

**UBS MARKETING CORPORATION AND JOHNNY K.H. UY,
PETITIONERS, VS. THE HONORABLE SPECIAL THIRD DIVISION OF
THE COURT OF APPEALS, BAN HUA U. FLORES, BAN HA U. CHUA,
AND ROLANDO M. KI...**

G.R. No. 130328. May 31, 2000

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This petition for review on certiorari seeks to reverse the decision of the Court of Appeals (CA), dated 21 August 1997, in CA-G.R. SP No. 41198. In the assailed decision, the CA reversed and set aside the order of the Securities and Exchange Commission (SEC) en banc, dated 21 December 1995, and resolution, dated 24 June 1996, ordering Ban Hua Uy-Flores et al. (respondents) to render a full accounting of all the assets, properties and receivables of Soon Kee Commercial, Inc. and UBS Marketing Corporation.

The factual background of this case, as established by this Court in its earlier decision[1] involving the same parties, is as follows:

Petitioner Johnny K.H. Uy and private respondents Ban Hua Uy-Flores and Ban Ha Uy-Chua are brother and sisters. They belong to the Uy family of Bacolod City which owns several corporations, including UBS Marketing Corporation and the Soon Kee Commercial, Inc. All the three (3) above-named individuals, including other members of the Uy family, were interlocking stockholders and officers of the two (2) aforementioned corporations. Thus, private respondents Ban Hua Uy-Flores and Ban Ha Uy-Chua were the managing directors of the said corporations and were in custody of the corporate accounting and tax records as well as the funds of UBS Marketing Corporation and Soon Kee Commercial, Inc. Private respondent Roland King is the accountant of the said corporations and other allied Uy family enterprises.

Due to serious disagreements and conflicts, the members of the Uy family, through several conciliation meetings held before their selected Board of Mediators, agreed to divide the family business so that the UBS Marketing Corporation would go to petitioner Johnny K.H. Uy while the Soon Kee Commercial, Inc. would go to the rest of the Uy family, including herein private respondents Ban Hua Uy-Flores and Ban Ha Uy-Chua.

Accordingly, on 5 June 1987, several deeds of assignment were executed by the parties wherein all the stockholdings of petitioner Johnny K.H. Uy and his wife, Magdalena Uy in Soon Kee Commercial, Inc. were assigned either to private respondents Ban Hua Uy-Flores, Ban Ha Uy-Chua or other members of the Uy family while all the stockholdings of private respondent Ban Hua Uy-Flores and Ban Ha Uy-Chua in UBS Marketing Corporation were assigned to petitioner Johnny K.H. Uy or the latter's wife. On 1 July 1987 the parties formalized this division of the family business as well as the other terms of the settlement.

On 6 April 1988, petitioners Johnny K.H. Uy and UBS Marketing Corporation filed with the Securities and Exchange Commission a complaint (petition) against the private respondents Ban Hua Uy-Flores, Ban Ha Uy-Chua, Roland King and Soon Kee Commercial, Inc. for the recovery of UBS Marketing Corporation's corporate books, books of account, and the accounting and turn over of the funds and properties belonging to

UBS Marketing Corporation, docketed therein as SEC Case No. 033 28.[2]

As likewise established by this Court, the petition in SEC Case No. 3328 (petition a quo) alleged that before the segregation of the family business, respondents Ban Hua Uy-Flores and Ban Ha Uy-Chua, aside from being stockholders and directors, were also officers of the UBS Marketing Corporation, who had custody, control and supervision of its records, property and funds; that respondent Roland King was the accountant of all the business concerns of the Uy family including UBS Marketing Corporation; that after the segregation, petitioner demanded for the turn over of the records of the UBS Marketing Corporation but which respondents refused without just cause; and that they held on and refused to account for funds and property, a portion of which should go to or benefit petitioners, in accordance with their settlement agreement made before the Board of Mediators.[3]

Instead of filing an answer, respondents filed a motion to dismiss the complaint on the ground that the SEC had no jurisdiction over their person and over the nature of the action because there was no intra-corporate relationship between the parties to the suit. On 30 May 1998, the SEC Hearing Officer Josefina Pasay-Paz issued an order denying respondents' motion to dismiss. On appeal, the CA reversed and set aside the order of the SEC hearing officer ruling that the SEC had no jurisdiction over the controversy in SEC Case No. 3328.

