

WONG AH KOW, PETITIONER, VS. INOVUS PHILIPPINES TECHNOLOGY INC., YONG CHONG CHEANG, YONG CHONG LIM, TEOH KHENG JIN, INOVUS TECHNOLOGY SDN., BHD., RESPONDENTS.

Ponente: YBAÑEZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/3be93103e48c/>**YBAÑEZ, J.:**

Before Us is a Petition for Review filed by petitioner Wong Ah Kow pursuant to Rule 43 of the Revised Rules of Court, seeking to set aside the Order of Branch 34 of the RTC of Calamba dated 29 April 2011 in SEC Case No. 87-2010-C declaring defendants Wong Ah Kow, Joy Cariño, Lisa Nofuente, Josephine Wong Chai Yein and Kua Eng San in default and thereafter submitting the case for decision; as well as the Decision promulgated on 13 October 2011 by the said court.

The Facts

On 24 November 2010, herein respondents Inovus Philippines Technology, Inc., Yong Chong Cheang, Yong Chong Lim, Teoh Kheng Jin, and Inovus Technology, Sdn. Bhd. filed a Complaint with Prayer for Damages and Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction[1] against herein petitioner Wong Ah Kow and other defendants Joy Cariño, Lisa Nofuente, Josephine Wong Chai Yein and Kua Eng San with the RTC of Calamba. Said case was docketed as SEC Case No. 87-2010-C and was raffled to Branch 34 of the said court.

In their complaint, respondents alleged that Inovus Philippines Technology, Inc. (“Inovus”) is a stock corporation engaged in providing goods and services related to design, fabrication and repair of printed circuit boards, contract manufacturing, servicing and refurbishing of equipment and parts. It has an authorized capital stock of ONE MILLION PESOS (P1,000,000.00), divided into 1,000,000 shares with a par value of P1.00 per share.[2] The amount of said capital stock which was actually subscribed is P250,000.00, distributed as follows:

NAME

No. of Shares/Stocks Subscribed

Amount

Inovus Technology Sdn. Bhd.-Malaysia

165,000.00

P165,000.00

Gloria I. Lacson

25,000.00

P 25,000.00

Rodolfo P. de Guzman

25,000.00

P 25,000.00

Rhoda M. Balilla

25,000.00

P 25,000.00

Wong Ah Kow

2,500.00

P 2,500.00

Teoh Keng Jin

2,500.00

P 2,500.00

Yong Chong Cheang

2,500.00

P 2,500.00

Yong Chong Lim

2,500.00

P 2,500.00

TOTAL

250,000.00

P250,000.00

The day-to-day affairs, the management and operation of Inovus' business, including the hiring of personnel and execution of contracts with other companies, are entrusted to the company's President. As President, petitioner Wong Ah Kow was, therefore, tasked to carry out his functions to protect and promote the best interests of the corporation.

However, despite this mandate and the trust and confidence given to him by the stockholders and board of directors of the company, respondents alleged that petitioner abused his authority and defrauded the corporation by entering into contracts that were prejudicial to respondent Inovus. According to respondents, petitioner entered into a contract with RD2 Consultancy & Engineering Services Sdn., Bhd. ("RD2"), a Malaysian corporation wherein the majority stockholder was his daughter, defendant Josephine Wong Chai Yein.[3]

Under the contract, RD2 acted as intermediary in the sale transaction between the corporation and its supplier.[4] Inovus resultantly lost or failed to earn the much needed profit for its business operations. According to respondents, the margin of profit that should have gone directly to Inovus went to the personal coffers of the

family of petitioner, who, in contravention with his fiduciary duty as President to protect the interest of Inovus, unfaithfully used his power and position for personal gain.

Respondents argued that petitioner did not disclose the said information, much less get the approval of the board of directors or the stockholders in transacting with RD2.

Despite repeated demands to explain the questionable transactions with RD2 and his actions to the Board, petitioner allegedly refused to meet with, and even hid from, the corporation's other directors.

