

**RAMON P. JACINTO AND JAIME J. COLAYCO, PETITIONERS, VS.
FIRST WOMEN'S CREDIT CORPORATION, REPRESENTED IN
THIS DERIVATIVE SUIT BY SHIG KATAYAMA, RESPONDENTS***G.R. No. 154049. August 28, 2003*

Ponente: BELLOSILLO, J.

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The propriety of the appointment of an Interim Management Committee "to take over the management of First Women's Credit Corporation (FWCC)"[1] is the subject of this petition for review on certiorari. It seeks to set aside the 8 January 2002 Decision[2] of the Court of Appeals affirming the 4 July 2000 Order[3] of the Securities and Exchange Commission (SEC) which, in turn, sustained the assailed order of Hearing Officer George T. Palmares appointing the Interim Management Committee.

Shig Katayama, in his capacity as director and minority stockholder of FWCC, instituted a derivative suit before the SEC against petitioners Ramon P. Jacinto and Jaime J. Colayco, President and Vice President, respectively, of FWCC. Katayama claimed that petitioners Jacinto and Colayco committed company plunder when they raided FWCC's coffers and diverted the staggering amount of P720,333,266.00 to RJ Guitars, RJ Holdings, RJ Music, RJ Bistro, Rajah Broadcasting Network, RJ FM, RJ Productions (collectively referred to herein as "RJ Group of Companies") as well as to companies affiliated with FWCC, namely, Quantum, Shigra, RJ Ventures Realty Corporation and Save-a-Lot. Katayama prayed that petitioners be ordered to account for and return the diverted amount to FWCC and that in the interim a management committee be appointed to end the dissipation, wastage and loss of corporate funds.[4]

In support of his petition, Katayama presented the Special Audit Report prepared by FWCC's external auditor, Carlos J. Valdez & Associates, stating that from 1993 to 1997 petitioners withdrew P720,333,266.00 from FWCC and transferred the withdrawn amount to RJ Group of Companies and companies affiliated with FWCC without Board authorization.[5] In the wake of the diversion, FWCC was left flat broke causing it to default on several of its obligations with creditor banks, particularly with Land Bank of the Philippines and Philippine National Bank, and to close down several of its offices around the country. Katayama also averred that the intemperate withdrawal of funds amounted to grave mismanagement as petitioners placed almost all of the operating funds of FWCC in one basket, that of petitioner Jacinto's companies, instead of lending to as many of its customers to distribute the risk of non-payment.

In their answer, petitioners while admitting that they withdrew money from FWCC for the benefit of companies associated with petitioner Jacinto claimed that such withdrawals constituted legitimate advances and loans extended in the ordinary course of business. As a matter of fact, the Board's decision to lend money to RJ Group of Companies was intended to maximize FWCC's idle funds. Petitioners explained that Katayama obliged FWCC to accept his dollar investments at the rate of 26% per annum even if it would result in surplusage of loanable funds. Since FWCC did not have enough customers the Board at first decided to place the amounts invested by

Katayama in money market placements where it earned interest from 8% to 9%. At about this time, RJ Group of Companies decided to obtain advances from FWCC instead of using its credit line with other financial institutions to make use of FWCC's idle funds. Thus, by extending loans to RJ Group of Companies at 18% per annum FWCC was able to reduce its losses from the money advanced by Katayama. Petitioners likewise insisted that Katayama was estopped from questioning the legality of the loans to RJ Group of Companies inasmuch as he himself had consented thereto. Lastly, all loans and advances extended by FWCC to RJ Group of Companies had been fully paid by the latter through an off-setting agreement done with the knowledge and consent of Katayama.[6]

Katayama denied consenting to, much less knowing, the transfer of FWCC funds to RJ Group of Companies. In fact, he averred that members of the Board were given instructions by petitioners not to tell him about the unauthorized disbursements. He also contested petitioners' claim that FWCC experienced surplusage of funds which justified the unauthorized lending to RJ Group of Companies. If truth be told, FWCC even had to borrow P600,000,00.00 from Land Bank and PNB to meet the demands of the business.

Before resolving Katayama's prayer for the appointment of an interim management committee, Hearing Officer Palmares ordered the presentation of evidence.[7] A year and a half later and after Katayama had concluded with the presentation of his evidence, he moved for the early resolution of his application for the appointment of an interim management committee. Hearing Officer Palmares deferred ruling on the application and gave petitioners the opportunity to present rebutting evidence.