This Court, upon petition for review filed by the SEC and petitioners, declared that the controversy subject of SEC Case No. 3328 is an intra-corporate controversy which falls within the original and exclusive jurisdiction of the SEC under Section 5(b) of PD No. 902-A, as amended.[4]

When the above decision of this Court became final and executory, petitioners filed with the SEC hearing officer a motion for ex-parte reception of evidence. Said motion was granted and petitioners presented testimonial and documentary evidence to support their claims. On 3 May 1995, SEC Hearing Officer Enrique L. Flores, Jr. rendered a judgment by default, the dispositive portion of which reads:

WHEREFORE, considering the foregoing, judgment[,] is hereby rendered as follows:

1. Commanding the respondents to produce and immediately turn over to petitioners the Books of Account of Soon Kee Commercial, Inc. and UBS Marketing Corporation from 1981 to 1987;
2. Commanding the respondents to immediately render a full and complete accounting of all the assets, properties and moneys and the receivables for both Soon Kee (from 1981-1991) and UBS (from 1981 to 1987) respectively;
3. Commanding the respondents to pay the petitioners ten percent (10%) of the entire actual income (from 1988 to 1993) of Soon Kee Commercial, Inc., in the amount of P13 Million as damages;
4. To grant and pay petitioners the amount of P48 Million equivalent to 31.183 percent of the actual income from (1981-1987).
5. Cancelling and annulling the Transfer Certificate of Titles in the name of Soon Kee Commercial, Inc. if any, the Certificate of Titles in the name of SK Realty, Inc. if any, and the Certificate of Titles in the name of New Challenge Resources, Inc. if still there is, and all the properties formerly belonging to and in the name of UBS; presently totalling (8) lots TCT No. T-141057, TCT No. T-141058, TCT No. T-141059, TCT No. T-141060, TCT No. T-141061, TCT No. T-141062, TCT No. T-141063, TCT No. T-141064 and reverting them back to UBS Marketing Corporation.
6. Ordering the respondents to return and/or execute the Deed of Conveyance of all the properties in the name of Soon Kee Commercial, Inc., SK Realty Inc., New Challenge Resources, Inc. which was previously in the name of UBS in favor of the latter/Johnny KH Uy.
7. Ordering the respondents to pay the separation pay of Johnny KH Uy plus interest amounting to

P946,455.31.

8. Ordering the respondents to return/pay the petitioners contingency fund representing 31.183 % of P3M plus interest in the amount of P1,957,280.86.

9. Ordering the respondents to turn over to the petitioners the Nissan or Isuzu Truck in good condition or the value thereof in the amount of P500,000.00.

10. Ordering respondent Ban Hua Flores to return to petitioner Johnny KH Uy the Hongkong property in Northpoint Metropole Flat 1121 previously owned by Johnny KH Uy.

11. Ordering respondents to pay P600,000.00 as attorney's fees.

12. Making the Writ of Preliminary Mandatory Injunction permanent.

SO ORDERED.[5]

Respondents appealed to the SEC en banc which set aside the decision of the SEC hearing officer save for paragraph number 2 of the dispositive portion thereof. In effect, the SEC en banc directed respondents to render a full and complete accounting of all the assets, properties and receivables of Soon Kee Commercial, Inc. and UBS Marketing Corporation.[6] Respondents moved for partial reconsideration of the aforesaid order but it was denied by the SEC en banc in its resolution of 24 June 1996.[7]

The CA, on appeal by respondents, reversed and set aside the order of the SEC en banc. The dispositive portion of the assailed CA decision reads:

WHEREFORE, premises considered, the SEC En Banc's order of December 21, 1995 is REVERSED AND SET ASIDE insofar as it affirmed paragraph 2 of the dispositive portion of the decision of the Hearing Officer, dated May 3, 1995, ordering and commanding petitioners to render a full and complete accounting of all the assets, properties and moneys and the receivables for both Soon Kee (from 1981-1991) and UBS (from 1981 to 1987). The decision, dated May 3, 1995 of the Hearing Officer and the resolution, dated June 24, 1996 of the SEC En Banc are REVERSED AND SET ASIDE in their entirety. There is no pronouncement as to costs.

SO ORDERED.[8]

Petitioners now come to this Court alleging that the CA committed reversible errors, to wit:

1. When it gave due course to the petition without the required Affidavit of Material [d]ates attached to the petition;
2. When it sustained private respondents' repetitious claim that the acts complained of in the petition are in the nature of an action for specific performance which must be filed with the Regional Trial Court;
3. When it applied Section 6, Rule 43 of the 1997 Rules on Civil Procedure;
4. When it reversed the decision of the SEC En Banc requiring the parties to render a full and complete accounting.[9]

Preliminarily, the procedural issues raised by petitioner, i.e., paragraph numbers 1 and 3 of the assignment of errors, are without merit. There is no showing that petitioners seasonably raised before the CA the matter of respondents' failure to state the verified material dates in their petition. It is thus too late in the day for petitioners to raise the same at this time. Moreover, contrary to petitioners' allegation, respondents correctly did not implead the SEC in their petition for review before the CA. Section 6 of Administrative Circular No. 1-95 (Revised Circular 1-91), the rule then governing respondents' petition for review, expressly provided that the lower court or agency which rendered the appealed judgment or order shall not be impleaded either as petitioner or

respondent.[10]

