

RUBY INDUSTRIAL CORPORATION AND BENHAR INTERNATIONAL, INC. PETITIONERS, VS. COURT OF APPEALS, MIGUEL LIM, ALLIED LEASING AND FINANCE CORPORATION, AND THE MANAGEMENT COMMITTEE OF...

G.R. Nos. 124185-87. January 20, 1998

Ponente: PUNO, J.

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PUNO, J.:

Petitioners seek the reversal of the Court of Appeals Decision, [1] setting aside the Orders of the Securities and Exchange Commission (SEC), dated July 30, 1993 and October 15, 1993, which approved the Revised Rehabilitation Plan of Ruby Industrial Corporation (RUBY) and appointed Benhar International, Inc. (BENHAR) as member of RUBY's Management Committee.

The facts: Petitioner Ruby Industrial Corporation (RUBY) is a domestic corporation engaged in glass manufacturing, while petitioner Benhar International, Inc. (BENHAR) is a domestic corporation engaged in importation and sale of vehicle spare parts. BENHAR is wholly-owned by the Yu family and headed by Henry Yu who is also a director and majority stockholder of RUBY.

In 1983, RUBY suffered severe liquidity problems. Thus, on December 13, 1983, it filed a Petition for Suspension of Payments with the Securities and Exchange Commission (SEC). [2]

On December 20, 1983, the SEC issued an Order[3] declaring RUBY under suspension of payments. Pending hearing of its petition, the SEC enjoined RUBY from disposing its property, except insofar as necessary in its ordinary operations. It also enjoined RUBY from making payments outside of the necessary or legitimate expenses of its business.

On August 10, 1984, the SEC Hearing Panel[4] created a management committee[5] for RUBY to: (1) undertake the management of RUBY; (2) take custody of and control over all existing assets and liabilities of RUBY; (3) evaluate RUBY's existing assets and liabilities, earnings and operations; (4) determine the best way to salvage and protect the interest of its investors and creditors; and (5) study, review and evaluate the proposed rehabilitation plan for RUBY.[6]

Subsequently, at RUBY's special stockholders meeting, its majority stockholders led by Yu Kim Giang presented the BENHAR/RUBY Rehabilitation Plan to be submitted to SEC. Under the plan, BENHAR shall lend its P60 million credit line in China Bank to RUBY, payable within ten (10) years. Moreover, BENHAR shall purchase the credits of RUBY's creditors and mortgage RUBY's properties to obtain credit facilities for RUBY.[7] Upon approval of the rehabilitation plan, BENHAR shall control and manage RUBY'S operations. For its service, BENHAR shall receive a management fee equivalent to 7.5% of RUBY's net sales.[8]

Some 40% of the stockholders opposed the BENHAR/RUBY Plan, including private respondent MIGUEL LIM, a minority shareholder of RUBY. Private respondent Allied Leasing and Finance Corporation, the biggest

unsecured creditor of RUBY and chairman of the management committee, also objected to the plan as it would transfer RUBY's assets beyond the reach and to the prejudice of its unsecured creditors. Despite the oppositions, the majority stockholders still submitted the BENHAR/RUBY Plan to the SEC for approval.

Upon the other hand, RUBY's minority stockholders, represented by private respondent Lim, submitted their own rehabilitation plan (the ALTERNATIVE PLAN) to the SEC where they proposed to: (1) pay all RUBY'S creditors without securing any bank loan; (2) run and operate RUBY without charging management fees; (3) buy-out the majority shares or sell their shares to the majority stockholders; (4) rehabilitate RUBY's two plants; and (5) secure a loan at 25% interest, as against the 28% interest charged in the loan under the BENHAR/RUBY Plan.[9]

Both plans were endorsed by the SEC to RUBY's management committee for evaluation.

On October 28, 1988, the SEC Hearing Panel approved the BENHAR/RUBY Plan.[10] The minority stockholders, thru private respondent Lim, appealed the approval to the SEC en banc. On November 15, 1988, the SEC en banc temporarily enjoined the implementation of the BENHAR/RUBY Plan. On December 20, 1988, after the expiration of the TRO, the SEC en banc granted the writ of preliminary injunction against the enforcement of the BENHAR/RUBY Plan.[11]

Thereafter, BENHAR and Henry Yu, later joined by RUBY and Yu Kim Giang, appealed to the Court of Appeals (CA-G.R. SP No. 16798) questioning the issuance of the writ. Their appeal was denied.[12]

BENHAR and company elevated the matter to this Court. In a minute Resolution,[13] dated February 28, 1990, we denied the petition and upheld the injunction against the implementation of the BENHAR/RUBY Plan.