Hence, compelled to protect the interest of the corporation and to prevent its defraudation in the hands of petitioner, whom they claimed acquired personal or pecuniary interest in conflict with his duty as director and President, the Board of Directors of Inovus called for the holding of a special meeting on 14 September 2010 with the following agenda:

- Call to Order
- Proof of Notice and Determination of Quorum
- Approval of the Minutes of Previous Meeting
- Election of New Corporate Secretary
- Discussion on the removal of the incumbent President and election of a new President.
- Election of management officers
- Designation of corporate counsel
- Designation of RCBC signatories
- Discussion of other business issues and concerns
- Adjournment

At the special meeting held on 14 September 2010[5], a quorum was present with the attendance of four (4) out of the five (5) directors of Inovus, to wit: 1) Yong Chong Lim; 2) Yong Chong Cheang; 3) Teoh Kheng Jin, and Rodolfo P. de Guzman. Defendant Nofuente, who then held the position Corporate Secretary, advised the Board that petitioner Wong electronically mailed a letter[6] stating his objections to the conduct of such Board meeting. In his letter, petitioner stated that the existing Board of the company was exercising rights only under the hold-over principle and has no power to remove him as President. The individual respondents, however, relied on the SEC Opinion dated 21 January 1986, which provides that, in the event that no new Board is elected and qualified after the original one-year term of the Board of Directors, the existing Board, under the hold-over principle, is still considered a legitimate Board with full authority to bind the corporation, provided that there is a quorum.

Hence, the 14 September 2010 meeting proceeded as scheduled and the Board removed defendant Wong as President and elected a new President in the person of plaintiff Yong Chong Lim. Also, Nofuente was replaced as Corporate Secretary by Atty. Jesus M. Manalastas.

Petitioner, however, refused to recognize the validity of the 14 September 2010 Special Board Meeting and continued to act as President of Inovus without authority from the Board of Directors or the stockholders.

On 29 September 2010, petitioner, in connivance with defendant Cariño, the Country Manager of Inovus, in open and willful defiance, and blatant disrespect against superiors, conducted a Special Stockholders' Meeting despite previous notice from the newly-elected Corporate Secretary, Atty. Manalastas, postponing the said meeting.[7]

To prevent the conduct of the Special Stockholders' Meeting on said date, respondent Teoh Keng Jin, one of the present directors of Inovus, and Atty. January C. Pizarro, attempted to attend the meeting, being the authorized

representatives of the members of the Board and newly-elected officers of Inovus. Instead of recognizing their presence, petitioner and his co-defendants barred them from attending the said meeting and instead proceeded with the said meeting without the participation of herein respondents or their authorized representatives.

After the 29 September 2010 meeting, petitioner continued to act as President of Inovus. He exercised control over the Interstar Security Agency that the corporation previously engaged to man the premises. Worse, upon instructions of petitioner, defendant Cariño instructed the Interstar security guards who were detailed at the corporation's premises to bar the entry into the corporation's premises of Yong Chong Yew, the newly-elected Vice President, and the other newly-appointed officers of the corporation.

Respondents also later learned that defendant Nofuente, purportedly acting as Corporate Secretary, issued board resolutions and secretary's certificates pertaining to the control and management of the corporation's business operations, including the control of Inovus' deposit accounts maintained with the Rizal Commercial Banking Corporation-Laguna Technopark Branch and other banks.

On 04 October 2010, Nofuente, without authority from the newly-elected Board of Directors and without the knowledge of the current President, respondent Yong Chong Lim, and the stockholders of Inovus, sent out a notice to Inovus' stockholders advising them of the supposed Annual Stockholders' Meeting to be held on 18 October 2010. Nofuente again represented herself in said notice as the Corporate Secretary of Inovus.

To protect the rights of respondent Yong Chong Lim as a stockholder of Inovus, he issued a proxy letter appointing Atty. Ho Wee Kong and/or Atty. Salve Regina Venturanza-Cortez and/or Atty. Pizarro, to be his true and lawful attorneys-in-fact to attend and represent him in said meeting solely for the purpose of reminding petitioner and his co-defendants of their lack of authority to call and hold a meeting as purported Directors of Inovus.

Thereafter, petitioner, acting through Cariño, instructed the Interstar Security Agency and Sigasig Security Agency to bar the physical entry, as well as to course all communications from stockholders Yong Chong Lim, Yong Chong Cheang, Teoh Kheng Jin, and other newly-elected officers of Inovus, through Nofuente.