This Court, however, finds merit in the other assignment of errors raised by petitioners, i.e., paragraph numbers 3 and 4. In granting respondents' petition for review, the CA basically ruled that the SEC en banc erred when it ordered respondents "to render a full and complete accounting of all the assets, properties and receivables of Soon Kee Commercial, Inc. and UBS Marketing Corporation" because this was not prayed for in the petition filed by petitioners with the SEC hearing officer. The CA apparently applied Section 5, Rule 18 of the old Rules of Court stating:

Section 5. - Extent of relief to be awarded. - A judgment entered against a party in default shall not exceed the amount or be different in kind from that prayed for.[11]

The CA likewise held that requiring respondents to render a full and complete accounting of the finances of the aforementioned business enterprises was a matter relating to "specific performance" or enforcement of a contract, a subject matter beyond the SEC's jurisdiction.

It must be noted that the Revised Rules of Procedure in the SEC, as amended, has no provision similar to Section 5, Rule 18 of the old Rules of Court. It appears that the CA applied said provision in a suppletory manner. The pertinent provision on default in the SEC rules on procedure reads:

Section 6. Default - If the respondent fails to answer within the time fixed by these Rules, the Hearing Officer, motu proprio or upon motion of the petitioner or complainant with proof of such failure, shall declare the respondent in default and forthwith receive evidence ex parte and render judgment granting such relief as the petition or complaint and the facts proven may warrant. This provision applies where no answer is made to a permissive counterclaim, cross-claim, or third-party complaint within the period provided in this Rule.

No service of pleadings other than substantially amended or supplemental pleadings and final orders or judgments shall be necessary on a party in default unless he files a motion to set aside the order of default, in which event he shall be entitled to notice of all further proceedings regardless of whether the order of default is set aside or not.[12]

Thus, applying the above provision, the SEC en banc clearly committed no reversible error in granting the relief which was warranted by the petition a quo and the facts proven albeit said relief was not expressly prayed for. Even if the Rules of Court were to be applied in this case, still it cannot be said that the relief granted by the SEC en banc was "different in kind from that prayed for" by the petitioners. Rather, said relief was plainly warranted by the allegations contained in the petition a quo as well as by the facts as found by both the SEC hearing officer and the SEC en banc.

Among others, the petition a quo alleged that:

1. Respondents Ban Hua U. Flores and Ban Ha U. Chua "took charge of all accounting and handling of funds of said UBS Marketing Corporation;"[13]
2. Said respondents "took charge of all the accounting and collections of all accounts receivables of the Uy Family Corporations and both said Respondents controlled the funds of all the Uy Family Corporations;"[14]
3. Respondent Roland M. King had been the accountant of the UBS Marketing Corporation and Soon Kee Commercial, Inc. and as such, "he was in-charge of all the accounting and bookkeeping work" thereof;[15]
4. Respondents misappropriated for their personal benefit and gain the contingency fund set aside for the payment of the obligations incurred by the UBS Marketing Corporation and Soon Kee Commercial, Inc.;[16] and

5. Respondents, despite repeated demands, failed and refused to account for the "slow moving receivables" of Soon Kee Commercial, Inc. and to turn over the amounts received therefrom for distribution to the UBS Marketing Corporation and Soon Kee Commercial, Inc.[17]

The petition a quo thus prayed as follows:

WHEREFORE, Petitioners pray that judgment be rendered:

