

FINANCING CORPORATION OF THE PHILIPPINES AND J. AMADO ARANETA, PETITIONERS, VS. HON. JOSE TEODORO, JUDGE OF THE COURT OF FIRST INSTANCE OF NEGROS OCCIDENTAL, BRANCH II, AND ENCA...

G.R. No. L-4900. August 31, 1953

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

In civil case No. 1294 of the Court of First Instance of Negros Occidental, Asuncion Lopez Vda. de Lizares, Encarnacion Lizares Vda. de Panlilio and Efigenia Vda. de Paredes, in their own behalf and in behalf of the other minority stockholders of the Financing Corporation of the Philippines, filed a complaint against the said corporation and J. Amado Araneta, its president and general manager, claiming among other things alleged cross mismanagement and fraudulent conduct of the corporate affairs of the defendant corporation by J. Amado Araneta, and asking that the corporation be dissolved; that J. Amado Araneta be declared personally accountable for the amounts of the unauthorized and fraudulent disbursements and disposition of assets made by him, and that he be required to account for said assets, and that pending trial and disposition of the case on its merits a receiver be appointed to take possession of the books, records and assets of the defendant corporation preparatory to its dissolution and liquidation and distribution of the assets. Over the strong objection of the defendants, the trial court presided by respondent Judge Jose Teodoro, granted the petition for the appointment of a receiver and designated Mr. Alfredo Yulo as such receiver with a bond of P50,000. Failing to secure a reconsideration of the order appointing a receiver, the defendants in said case, Financing Corporation of the Philippines and J. Amado Araneta, as petitioners, have filed the present petition for certiorari with preliminary injunction, a majority of the court granted the same upon the filing of a bond by the petitioners in the sum of P50,000.

The main contention of the petitioners in opposing the appointment of a receiver in this case is that said appointment is merely an auxiliary remedy; that the principal remedy sought by the respondents in the action in Negros Occidental was the dissolution of the Financing Corporation of the Philippines; that according to the law a suit for the dissolution of a corporation can be brought and maintained only by the State through its legal counsel, and that respondents, much less the minority stockholders of said corporation, have no right or personality to maintain the action for dissolution, and that inasmuch as said action cannot be maintained legally by the respondents, then the auxiliary remedy for the appointment of a receiver has no basis.

True it is that the general rule is that the minority stockholders of a corporation cannot sue and demand its dissolution. However, there are cases that hold that even minority stockholders may ask for dissolution, this, under the theory that such minority members, if unable to obtain redress and protection of their rights within the corporation, must not and should not be left without redress and remedy. This was what probably prompted this Court to state in the case of *Hall, et al. vs. Judge Piccio*,[*] G.R. No. L-2598 (47 Off. Gaz. No. 12 Supp., p. 200) that even the existence of a *de jure* corporation may be terminated in a private suit for its dissolution by the stockholders without the intervention of the State. It was therein further held that although there might be some

room for argument on the right of minority stockholders to ask for dissolution,—that question does not affect the court's jurisdiction over the case, and that the remedy by the party dissatisfied was to appeal from the decision of the trial court. We repeat that although as a rule, minority stockholders of a corporation may not ask for its dissolution in a private suit, and that such action should be brought by the Government through its legal officer in a quo warranto case, at their instance and request, there might be exceptional cases wherein the intervention of the State, for one reason or another, cannot be obtained, as when the State is not interested because the complaint is strictly a matter between the stockholders and does not involve, in the opinion of the legal officer of the Government, any of the acts or omissions warranting quo warranto proceedings, in which minority stockholders are entitled to have such dissolution. When such action or private suit is brought by them, the trial court has jurisdiction and may or may not grant the prayer, depending upon the facts and circumstances attending it. The trial court's decision is of course subject to review by the appellate tribunal. Having such jurisdiction, the appointment of a receiver pendente lite is left to the sound discretion of the trial court. As was said in the case of *Angeles vs. Santos* (64 Phil., 697), the action having been properly brought and the trial court having entertained the same, it was within the power of said court upon proper showing to appoint a receiver pendente lite for the corporation; that although the appointment of a receiver upon application of the minority stockholders is a power to be exercised with great caution, nevertheless, it should be exercised when necessary in order not to entirely ignore and disregard the rights of said minority stockholders, especially when said minority stockholders are unable to obtain redress and protection of their rights within the corporation itself.

In that civil case No. 1924 of the Negros Occidental court, allegations of mismanagement and misconduct by its President and Manager were made, specially in connection with the petition for the appointment of a receiver. In order to have an idea of the seriousness of said allegations, we reproduce a pertinent portion of the order of respondent Judge Teodoro dated June 23, 1951, subject of these certiorari proceedings:

"Considering plaintiff's complaint and verified motion for appointment of a receiver together, as they have been treated jointly in the opposition of the defendants, the grounds of the prayer for receivership may be briefly stated to be: (1) imminent danger of insolvency; (2) fraud and mismanagement, such as, particularly, (a) wrongful and unauthorized diversion from corporate purposes and use for personal benefit of defendant Araneta, for the benefit of corporations under his control and of which he is majority stockholder and/or for the benefit of his relatives, personal friends and the political organization to which he is affiliated of approximately over one and a half million pesos of the funds of the defendant corporation in the form of uncollected allowances and loans, either without or with uncollected interest, and either unsecured or insufficiently secured, and sometimes with a securities appearing in favor of defendant Araneta as if the funds advanced or loaned were his own; (b) unauthorized and profitless pledging of securities owned by defendant corporation to secure obligations amounting to P588,645.34 of another corporation controlled by defendant Araneta; (c) unauthorized and profitless using of the name of the defendant corporation in the shipping of sugar belonging to other corporations controlled by defendant Araneta to the benefit of said corporations in the amount of at least P104,343.36; (d) refusal by defendant Araneta to endorse to the defendant corporation shares of stock and other securities belonging to it but which are still in his name; (e) negligent failure to endorse other shares of stock belonging to defendant corporation but still in the names of the respective vendors; and (f) illegal and unauthorized transfer and deposit in the United States of America of 6,426,281 shares of the Atok-Big Wedge Mining Company; (3) violations of the corporation law and the by-laws of the corporation such as (a) refusal to allow minority stockholders to examine the books and records of corporation; (b) failure to call and hold stockholders' and directors' meetings; (c) virtual disregard and ignoring of the board of directors by defendant Araneta who has been and is conducting the affairs of the corporation under his absolute control and for his personal benefit and for the benefit of the corporations controlled by him, to the prejudice and in disregard of the rights of the plaintiffs and other minority stockholders; and (d) irregularity in the keeping and (e) errors and omissions in the books and failure of the same to reflect the real and actual transactions of the defendant corporation; (4) failure to achieve the fundamental purpose of the corporation; (5) if administration, possession

and control of the affairs, books, etc. of defendant corporation are left in the hands of defendant Araneta and the present assets of the corporation are in danger of being further dissipated, wasted or lost and of becoming ultimately unavailable for distribution among its stockholders; and (6) the best means to protect and preserve the assets of defendant corporation is the appointment of a receiver."

In conclusion, we hold that the trial court through respondent Judge Teodoro had jurisdiction and properly entertained the original case; that he also had jurisdiction to appoint a receiver pendente lite, and considering the allegations made in connection with the petition for the appointment of a receiver, he neither exceeded his jurisdiction nor abused his discretion in appointing a receiver. The petition for certiorari is hereby denied, with costs. The writ of preliminary injunction heretofore issued is hereby ordered dissolved.

Paras, C.J., Pablo, Bengzon, Padilla, Tuason, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

[*] 86 Phil., 603.

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