Respondents further alleged that, Nofuente, in connivance with petitioner, Cariño, Josephine Wong Chai Yein, and Kua Eng San, signed and filed under oath the General Information Sheet[8] dated 30 September 2010 reflecting change of ownership of shares in Inovus, thereby unilaterally canceling the shares in the names of stockholders Gloria I. Lacson, Rodolfo P. De Guzman, Rhoda M. Balilla, Teoh Keng Jin, Yong Chong Cheang, and Yong Chong Lim, without authority and without observing the requirements of due process, and named the Wong Group, including Nofuente, as individual stockholders of Inovus. Petitioner and his group likewise caused the amendment of the Articles of Incorporation[9] increasing the capital stock of Inovus. The Securities and Exchange Commission (SEC), relying on the false representation of respondents, issued a Certificate of Approval of Increase of Capital Stock, Certificate of Amended Articles of Incorporation, and Certificate of Authority to Increase Percentage of Foreign Equity under the Foreign Investments Act of 1991, all dated 18 November 2010.

To protect Inovus and its stockholders from further damage and prejudice caused by petitioner and his group, respondent Inovus and the other directors of the corporation filed the instant complaint.

Pursuant to Section 6, Rule 2 of the Interim Rules of Procedure for Intra-Corporate Controversies (A.M. No. 01-2-04-SC), the defendants had fifteen (15) days from service of summons within which to file their Answer or any responsive pleading, or until 24 December 2011.

Instead of filing an Answer, petitioner and the other defendants filed with the RTC a Motion for Extension of Time with Entry of Appearance dated 23 December 2010, praying for an additional fifteen (15) days from 24

December 2010, or until 08 January 2011, within which to file a responsive pleading to the Complaint, which the court a quo granted in its Order dated 14 January 2011.

However, until March 2011, or a period of more than two (2) months from 08 January 2011, defendants have not filed their Answer. This prompted respondents to file a Motion to Declare Defendants in Default and To Render Judgment Based on the Complaint[10] on 10 March 2011.

On 25 March 2011, defendants filed their Motion to Admit Answer[11] together with the attached Answer[12], both dated 23 March 2011.

In its Order dated 29 April 2011, the court a quo denied defendants' Motion to Admit Answer citing that defendants were given a non-extendible period of fifteen (15) days, or until 08 January 2011, within which to file their Answer. The court noted that defendants did not file their Answer within the extended period and, as such, they were considered in default pursuant to Section 7, Rule 2 of the Interim Rules. In the same Order, the court granted respondents' Motion to Declare Defendants in Default and the case was submitted for decision.

On 27 May 2011, defendants filed a Motion to Set Aside Order of Default, which was denied by the trial court in its Order[13] dated 08 July 2011.

During the 22 July 2011 hearing for the supposed presentation of respondents' evidence for the issuance of preliminary injunction, respondents withdrew their prayer for preliminary injunction in view of the denial of defendants' Motion to Set Aside Order of Default. As such, the main case was submitted for decision.

On 13 October 2011, the trial court rendered the assailed Decision[14] in favor of respondents, the dispositive portion of which reads as follows, viz:

“WHEREFORE, judgment is rendered in favor of plaintiffs as follows:

1. The distribution of shares in plaintiff Inovus Philippines Technology, Inc. shall remain as follows:

Stockholder

Subscribed Share

Inovus technology Sdn. Bhd.

165,000

Gloria I. Lacson

25,000

Rodolfo P. de Guzman

25,000

Rhoda M. Balilla

25,000

Wong Ah Kow

2,500

Teoh Keng Jin

2,500

Yong Chong Cheang

2,500

Yong Chong Lim

2,500

TOTAL

250,000

2. Plaintiffs Yong Chong Cheang, Yong Chong Lim and Teoh Kheng Jin shall remain as duly elected directors of plaintiff Inovus Philippines technology, Inc. as of the filing of the Articles of Incorporation, and plaintiff Yong Chong Lim is declared as the newly elected President of the Corporation.

3. All acts of defendants, as purported officers of the Corporation, on and after the Special Board Meeting on 14 September 2010 are hereby declared null and void;

4. The Special Stockholders' Meeting conducted on 29 September 2010, including all resolutions adopted therein and/or subsequent thereto, is declared null and void.