1. Immediately issuing a temporary mandatory order or a writ of preliminary mandatory injunction commanding the Respondents Ban Hua U. Flores and Ban Ha U. Chua and Roland M. King to turn over, deliver and transfer all corporate accounting records, tax and financial records, property documents, cash and records of all transaction in the custody, supervision and control of Respondents Ban Hua U. Flores, Ban Ha U. Chua and Roland M. King to the Petitioners;
2. After trial, making the mandatory injunction above-mentioned permanent; and ordering Respondents to turn over and deliver all the above-mentioned records to Petitioners at their address at No. 192 Speaker Eugenio Perez St., Sta. Mesa Heights, Quezon City, Philippines permanently;
3. Ordering and requiring the Respondents to deliver and turn over the common contingency fund to the Petitioners to be entrusted to the above-mentioned Board of Mediators;
4. To order the Respondents jointly and severally to account for and turn over collections from slow moving receivables of the Soon Kee Commercial, Inc. to the Board of Mediators for distribution to the UBS Marketing Corporation and the Soon Kee Commercial, Inc. under the Third Cause of Action;
5. Ordering the Respondents jointly and severally to pay Petitioner Johnny KH Uy his separation pay, bonuses and allowances as President of the UBS Marketing Corporation from funds in the hands of Respondents in such amount as shall be determined by this Honorable Commission after trial under the Fourth Cause of Action;
6. Ordering and requiring the Respondents to turn over and deliver to the Petitioners the Isuzu or Nissan Truck which Respondents have obligated themselves to deliver to Petitioners under the Fifth Cause of Action;
7. To order the Respondents jointly and severally to account for and turn over to the Petitioners the latter's share in the orders taken from Soon Kee Commercial, Inc.'s customers obtained by using and appropriating the name Soon Kee Commercial, Inc. in such amount as shall be established during the trial of the case and to order Respondents to cease and desist from using the corporate name Soon Kee Commercial, Inc. under the Sixth Cause of Action;
8. To order and require Respondents to pay Petitioners jointly and severally such amounts of damages as shall be established under the Seventh Cause of Action;
9. Ordering and requiring the Respondents jointly and severally to pay Petitioners such amount of damages as Petitioners' share in the profits as shall be proved under the Eighth Cause of Action;
10. Ordering and requiring the Respondents jointly and severally to pay Petitioners such amount of actual, moral and exemplary damages and attorney's fees under the Ninth Cause of Action as shall be finally determined by the Honorable Commission on the basis of the evidence adduced and to pay the costs of suit.

Petitioners pray for such other relief as may be deemed just and equitable in the premises.[18]

Specifically, the foregoing prayers: that respondents be ordered to account for and turn over funds from the "slow moving receivables" of Soon Kee Commercial, Inc (paragraph number 4); that respondents be ordered to pay petitioner Uy his separation pay, bonuses and allowances as President of UBS Marketing Corporation (paragraph number 5); that respondents be ordered to deliver to petitioner Uy the Isuzu or Nissan truck (paragraph number 6);

and that respondents be ordered to account for and turn over to petitioner his share in the profits derived from the use of the name Soon Kee Commercial Inc. (paragraph number 7), cannot be taken independently of each other and of the other finances of the aforementioned family corporations. Considering these reliefs prayed for against the backdrop of the allegations in the petition a quo, the full and complete accounting of all the assets, funds and receivables of said corporations was necessarily warranted.

Indeed, "it is a rule of pleading that the prayer for relief, though part of the complaint, is no part of the cause of action, and plaintiff is entitled to as much relief as the facts may warrant." [19] In the present case, the relief granted by the SEC en banc was clearly based on its findings that respondents, as officers of Soon Kee Commercial, Inc. and UBS Marketing Corp., had an obligation, not only to petitioners but to the other stockholders as well, to render an accounting of said companies' finances. Further, contrary to the ruling of the CA, this relief does not constitute "specific performance" and is well within the jurisdiction of the SEC.

In fine, the CA thus erroneously reversed the order of the SEC en banc as the latter clearly had the authority to grant petitioners "such relief as the complaint and the facts proven warrant" both under the Rules of Court and the Revised Rules of Procedure in the SEC, as amended.

WHEREFORE, premises considered, the Petition is hereby GRANTED. The assailed CA Decision, dated 21 August 1997, is REVERSED and SET ASIDE, and the SEC en banc's Order, dated 21 December 1995, and Resolution, dated 24 June 1996, are REINSTATED.

SO ORDERED.

Puno, and Pardo, JJ., concur.

Davide, Jr., C.J., (Chairman), on official leave.

Ynares-Santiago, J., on leave.

[1] Securities and Exchange Commission vs. CA, 201 SCRA 124 (1991).

[2] Id., at 126-127.

[3] Id., at 127.

[4] Id.

[5] Rollo, pp. 286-288.

[6] Order of SEC en banc, dated 21 December 1995, pp. 9-10; Rollo, pp. 297-298.

[7] Rollo, p. 329.

[8] Decision of the Court of Appeals, dated 21 August 1997, pp. 20-21; Rollo, pp. 400-401.

[9] Rollo, pp. 22-23.

[10] Now Section 6, Rule 43 of the Rules of Court.

[11] This provision has already been deleted in the new Rules of Court.

[12] Rule VII, Section 6 of the SEC 1993 Revised Rules on Procedure. Underscoring supplied.

[13] Rollo, p. 53.

[14] Id., pp. 53-54.

[15] Id., at 54.

[16] Id., at 56.

[17] Id., at 58.

[18] Rollo, pp. 65-67.

[19] Moran, Comments on the Rules of Court, Vol. I (1995 ed.) citing *Alzua vs. Johnson*, 21 Phil. 308, 366;

Rosales vs. Reyes, 35 Phil. 495; Aguilar vs. Rubiato, 40 Phil. 570.

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