On 17 November 1999, after petitioners presented their evidence, Hearing Officer Palmares issued an order creating an Interim Management Committee composed of three (3) members to oversee the administration of FWCC pending resolution of the dispute. Hearing Officer Palmares explained that the massive diversion of funds and the constant bickering among stockholders demanded the immediate creation of a management committee pendente lite.[8]

Petitioners moved for reconsideration but were denied. Forthwith, they went to the SEC en banc which nevertheless upheld the creation of the Committee. According to the SEC, while the appointment of a management committee is a drastic remedy and may only be employed in cases of urgent necessity, the creation of the Committee in the present case was within the authoritative discretion of Hearing Officer Palmares considering the imminent danger of dissipation, loss and wastage of assets and property of FWCC.[9]

Petitioners appealed to the Court of Appeals attributing error to the SEC en banc for upholding the appointment of the Interim Management Committee. Petitioners' plea for a reversal was denied for the reason that the existing danger to the interests of the stockholders, i.e., suspension of corporate business and threatened reduction in the value of corporate assets, demanded the creation of a management committee pendente lite.

Their motion for reconsideration having been denied, petitioners filed this petition for review raising the very same issues they presented before the appellate court. Petitioners, in the main, argue that the drastic relief of appointing an interim management committee must be granted only after much serious thought; in other words, they posit that the creation of a management committee for a solvent and going corporation should be a last-resort remedy considering that it would deprive the Board of Directors of its power over the corporation.

Further, petitioners aver that the IMC was created on the unfounded allegation that they diverted corporate funds to RJ Group of Companies. They deny the charge and assert that RJ Group of Companies had settled its obligations with FWCC through an off-setting agreement which was consented to by Katayama himself. Besides, petitioner Jacinto's financial exposure as surety to FWCC's creditor-banks far exceeds the amounts loaned to RJ Group of Companies. Jacinto claims that he acted as surety for FWCC in the latter's obligations with Land Bank

and PNB amounting to almost a billion pesos. If on this account alone, the IMC should be dissolved and management of FWCC should be given back to the Board of Directors headed by petitioner Jacinto.

In exercising the discretion to appoint a management committee, the officer or tribunal before whom the application was made must take into account all the circumstances and facts of the case, the presence of conditions and grounds justifying the relief, the ends of justice, the rights of all the parties interested in the controversy and the adequacy and effectiveness of other available remedies. The discretion must be exercised with great caution and circumspection and only for a reason strongly appealing to the tribunal or officer exercising jurisdiction. At any rate, once the discretion has been exercised, the presumption to be considered is that the officer or tribunal has fairly weighed and appraised the evidence submitted by the parties.

In determining whether Hearing Officer Palmares correctly exercised his judgment when he ordered the creation of the IMC, it is necessary to refer to Sec. 6, par. (d), of PD 902-A -

Sec. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers: x x x d) To create and appoint a management committee, board, or body upon petition or motu proprio when there is imminent danger of dissipation, loss, wastage or destruction of assets or other properties or paralization of business operations of such corporations or entities which may be prejudicial to the interest of minority stockholders, parties-litigants or the general public (emphasis supplied).

A reading of the aforecited legal provision reveals that for a minority stockholder to obtain the appointment of an interim management committee, he must do more than merely make a prima facie showing of a denial of his right to share in the concerns of the corporation; he must show that the corporate property is in danger of being wasted and destroyed; that the business of the corporation is being diverted from the purpose for which it has been organized; and that there is serious paralization of operations all to his detriment. It is only in a strong case where there is a showing that the majority are clearly violating the chartered rights of the minority and putting their interests in imminent danger that a management committee may be created.

In this regard, mere disagreement among stockholders as to the affairs of the corporation would not in itself suffice as a ground for the appointment of a management committee. At least where there is no imminent danger of loss of corporate property or of any other injury to stockholders, management of corporate business should not be wrested away from duly elected officers, who are prima facie entitled to administer the affairs of the corporation, and placed in the hands of the management committee. However, where the dissension among stockholders is such that the corporation cannot successfully carry on its corporate functions the appointment of a management committee becomes imperative.