However, it appears that before the SEC Hearing Panel approved the BENHAR/RUBY Plan on October 28, 1988, BENHAR had already implemented part of the plan by paying off Far East Bank & Trust Company (FEBTC), one of RUBY's secured creditors. Thus, by May 30, 1988, FEBTC had already executed a deed of assignment of credit and mortgage rights in favor of BENHAR. Moreover, despite the SEC en banc's TRO and injunction, BENHAR still paid RUBY's other secured creditors who, in turn, assigned their credits in favor of BENHAR.

Hence, RUBY's biggest unsecured creditor, Allied Leasing and Finance Corporation, and private respondent Lim moved to nullify the deeds of assignment executed in favor of BENHAR and cite the parties thereto in contempt for willful violation of the December 20, 1983 SEC Order enjoining RUBY from disposing its properties and making payments pending the hearing of its petition for suspension of payments. Private respondents Lim and Allied Leasing charged that in paying off FEBTC's credits, FEBTC was given undue preference over the other creditors of RUBY.

Acting on private respondents' motions, the SEC Hearing Panel nullified the deeds of assignment executed by RUBY's creditors in favor of BENHAR and declared the parties thereto guilty of indirect contempt.[14]

Petitioners appealed to the SEC en banc. Their appeal was denied.[15] It was ruled that, pending approval of the BENHAR/RUBY plan, BENHAR had no authority to pay off FEBTC, one of RUBY's creditors. In prematurely implementing the BENHAR/RUBY plan, BENHAR defied the SEC Order declaring RUBY under suspension of payments and directing the management committee to preserve its assets.

Petitioners RUBY and BENHAR, joined by Henry Yu and Yu Kim Giang, appealed to the Court of Appeals (CA-G.R. SP No. 18310). On August 29, 1990, the Court of Appeals affirmed the SEC ruling nullifying the deeds of assignment.[16] It also declared that its decision is final and executory as to RUBY and Yu Kim Giang for their failure to file their pleadings within the reglementary period. This Court affirmed the Court of Appeals' decision

in G.R. No. 96675.[17]

Earlier, on May 29, 1990, after the SEC en banc enjoined the implementation of BENHAR/RUBY Plan, RUBY filed with the SEC en banc an ex-parte petition to create a new management committee and to approve its revised rehabilitation plan (Revised BENHAR/RUBY Plan). Under the revised plan, BENHAR shall receive P34.068 Million of the P60.437 Million credit facility to be extended to RUBY, as reimbursement for BENHAR's payment to some of RUBY's creditors.

The SEC en banc directed RUBY to submit the Revised BENHAR/RUBY Plan to its creditors for comment and approval. The petition for the creation of a new management committee was remanded for further proceedings to the SEC Hearing Panel. The Alternative Plan of RUBY's minority stockholders was also forwarded to the hearing panel for evaluation.

On April 26, 1991, over ninety (90%) percent of RUBY's creditors objected to the Revised BENHAR/RUBY Plan and the creation of a new management committee. Instead, they endorsed the minority stockholders' Alternative Plan.

At the hearing of the petition for the creation of a new management committee, three (3) members of the original management committee[18] opposed the Revised BENHAR/RUBY Plan on the following grounds:

(1)

the Revised BENHAR/RUBY Plan would legitimize the entry of BENHAR, a total stranger, to RUBY as BENHAR would become the biggest creditor of RUBY;

(2)

the revised plan would put RUBY's assets beyond the reach of the unsecured creditors and the minority stockholders; and,

(3)

the revised plan was not approved by RUBY's stockholders in a meeting called for the purpose.

However, on September 18, 1991, despite the objections of over 90% of RUBY's creditors and three (3) members of the management committee, the SEC Hearing Panel approved the revised plan and dissolved the existing management committee. It also created a new management committee and appointed BENHAR as one of its members.[19] In addition to the powers originally conferred to the management committee under P.D. No. 902-A, the new management committee was tasked to oversee the implementation by the Board of Directors of the revised rehabilitation plan for RUBY.