5. Defendants are ordered to:

5. 1. vacate the principal office of Inovus Philippines Technology, Inc. and other corporate properties;

5.2. turn over to plaintiff Yong Chong Lim all records and documents of the Corporation as well as all original titles of properties registered in the Corporation's name;

5.3. submit an accounting of all income received and all funds disbursed by them after the Special Board Meeting on 14 September 2010; and

5.4. pay the cost of suit.

SO ORDERED.”[15]

Aggrieved, only petitioner filed the instant petition[16], which was amended on 08 January 2012 by virtue of this Court's Resolution[17] dated 20 December 2011 directing petitioner to rectify the defects stated therein.

Thus, in his Amended Petition[18], petitioner raised the following errors[19] purportedly committed by the trial court, viz:

I.

[THE RTC] COMMITTED ERRORS IN DECLARING THE DEFENDANTS IN DEFAULT DUE TO INEXCUSABLE NEGLIGENCE OF HIS PREVIOUS COUNSEL;

II.

[THE RTC] ACTED IN EXCESS OF JURISDICTION IN GRANTING THE PRAYERS SET FORTH IN THE COMPLAINT BEYOND THAT PROVED BY EVIDENCE

In support of these assigned errors, petitioner contends that the negligence of his counsel in failing to file an Answer within the 15-day reglementary period constitutes gross and inexcusable negligence which deprived him of his livelihood and right to due process. Moreover, petitioner insists that his removal as President of Inovus was without cause and, hence, illegal.

The Issues

The core issues presented for Our resolution are (1) whether or not the failure of petitioner's former counsel to file an Answer within the reglementary period constitutes gross and inexcusable negligence which deprived petitioner of due process of law; and (2) whether or not petitioner's removal as officer of the corporation is valid.

Our Ruling

We find the petition devoid of merit.

Negligence of counsel binds his client.

It is an oft-repeated ruling that the negligence and mistakes of counsel bind the client. A departure from this rule would bring about never-ending suits, so long as lawyers could allege their own fault or negligence to support the client's case and obtain remedies and reliefs already lost by the operation of law. The only exception would be, where the lawyer's gross negligence would result in the grave injustice of depriving his client of due process of law.[20] Thus, where "a party was given the opportunity to defend his interests in due course, he cannot be said to have been denied due process of law, for this opportunity to be heard is the very essence of due process." [21]

In this case, there was no such deprivation of due process. After a complaint was filed by respondents and received by petitioner and his co-defendants, the latter had until 24 December 2010 within which to file an Answer. Instead of filing an Answer or any responsive pleading, defendants' former counsel, Atty. Romero, filed a Motion for Extension of Time with Entry of Appearance dated 23 December 2010 asking for an extension of time to file Answer, which was granted by the RTC in its Order dated 14 January 2011. Hence, defendants were

given a non-extendible period until 08 January 2011 to file their Answer. However, said date lapsed without defendants filing the same. After two months from 08 January 2011, or on 10 March 2011, respondents filed a Motion to Declare Defendants in Default and to Render Judgment Based on the Complaint. Consequently, it was only after respondents filed the said motion that petitioner and his co-defendants filed a Motion to Admit Attached Answer on 24 March 2011. In its Order dated 29 April 2011, the RTC declared the defendants, including herein petitioner, in default and denied their Motion to Admit Attached Answer. Subsequently, defendants filed a Motion to Set Aside Order of Default (Motion to Set Aside) on 27 May 2011, which was likewise denied by the RTC in its Order dated 08 July 2011. No appeal had been taken therefrom by defendants.

Indeed, records show that petitioner had been given ample opportunity to be heard by the RTC, as shown by the trial court's leniency in granting his Motion for Extension of Time to File Answer. Petitioner, however, squandered this opportunity when he failed to file an Answer within the extended period provided by the trial court. Thereafter, petitioner's former counsel was able to take the appropriate actions to protect the interests of the petitioner in subsequent proceedings by filing a Motion to Set Aside Order of Default with Motion to Admit Herein Attached Answer. Hence, it cannot be said that petitioner was deprived of his chance to present his side and to flesh out his arguments.