After a review of the records, we are convinced that the appointment of the Interim Management Committee is fully warranted by the circumstances. The findings of Hearing Officer Palmares relative to the transfer of funds from FWCC to RJ Group of Companies without the corresponding Board resolutions, the drastic reduction of the number of FWCC branch offices all over the country, the suspension of lending operations, the limitation of FWCC's operations to mere collection of receivables as well as the inability of FWCC to pay its pressing obligations amply support the conclusion that there is "imminent danger of dissipation, loss, wastage or destruction of corporate assets."

The word "imminent" has been defined as "impending or on the point of happening;"[10] while "danger" means "peril or exposure to loss or injury." [11] The findings of FWCC's external auditor, which were embodied in an audit report the accuracy of which was not questioned by petitioners, support the conclusion that petitioners' unrestricted and continuous management of FWCC poses an impending peril to corporate assets. For one, petitioners allowed the release of loans to companies associated with petitioner Jacinto without the corresponding

Board resolutions. Petitioners' argument that Katayama knew of the practice does not justify the impropriety of their dealings inasmuch as a corporate act inherently illegal does not cease to be illegal simply because the questioning stockholder is aware of the illegal practice and hence cannot claim that he was deceived. Also, petitioners' contention that there is no need for the IMC to oversee corporate operations since FWCC had collected on the obligations of RJ Group of Companies through the 30 July 1997 Deed of Assignment is flawed. Petitioners need to be reminded that FWCC has not consummated the contract, that is, collect the assigned receivables, and there is still the danger that these receivables may turn out to be bad loans much to the detriment of FWCC as assignee.[12]

Additionally, as admitted by the parties and borne out by the evidence on record, the prevailing internal dispute and feud between petitioners and Katayama have resulted in the total paralization of FWCC's business operations and adversely affected its collection efforts. In view of these facts, Hearing Officer Palmares was clearly justified in ordering the appointment of the IMC to oversee the operation of FWCC and preserve its assets pending resolution of the parties' dispute.

With regard to petitioners' argument that the appointment of the IMC caused them injuries which far outweigh the benefits granted to Katayama, suffice it to state that a management committee is not the representative or agent of the stockholder upon whose instance the committee has been appointed; rather, it is for the time being a ministerial officer and representative of the court hearing the derivative suit. Since its appointment is for the benefit of all interested parties, it holds and manages the property for the benefit of those ultimately entitled to, and not primarily for the benefit of the party at whose instance the appointment has been made.

In fine, it cannot be denied that the circumstances obtaining in the present case demonstrate quite clearly the need for the immediate appointment of the IMC. It is our ruling therefore that the competence of Hearing Officer Palmares to issue the questioned order is fully warranted by law; petitioners' protestations thereto are groundless and illusory.

WHEREFORE, the petition is DENIED. The assailed 8 January 2002 Decision of the Court of Appeals upholding the appointment of the Interim Management Committee tasked with overseeing the operations of respondent First Women's Credit Corporation is AFFIRMED. Costs against petitioners.

SO ORDERED.

Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.
Quisumbing, J., no part.

[1] Decision penned by Associate Justice Renato C. Dacudao, concurred in by Associate Justices Ruben T. Reyes and Mariano C. Del Castillo; Rollo, p. 163.

[2] Id., pp. 78-93.

[3] Id., pp. 120-126.

[4] Id., pp. 127-138.

[5] Original Records, pp. 232-235.

[6] Jaime Colayco in his capacity as Executive Vice-President of FWCC and Ramon Jacinto in behalf of Rajah Broadcasting Network (RBN) executed a Deed of Assignment dated 30 July 1997 whereby RBN assigned all its receivables from RJ Ventures Realty Corporation in the amount of P276,445,119.94 to FWCC; see Note 1, pp.

307-309.

[7] Id., pp. 159-160.

[8] Id., pp. 161-163.

[9] Id., pp. 120-126.

[10] Black's Law Dictionary, West Publishing Company, St. Paul, Minnesota, (4th ed., 1951), p. 750, citing Continental Illinois Nat. Bank & Trust Co. of Chicago v. U.S., C.A. Ill., 504 F.2d 586, 588.

[11] Id., p. 393, citing State v. Londe, 345 Mo. 185, 132 S.W.2d 501, 506.

[12] See Note 1, pp. 727-728.

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