Consequently, the original management committee, Lim, and the Allied Leasing Corporation appealed to the SEC en banc. On July 30, 1993, the SEC En Banc affirmed the approval of the Revised BENHAR/RUBY Plan and the creation of a new management committee.[20] To avoid any group from controlling the management of RUBY, the SEC appointed SEC lawyers Ruben C. Ladia and Teresita R. Siao as additional members of the new management committee. Further, it declared that BENHAR's membership in the new management committee is subject to the condition that BENHAR will extend its credit facilities to RUBY without using the latter's assets as security or collateral.

Private respondents Lim, Allied Leasing Corporation and the original management committee moved for reconsideration. Petitioners, on the other hand, asked the SEC to reconsider the portion of its Order prohibiting BENHAR from utilizing RUBY's assets as collateral.

On October 15, 1993, the SEC denied private respondents' motions for reconsideration. However, it granted petitioners' motion and allowed BENHAR to use RUBY's assets as collateral for loans, subject to the approval of the majority of all the members of the new management committee.[21]

On appeal by private respondents, the Court of Appeals set aside[22] SEC's approval of the Revised BENHAR/RUBY plan and remanded the case to the SEC for further proceedings. It ruled that the revised plan circumvented its earlier decision (CA-G.R. SP No. 18310) nullifying the deeds of assignment executed by RUBY's creditors in favor of BENHAR. Under the revised plan, BENHAR was to receive P34.068 Million of the P60.437 Million credit facility to be extended to RUBY, as settlement for its advance payment to RUBY's seven (7) secured creditors. In effect, the payments made by BENHAR under the void Deeds of Assignment were recognized as payable to BENHAR under the revised plan. Petitioners' motion for reconsideration was denied.[23]

Hence, this petition where petitioners aver that:

"I. THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR, GRAVELY ABUSED ITS DISCRETION AND EXCEEDED ITS JURISDICTION WHEN IT WENT AGAINST THE FACTS AS FOUND BY THE SEC AND, THEREAFTER, SUBSTITUTED ITS JUDGMENT FOR THAT OF THE SEC.

"II. THE COURT OF APPEALS COMMITTED AN ERROR REVIEWABLE ON APPEAL AND ALSO A PROPER SUBJECT OF CERTIORARI WHEN IT ALLOWED PRIVATE RESPONDENTS TO FILE SEPARATE PETITIONS PREPARED BY LAWYERS REPRESENTING THEMSELVES AS BELONGING TO DIFFERENT LAW FIRMS."

We find no merit in the petition.

Petitioners first contend that, in reversing the SEC's approval of the Revised BENHAR/RUBY Plan, the Court of Appeals exceeded its jurisdiction and disregarded the SEC's expertise in resolving corporate controversies.

The settled doctrine is that factual findings of an administrative agency are accorded respect and, at times, finality for they have acquired the expertise inasmuch as their jurisdiction is confined to specific matters.[24] Nonetheless, these doctrines do not apply when the board or official has gone beyond his statutory authority, exercised unconstitutional powers or clearly acted arbitrarily and without regard to his duty or with grave abuse of discretion.[25] In *Leongson vs. Court of Appeals*,[26] we held: "once the actuation of the administrative official or administrative board or agency is tainted by a failure to abide by the command of the law, then it is incumbent on the courts of justice to set matters right, with this Tribunal having the last say on the matter."

We hold that the SEC acted arbitrarily when it approved the Revised BENHAR/RUBY Plan. As found by the Court of Appeals, the plan contained provisions which circumvented its final decision[27] in CA-G.R. SP No. 18310, nullifying the deeds of assignment of credits and mortgages executed by RUBY's creditors in favor of BENHAR, as well as this Court's resolution in G.R. No. 96675, affirming said Court of Appeals' decision. Specifically, the Revised BENHAR/RUBY Plan considered as valid the advance payments made by BENHAR in favor of some of RUBY'S creditors. The nullity of BENHAR's unauthorized dealings with RUBY's creditors is settled. The deeds of assignment between BENHAR and RUBY's creditors had been categorically declared void by the SEC Hearing Panel in two (2) orders issued on January 12, 1989 and March 15, 1989.[28] The dispositive portion of the Order, dated January 12, 1989, held:

"WHEREFORE, the motion for reconsideration of the Order dated October 7, 1988, insofar as it relates to the motion of Allied Leasing and Finance Corporation to cite for contempt and to annul deed of assignment is hereby GRANTED. ... The Deed of Assignment of Receivables and Mortgages, Rights, Credits and Interest Without Recourse having been executed in violation of the Order dated December 20, 1988 is hereby declared NULL and VOID.