Moreover, since the complaint is governed by the Interim Rules of Procedure for Intra-Corporate Controversies (A.M. No. 01-2-04-SC), no motion for extension can be filed except for clearly compelling reasons. In this case, petitioner did not give any explanation or compelling reason for his lawyer's failure to abide by the rules for filing an Answer. He merely insisted that he had not been remiss in following up his case with said lawyer. Indeed, mere allegations on the supposed negligence of Atty. Romero, without any explanation or reason, do not carry any weight to warrant the reversal of the questioned Order and Decision.

Removal of petitioner as President of Inovus is valid.

A corporation exercises its powers through its board of directors and/or its duly authorized officers and agents, except in instances where the Corporation Code requires stockholders' approval for certain specific acts.[22]

A corporation's board of directors is understood to be that body which (1) exercises all powers provided for under the Corporation Code; (2) conducts all business of the corporation; and (3) controls and holds all property of the corporation. Its members have been characterized as trustees or directors clothed with a fiduciary character. Moreover, the directors may appoint officers and agents and as incident to this power of appointment, they may discharge those appointed.[23]

In this case, petitioner was removed as a corporate officer through the resolution of Inovus' Board of Directors adopted in a special board meeting on 14 September 2010.

We agree with the trial court when it ruled that respondents had sufficient ground to remove petitioner as President of Inovus. Records show that petitioner entered into a purchase contract with RD2, a company owned and controlled by his daughter Josephine Wong Chai Yein. Said transaction was never refuted by petitioner. This transaction, coupled with petitioner's failure and refusal, despite repeated demands, to justify or explain his actions to respondents who are also directors of Inovus, are violations of the fiduciary responsibility of a director and considered as sufficient cause for the removal of petitioner as President of the corporation.

The ruling of the Supreme Court in the case of Prime White Cement Corporation vs. Honorable Intermediate Appellate Court[24] regarding the fiduciary duty of a director is instructive, to wit:

“A director of a corporation holds a position of trust and as such, he owes a duty of loyalty to his corporation.

In case his interests conflict with those of the corporation, he cannot sacrifice the latter to his own advantage and benefit. As corporate managers, directors are committed to seek the maximum amount of profits for the corporation. This trust relationship 'is not a matter of statutory or technical law. It springs from the fact that directors have the control and guidance of corporate affairs of property and hence of the interests of the stockholders. In the case of *Gokongwei vs. Securities and Exchange Commission*, this court quoted with favor from *Pepper vs. Litton*, thus:

'... He cannot by the intervention of a corporate entity violate the ancient precept against serving two masters... He cannot utilize his inside information and his strategic position for his own preferment. He cannot violate rules of fair play by doing indirectly through the corporation what he could not do directly. He cannot use his power for his personal advantage and to the detriment of the stockholders and creditors no matter how absolute in terms that power may be and no matter how meticulous he is to satisfy technical requirements. For that power is at all times subject to the equitable limitation that it may not be exercised for the aggrandizement, preference, or advantage of the fiduciary to the exclusion or detriment of the cestuis..”

Indeed, by entering into a transaction for profit without the authorization from the Board of Directors, petitioner violated his fiduciary duty as a director and hence, respondents, being majority members of the board, have the right and duty to protect Inovus from petitioner who abused his position by advancing his own interest and enriching himself and his family to the detriment of the corporation.

Petitioner, however, insists that he did not violate his fiduciary duty, as shown by an increase in Inovus' profit in the year 2010.

We find said argument deserving of scant consideration, as the same was never raised before the proceedings in the RTC. More importantly, said allegation is immaterial and irrelevant in resolving the issue of whether or not petitioner violated his fiduciary duty to the corporation. Assuming that the figures reflected in the financial statements of 2010 are true and correct, the performance of Inovus in the said year bears little or no significance to the validity of petitioner's removal as President, as the alleged increase in the profits of Inovus by the year 2010 does not give petitioner a license to violate his fiduciary responsibility as a director of Inovus.

The RTC also correctly concluded that petitioner was removed as an officer of Inovus in compliance with established procedure.

