20, 1968, Annex A, petition (approving the recommendation of the receiver that "the Dasmariñas property be sold to the Continental Bank for P850,000 and the Intramuros property be sold to Saint Rico Investment Corporation for P610,000" and authorizing the said receiver "to enter into contracts for sale for cash" of the said properties) and the questioned Order dated May 7, 1968, Annex B, petition (denying petitioners' "Motion for Reconsideration and to Set Case for Trial on the Merits" and approving and confirming the "Deed of Sale with Assumption of Mortgage in favor of the Continental Bank honoring the lease contract of Hap Hong Hardware Co., Inc. with Gaw Khoan" and the "unconditional Deed of Sale with Assumption of Mortgage in favor of Saint Rico Investment Corporation") are hereby SET ASIDE. Concomitantly, the Deed of Absolute Sale with Assumption of Mortgage dated April 3, 1968 in favor of Continental Bank relating to the Binondo realty and the Deed of Sale with Assumption of Mortgage dated April 23, 1968 in favor of Saint Rico Investment Corporation relating to the Intramuros realty, both

executed pursuant to the above questioned Order dated March 20, 1968 to be vacated are hereby declared null and void. The receiver is hereby ordered to return to the proposed buyers Continental Bank and Saint Rico Investment Corporation the amounts received from them upon execution of the voided sales and deposited with him within thirty (30) days from finality hereof, pursuant to his undertaking in the deed of sale "to return or account for any of the purchase money paid and delivered to him" in case of non-confirmation by the receivership court of the deed of sale. (Annex C, petition). With reference to the obligations with the China Banking Corporation and Philippine Bank of Communications secured by the real properties and assumed by Continental Bank and Saint Rico Investment Corporation, respectively, the petitioners (majority group) and respondents (minority faction) are ordered to return within thirty (30) days from finality hereof to said proposed buyers pro rata the sums that they may have paid by way of principal and regular interest to the said banks in discharge of the corporation's mortgage obligations. The transfer certificates of title that may have been issued to said proposed buyers Continental Bank and Saint Rico Investment Corporation in pursuance of the receiver's voided deeds of sale are hereby likewise ordered cancelled.

Finally, the orders dated March 20, 1968 and May 7, 1968 of respondent court (Annexes A and B, petition) are set aside and a new one is entered awarding the sale of all the corporate properties and assets of the corporation Hap Hong Hardware Co., Inc. to petitioner Manuel L. Limsico in accordance with his offer contained in his Manifestation dated March 8, 1968. The other questioned Orders of respondent court of December 22, 1966, April 29, 1967, May 23, 1967 and July 19, 1967 (Annexes D, E, F and G, petition) are likewise set aside and annulled. The preliminary injunction issued by the Court against their enforcement is hereby made permanent. With costs against respondents except respondent judge. SO ORDERED.

Plana, Escolin, Vasquez and Gutierrez, Jr., JJ., concur.

Melencio-Herrera and Relova, JJ., on leave.

[*] Mr. Justice Escolin was designated to sit with the First Division under Special Order No. 241 dated April 28, 1983.

[1] In their Memorandum dated October 4, 1968, petitioners submit the data that the receiver had executed in the Deed of Sale with Assumption of Mortgage dated April 23, 1968 of the corporation's Intramuros realty pursuant to the assailed Order of March 20, 1968, and reiterate the plea in their petition for nullification thereof.

[2] Annexes "D", "E", "F", "G", "A" and "B" of petition respectively.

[3] "The Honorable Jose G. Bautista the Presiding Judge of Branch VI, Court of First Instance of Manila, ... replaced the then Presiding Judge, the Honorable Gaudencio Cloribel, after the latter was suspended" (Record, p. 1)

[4] Supra, at page 7.

[5] Supra, at page 7.

[6] Supra, at page 6.

[7] Supra, at pages 7-8.

[8] Respondents' complaint below, Record, page 50.

[9] Petitioners' Supplemental Memorandum dated August 23, 1972, page 18.

[10] Record, p. 766 (Memorandum for Respondent Continental Bank).

- [11] Record, p. 43 (Deed of Absolute Sale with Assumption of Mortgage dated April 3, 1968).
- [12] Record, p. 766 (Memorandum for Respondent Continental Bank).
- [13] Record, p. 581 (Answer of Respondent Saint Rico Investment Corporation dated July 30, 1968).
- [14] Supra, at page 12.
- [15] Supra, at page 7.
- [16] Receiver's supplemental memorandum dated January 29, 1972.

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