"SO ORDERED."

The dispositive portion of the Order dated March 15, 1989, similarly provided:

"WHEREFORE, Mr. Yu Kim Giang and others are hereby found guilty of indirect contempt and a penalty of P500.00 each is hereby imposed on them. The Deed of Assignment of Receivables and Mortgages, Rights, Credits and Interest Without Recourse, in favor of Benhar International, Inc., by Florence Danon, Philippine Bank of Communication, Philippine Commercial International Bank, Philippine Trust Company and PCI Leasing and Finance Incorporated, having been executed in violation of the Order dated December 20, 1988 are hereby declared NULL and VOID.

These orders were upheld by the SEC en banc^[29] and the Court of Appeals.^[30] In CA-GR SP No. 18310, the Court of Appeals ruled as follows:

"xxx xxx xxx

"1) x x x when the Deed of Assignment was executed on May 30, 1988 by and between Ruby Industrial Corp., Benhar International Inc., and FEBTC, the Rehabilitation Plan proposed by petitioner Ruby Industrial Corp. for Benhar International Inc. to assume all petitioner's obligation has not been approved by the SEC. The Rehabilitation Plan was not approved until October 28, 1988. There was a willful and blatant violation of the SEC order dated December 20, 1983 on the part of petitioner Ruby Industrial Corp., represented by Yu Kim Giang, by Benhar International Inc., represented by Henry Yu and by FEBTC

"2) The magnitude and coverage of the transactions involved were such that Yu Kim Giang and the other signatories cannot feign ignorance or pretend lack of knowledge thereto in view of the fact that they were all signatories to the transaction and privy to all the negotiations leading to the questioned transactions. In executing the Deeds of Assignments, the petitioners totally disregarded the mandate contained in the SEC order not to dispose the properties of Ruby Industrial Corp. in any manner whatsoever pending the approval of the Rehabilitation Plan and rendered illusory the SEC efforts to rehabilitate the petitioner corporation to the best interests of all the creditors.

"3) The assignments were made without prior approval of the Management Committee created by the SEC in an Order dated August 10, 1984. Under Section 6, par. d, sub. par. (2) of P.D. 902-A as amended by P.D. 1799, the Management Committee, rehabilitation receiver, board or body shall have the power to take custody and control over all existing assets of such entities under management notwithstanding any provision of law, articles of incorporation or by-law to the contrary. The SEC therefore has the power and authority, through a Management Committee composed of petitioner's creditors or through itself directly, to declare all assignment of assets of the petitioner Corporation declared under suspension of payments, null and void, and to conserve the same in order to effect a fair, equitable and meaningful rehabilitation of the insolvent corporation."

"4) x x x. The acts for which petitioners were held in indirect contempt by the SEC arose from the failure or willful refusal by petitioners to obey the lawful order of the SEC not to dispose of any of its properties in any manner whatsoever without authority or approval of the SEC. The execution of the Deeds of Assignment tend to defeat or obstruct the administration of justice. Such acts are offenses against the SEC because they are calculated to embarrass, hinder and obstruct the tribunal in the administration of justice or lessen its authority.

"In view of the foregoing conclusion which has now been reached, it is not necessary to discuss at length or to

determine other questions which are presented on record. It is sufficient to say that the facts as established by the evidence on records warrant a finding that petitioners are guilty of indirect contempt. The Order of the SEC is hereby AFFIRMED. This petition is DISMISSED with costs against the petitioners.

"SO ORDERED." (emphasis ours)

Petitioners insist that the Court of Appeals did not make a categorical statement in the dispositive portion of its decision in CA-G.R. SP No. 18310 that it was nullifying the deeds of assignment in favor of BENHAR. Allegedly, it merely stated that it is affirming the decision of the SEC. Petitioners cite *Olac vs. Court of Appeals*[31] where we held that the dispositive portion or the fallo constitutes the court's resolution in a given case, while the discussion in the body of the decision merely expresses the court's opinion.