Only stockholders or members have the power to remove the directors or trustees elected by them, as laid down in Section 28 of the Corporation Code, which provides in part:

“SEC. 28. Removal of directors or trustees. -- Any director or trustee of a corporation may be removed from office by a vote of the stockholders holding or representing at least two-thirds (2/3) of the outstanding capital stock, or if the corporation be a non-stock corporation, by a vote of at least two-thirds (2/3) of the members entitled to vote: Provided, that such removal shall take place either at a regular meeting of the corporation or at a special meeting called for the purpose, and in either case, after previous notice to stockholders or members of the corporation of the intention to propose such removal at the meeting. A special meeting of the stockholders or members of a corporation for the purpose of removal of directors or trustees or any of them, must be called by the secretary on order of the president or on the written demand of the stockholders representing or holding at least a majority of the outstanding capital stock, or if it be a non-stock corporation, on the written demand of a majority of the members entitled to vote. x x x Notice of the time and place of such meeting, as well as of the intention to propose such removal, must be given by publication or by written notice as prescribed in this

Code. x x x Removal may be with or without cause: Provided, That removal without cause may not be used to deprive minority stockholders or members of the right of representation to which they may be entitled under Section 24 of this Code.” (Emphasis supplied)

Moreover, Article II of the By-Laws of Inovus provides that:

“Section 6. Quorum – A majority of the number of directors shall constitute a quorum for the transaction of corporate business, and in every decision at least two thirds of all the members of the Board shall be valid as a corporate act.”

As regards the removal of officers, Article IV of the By-Laws of the corporation provides as follows:

“Section 7. Term of Office – The term of office of all officers shall be for a period of one (1) year and until their successors are duly elected and qualified. Such officers may, however, be sooner removed for cause.

Section 8. Vacancies – If any position of the officers becomes vacant by reason of death, resignation, disqualification or for any cause, the Board of Directors, by vote of at least two-thirds (2/3) of all the members of the Board, may elect a successor who shall hold office for the unexpired term.”

In the case at bench, the special board meeting held on 14 September 2010, where petitioner was removed as President of Inovus, was attended and approved by four (4) of its five (5) directors, who represent a total of 172,500 shares, or 69% of the outstanding capital stock of the corporation. Hence, the two-thirds (2/3) vote requirement needed to oust any officer of the company was faithfully complied with by respondents in the Special Board Meeting held on 14 September 2010 for the removal of petitioner as President of the corporation.

Contrary to the allegations of petitioner, the former member of the Board, Mr. Rodolfo de Guzman, was present and participated during the said 14 September 2010 special board meeting where petitioner was removed as officer, as evidenced by the minutes[25] and attendance sheet[26] taken during the said meeting.

Based on the foregoing, there is no cogent reason to reverse the findings of the trial court and to grant the present petition.

WHEREFORE, premises considered, the instant petition is hereby DISMISSED for lack of merit, and the assailed Order dated 29 April 2011 and Decision rendered on 13 October 2011 by Branch 34 of the RTC of Calamba in SEC Case No. 87-2010-C are AFFIRMED.

SO ORDERED.

Dimaampao, (Chairperson), and Sadang, JJ., concur.

[1] Rollo, pp. 51-81.

[2] Ibid., pp. 84-89.

[3] Ibid., pp. 66-67.

[4] Ibid., pp. 70-81.

- [5] Ibid., pp. 124-131.
- [6] Ibid., p. 123.
- [7] Ibid., p. 133.
- [8] Ibid., pp. 142-147.
- [9] Ibid., p. 150.
- [10] Ibid., pp. 169-173.
- [11] Ibid., pp. 186-188.
- [12] Ibid., pp. 174-185.
- [13] Ibid., pp. 255-256.
- [14] Ibid., pp. 32-47.
- [15] Ibid., pp. 46-47.
- [16] Ibid., pp. 13-29.
- [17] Ibid., p. 269.
- [18] Ibid., pp. 273-299.
- [19] Ibid., pp. 283-284.
- [20] Building Care Corporation vs. Macaraeg, G.R. No. 198357, December 10, 2012, 687 SCRA 643.
- [21] Torres vs. China Banking Corporation, G.R. No. 165408, January 15, 2010, 610 SCRA 134.
- [22] Raniel and Pag-Ong vs. Jochico et al., G.R. No. 153413, March 2, 2007, 517 SCRA 221.
- [23] Ibid.
- [24] G.R. No. L-68555, March 19, 1993, 220 SCRA 103, 220 SCRA 103.
- [25] Rollo, pp. 124-131.
- [26] Ibid., p. 122.

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