The contention has no merit. The principle laid down in *Olac* applies only when there is a conflict between the dispositive part (fallo) and the opinion of the court contained in the decision. Hence, in the execution of the court's judgment, the fallo should be considered as the final disposition of the case before it. Such conflict does not exist in the Court of Appeals' decision in CA-G.R. SP No. 18310. It is crystal clear that what the Court of Appeals affirmed in CA-GR SP No. 18310 was the nullity of the deeds of assignment in favor of BENHAR. In a minute resolution in G.R. No. 96675, we even sustained the Court of Appeals' decision in CA-GR SP No. 18310.[32]

In any event, petitioners actively participated in the proceedings before the SEC and the Court of Appeals when private respondents sought the nullification of the subject deeds. Petitioners are, therefore, estopped from questioning anew the validity of the deeds of assignment executed by RUBY's creditors in favor of BENHAR. Petitioners should know that it is not for a party to participate in the proceedings, submit his case for decision, accept the judgment if it is favorable to him but attack it for any reason when it is adverse.[33]

Even the SEC en banc, in its July 30, 1993 Order affirming the approval of the Revised BENHAR/RUBY Plan, has acknowledged the invalidity of the subject deeds of assignment. However, to justify its approval of the plan and the appointment of BENHAR to the new management committee, it gave the lame excuse that BENHAR became RUBY's creditor for having paid RUBY's debts. We quote the relevant portion of the SEC's ruling, thus:

"Anent the contention that BENHAR should not take an active participation in the management of petitioner corporation, the same deserves scant consideration.

"While the Deeds of Assignment executed by creditors of Ruby in favor of Benhar were all declared null and void, the Revised Rehabilitation Plan, as herein approved by the Commission, shows that Benhar will assign its credit lines/loan proceeds or will act as financier whereby it re-lends the contracted loan to Ruby thereby converting Benhar as a creditor of the petitioner corporation once the Rehabilitation Plan is implemented. In fact, as of March 31, 1990, it appears that Benhar had made some advance payments to some creditors of Ruby further strengthening its status as a creditor. We cannot, therefore, see any reason why Benhar should not sit in the management team to oversee the implementation of the Plan."

For its part, the Court of Appeals noted that the approved Revised BENHAR/RUBY Plan gave undue preference to BENHAR. The records, indeed, show that BENHAR's offer to lend its credit facility in favor of RUBY is conditioned upon the payment of the amount it advanced to RUBY's creditors, thus:

"FUND SOURCING

x x x

1. Deed of Assignment of Credit Facility (or Loan Proceeds) to be executed by Benhar in favor of Ruby, under pre-arrangement with China Banking Corporation or by any other creditor-banks, and upon payment by Ruby of such amount already advanced by Benhar."

In fact, BENHAR shall receive P34.068 Million out of the P60.437 Million credit facility to be extended to RUBY for the latter's rehabilitation.

Rehabilitation contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency.[34] When a distressed company is placed under rehabilitation, the appointment of a management committee follows to avoid collusion between the previous management and creditors it might favor, to the prejudice of the other creditors. All assets of a corporation under rehabilitation receivership are held in trust for the equal benefit of all creditors to preclude one from obtaining an advantage or preference over another by the expediency of attachment, execution or otherwise. As between the creditors, the key phrase is equality in equity. Once the corporation threatened by bankruptcy is taken over by a receiver, all the creditors ought to stand on equal footing. Not any one of them should be paid ahead of the others. This is precisely the reason for suspending all pending claims against the corporation under receivership.[35]

Parenthetically, BENHAR is a domestic corporation engaged in importing and selling vehicle spare parts with an authorized capital stock of thirty million pesos. Yet, it offered to lend its credit facility in the amount of sixty to eighty millions pesos to RUBY. It is to be noted that BENHAR is not a lending or financing corporation and lending its credit facilities, worth more than double its authorized capitalization, is not one of the powers granted to it under its Articles of Incorporation. Significantly, Henry Yu, a director and a majority stockholder of RUBY is, at the same time, a stockholder of BENHAR, a corporation owned and controlled by his family. These circumstances render the deals between BENHAR and RUBY highly irregular.

To justify its appointment in the new management committee and to dispute that it will become a creditor of RUBY only on account of the proposed assignment of its credit facility to RUBY, BENHAR avers that as early as December 27, 1988, it already lent one million pesos (P1,000,000.00) to RUBY for the latter's working capital.

The submission deserves scant consideration. To start with, this argument was raised by BENHAR for the first time in its motion for reconsideration before the Court of Appeals. The settled rule is that issues not raised in the court a quo cannot be raised for the first time on appeal -- in this case, in a motion for reconsideration -- for being offensive to the basic rules of fair play, justice and due process.[36]

Moreover, when RUBY initiated its petition for suspension of payments with the SEC, BENHAR was not listed as one of RUBY's creditors. BENHAR is a total stranger to RUBY. If at all, BENHAR only served as a conduit of RUBY. As aptly stated in the challenged Court of Appeals decision:[37]

"Benhar's role in the Revised Benhar/Ruby Plan, as envisioned by the majority stockholders, is to contract the loan for Ruby and, serving the role of a financier, relend the same to Ruby. Benhar is merely extending its credit line facility with China Bank, under which the bank agrees to advance funds to the company should the need arise. This is unlikely a loan in which the entire amount is made available to the borrower so that it can be used and programmed for the benefit of the company's financial and operational needs. Thus, it is actually China Bank which will be the source of the funds to be relend to Ruby. Benhar will not shell out a single centavo of its own funds. It is the assets of Ruby which will be mortgaged in favor of Benhar. Benhar's participation will only make the rehabilitation plan more costly and, because of the mortgage of its (Ruby's) assets to a new creditor, will create a situation which is worse than the present. x x x."

We need not say more.

On the second issue, petitioners charge that private respondents are guilty of forum-shopping. It appears that the three (3) private respondents filed separate petitions before the Court of Appeals upon receipt of the adverse ruling of the SEC en banc. Private respondent Miguel Lim commenced CA-G.R. SP No. 32404, thru its counsel

Romulo Mabanta Beunaventura Sayoc and De los Angeles. For their part, private respondent Allied Leasing and the original management committee of RUBY, represented by Attorney Walter T. Young, commenced CA-G.R. SP No. 32483 and CA-G.R. SP No. 32469, respectively. In CA-G.R. SP No. 32483, Atty. Young signed for and in behalf of the law firm Ocampo Quiroz Pesayco and Associates, while in CA-G.R. SP No. 32469, Atty. Young signed for the law firm Quiroz and Young. In both petitions, he used the same business address-- Allied Bank Center, 6754 Ayala Avenue, Makati City.

We hold that private respondents are not guilty of forum-shopping. In *Ramos, Sr. vs. Court of Appeals*, [38] we ruled:

"The private respondents can be considered to have engaged in forum shopping if all of them, acting as one group, filed identical special civil actions in the Court of Appeals and in this Court. There must be identity of parties or interests represented, rights asserted and relief sought in different tribunals. In the case at bar, two groups of private respondents appear to have acted independently of each other when they sought relief from the appellate court. Both group sought relief from the same tribunal.

"It would not matter even if there are several divisions in the Court of Appeals. The adverse party can always ask for the consolidation of the two cases. x x x"

In the case at bar, private respondents represent different groups with different interests-- the minority stockholders' group, represented by private respondent Lim; the unsecured creditors group, Allied Leasing & Finance Corporation; and the old management group. Each group has distinct rights to protect. In line with our ruling in *Ramos*, the cases filed by private respondents should be consolidated. In fact, BENHAR and RUBY did just that-- in their urgent motions filed on December 1, 1993 and December 6, 1993, respectively, they prayed for the consolidation of the cases before the Court of Appeals.

IN VIEW OF THE FOREGOING, the instant petition is DISMISSED for lack of merit. The Court of Appeals' Decision, dated March 31, 1995, and its Resolution, dated March 12, 1996, in CA-G.R. SP Nos. 32404, 42469 and 32483 are AFFIRMED. The case is remanded to the Securities and Exchange Commission for further proceedings. Costs against petitioners.

SO ORDERED.

Regalado, (Chairman), and Mendoza, JJ., concur.

Martinez, J., no part.

[1] Dated March 31, 1995; Penned by Associate Justice Consuelo Ynares-Santiago and concurred in by Associate Justice Antonio M. Martinez (now a distinguished member of this Court) and Associate Justice Ruben T. Reyes; See Rollo, pp. 33-56.

[2] Docketed as SEC Case No. 2556.

[3] Rollo, pp. 271-272.

[4] Composed of Hearing Officers Alberto P. Atas, Juanito B. Almosa and Rolando C. Malabonga.

[5] Composed of Allied Leasing & Finance Corp. as Chairman, with the following as members: Philippine Bank of Commerce, China Banking Corporation, Filipinas Shell Petroleum and Ruby Industrial Corp.

[6] Order of SEC Hearing Panel, dated October 28, 1988, Rollo, pp. 100-109.

- [7] Comment of private respondent Miguel Lim, Rollo, pp. 201-202.
- [8] See Order of SEC Hearing Panel, dated October 28, 1988, in SEC Case No. 2556, marked as Annex "E" of Petition, Rollo, pp. 100-109.
- [9] Ibid., at p. 203.
- [10] Annex "E" of Petition, Rollo, pp. 100-109.
- [11] The Writ of Injunction was finally issued on January 6, 1989, Rollo, p. 278.
- [12] The Fourth Division of the Court of Appeals which decided the appeal in CA-G.R. SP No. 16798 was composed of Associate Justices Cecilio L. Pe (ponente), Pedro A. Ramirez and now Supreme Court Associate Justice Vicente V. Mendoza.
- [13] G.R. No. L-88311.
- [14] Orders, dated January 12, 1989 and March 15, 1989; Rollo, pp. 408-412, 416-419.
- [15] Order, dated July 31, 1989, Rollo, pp. 414-415
- [16] Decision, dated August 29, 1990, Rollo, pp. 285-292.
- [17] Resolution, dated August 26, 1991, Rollo, p. 293.
- [18] Lim (representing the minority stockholders), Allied Leasing and Finance Corporation (representing the unsecured creditors), and Filipinas Shell Petroleum Corporation.
- [19] The other members were China Banking Corporation, representing the secured creditors; Allied Leasing, representing the unsecured creditors; BENHAR, representing the entity extending credit facilities to RUBY; a representative of the majority stockholders; and a representative of the minority stockholders. See Order dated September 18, 1991, Rollo, pp. 92-99.
- [20] Rollo, pp. 77-81.
- [21] Resolution, dated October 15, 1993, Rollo, pp. 84-86.
- [22] Decision, dated March 31, 1995, *supra*.
- [23] Resolution, dated March 12, 1996, Rollo, pp. 58-75.
- [24] *Alejandro vs. Court of Appeals*, G.R. Nos. 84572-73, November 27, 1990, 191 SCRA 700.
- [25] *Pajo vs. Ago*, No. L-15414, June 30, 1960, 108 Phil 905.
- [26] No. L-32255, January 30, 1973, 49 SCRA 212.
- [27] Dated August 29, 1990, Rollo, pp. 285-292.
- [28] Signed by Hearing Officers Alberto P. Atas, Juanito B. Almosa, Jr., and Rolando C. Malabonga.
- [29] See Order dated July 31, 1989, Rollo, pp. 414-415.
- [30] CA-G.R. SP No. 18310 Decision dated August 29, 1990, Rollo, pp. 285-292. Penned by former Associate Justice Jose Campos, Jr.; Associate Justices Oscar M. Herrera and Artemon D. Luna concurred in the decision.
- [31] G.R. No. 84256, 213 SCRA 321, 328-329.

[32] See note 18.

[33] Ilocos Sur Electric Cooperative, Inc., vs. NLRC, G.R. No. 106161, February 1, 1995, 241 SCRA 36.

[34] New York Title and Mortgage Co., vs. Friedman, 276 N.Y.S. 72, 153, Misc. 697.

[35] Araneta vs. Court of Appeals, G.R. No. 95253, July 10, 1992, 211 SCRA 390; Rizal Commercial Banking Corporation vs. IAC and BF Homes, Inc., G.R. No. 74851, September 14, 1992, 213 SCRA 830.

[36] Association of Marine Officers, et al., vs. Laguesma, et al., G.R. No. 107761, December 27, 1994, 239 SCRA 460.

[37] See note 1.

[38] G.R. Nos. 80908 & 80909, May 24, 1989, 173 SCRA 550.

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