

THIRD DIVISION

[G.R. No. 131729, May 19, 1998]

UNION BANK OF THE PHILIPPINES, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, COMMISSIONER FE ELOISA C. GLORIA, ATTY. MANOLITO SOLLER, IN THEIR CAPACITY AS CHAIRPERSON AND MEMBER, RESPECTIVELY, OF THE HEARING PANEL OF THE SECURITIES AND EXCHANGE COMMISSION, EULOGIO O. YUTINGCO, CAROLINE YUTINGCO-YAO, THERESA I. LAO, NIKON INDUSTRIAL CORPORATION, NIKOLITE INDUSTRIAL CORPORATION, THAMES PHILIPPINES, INC., 2000 INDUSTRIES CORPORATION, TRADE HOPE INDUSTRIAL CORPORATION, FIRST UNI-BRANDS FOOD CORPORATION, INTEGRAL STEEL CORPORATION, CLARION PRINTING HOUSE, INC., NIKON PLAZA, INC., NIKON LAND CORPORATION, EYCO PROPERTIES, INC., INTERIM RECEIVERS AMELIA B. CABAL, AS REPRESENTATIVE OF SGV, INOCENCIO R. DEZA, JR., AS REPRESENTATIVE OF PNB, AND FLORENCIO B. ORENDAIN OF EYCO, RESPONDENTS.

D E C I S I O N

ROMERO, J.:

It has been about a year since the Thai baht plummeted to a record low and sparked the downspin of most of Asia's other currencies including our very own peso. The Philippines has not suffered as much from the full impact of the region's worst financial turmoil when most neighboring economies are still sluggishly inching their way towards recovery. Tested economic initiatives often hailed for helping save the country from losing its hard-earned gains cannot hide the fact that some businesses are still going downhill in light of serious liquidity problems resulting from said crisis. Private respondents' present predicament is one such example and from which they now intend to free themselves.

The road to recovery seems elusive though. Private respondent's bid to salvage their collapsing business by seeking suspension of payments – a statutory device allowing distressed debtors to defer payment of their debts – now faces a major hindrance as petitioner challenges their recourse to said remedy.

The records disclose the following antecedent facts:

On September 16, 1997, private respondents EYCO Group of Companies ("EYCO"),^[1] *Eulogio O. Yutingco, Caroline Yutingco-Yao, and Theresa T. Lao* (the "Yutingcos"), all of whom are controlling stockholders of the aforementioned corporations, jointly filed with the SEC a **Petition for the Declaration of Suspension of Payment[s], Formation and Appointment of Rehabilitation Receiver/Committee, Approval of Rehabilitation Plan with Alternative Prayer for Liquidation and Dissolution of Corporations**^[2] alleging, among other things, that, "the present

combined financial condition of the petitioners clearly indicates that their assets are more than enough to pay off the credits” but that due to “factors beyond control and anticipation of the management xxx the inability of the EYCO Group of Companies to meet the obligations as they fall due on the schedule agreed with the [creditors] has now become a stark reality.”^[3] In a footnote to said petition^[4] the Yutingcos justified their inclusion as co-petitioners before the SEC on the ground that they had personally bound themselves to EYCO’s creditor under a J.S.S. Clause (Joint Several Solidary Guaranty).

Upon finding the above petition to be sufficient in form and substance, the SEC Hearing Panel then composed of Manolito S. Soller, George P. Palmares and Rommel G. Olivia issued an **order**^[5] dated September 19, 1997 setting its hearing on October 22, 1997. At the same time, said panel also directed the suspension of all actions, claims and proceedings against private respondents pending before any court, tribunal, office, board and/or commission.

Meanwhile, some of private respondents’ creditor, composed mainly of twenty-two (22) domestic banks (the “consortium”)^[6] including herein petitioner Union Bank of the Philippines,^[7] also convened on September 19, 1997 for the purpose of deciding their options in the event that private respondents invoke the provisions of Presidential Decree No. 902-A, as amended. The minutes^[8] embodying the terms agreed upon by the consortium in said meeting provided, *inter alia*, for the following:

“. . . In response to this, the following were actions agreed upon by all the creditor banks present:

- Hire a lawyer to advise the banks on the legal matters of suspension of payments. Atty. Balgos was engaged to be the legal counsel.
- Form a management committee to represent all the creditor banks. This will be composed of the first seven banks with the highest exposures, namely:

Philippine National Bank
Far East Bank and Trust Co.
Traders Royal Bank
Allied Banking Corporation
Philippine Commercial and International Bank
Bank of Commerce
Westmont Bank

The other creditor Banks will be informed as often as needed.”

Without notifying the members of the consortium, petitioner, however, decided to break away from the group by suing private respondents in the regular courts. These cases are:

Civil Case No. 97-2184 (*Union Bank of the Philippines v. Nikon Industrial Corporation, et al.*) for **Sum of Money with Application for Preliminary Attachment** filed before the Regional Trial Court of Makati, Branch 148, on September 23, 1997;^[9]

Civil Case No. 5360-V-97 (*Union Bank of the Philippines v. Eulogio and Bee Kuan Yutingco, et al.*) for **Annulment, Rescission of Titles/Injunction with prayer for Issuance of Preliminary Mandatory Injunction** filed before the Regional Trial Court of Valenzuela, Branch 172, on September 24, 1997;^[10]

Civil Case No. 66477 (*Union Bank of the Philippines v. Eulogio and Bee Kuan Yutingco, et al.*) for **Annulment, Rescission of Titles/Injunction with prayer for Issuance of Preliminary Mandatory Injunction** filed before the Regional Trial Court of Pasig City, Branch 157, on September 26, 1997;

Civil Case No. 66479 (*Union Bank of the Philippines v. Eulogio and Bee Kuan Yutingco, et al.*) for **Annulment, Rescission of Titles/Injunction with Prayer for Issuance of Preliminary Mandatory Injunction** filed before the Regional Trial Court of Pasig City, Branch 159, on September 24, 1997; and

Civil Case No. 66478 (*Union Bank of the Philippines v. Eulogio and Bee Kuan Yutingco, and Enrique Yao*) for **Annulment, Rescission of Titles/Injunction with prayer for Issuance of Preliminary Mandatory Injunction** filed before the Regional Trial Court of Pasig City, Branch 158, on September 25, 1997.

In the meantime, the SEC issued an order^[11] on October 3, 1997, appointing (a) Amelia B. Cabal of SGV & Co., as common representative; (b) Inoncencio Deza, Jr., of the Philippine National Bank as representative of the creditor-banks; and (c) Atty. Florencio B. Orendain as representative of the EYCO Group and the Yutingcos, to act collectively as interim receivers of the distressed corporations.

Aside from commencing suits in the regular courts, petitioner also vehemently opposed private respondents' petition for suspension of payments in the SEC by filing a **Motion to Dismiss** on October 22, 1997.^[12] It contended that the SEC was bereft of jurisdiction over such petition on the ground that the inclusion of the Yutingcos in the petition "cannot be allowed since the authority and power of the Commission under the (sic) virtue of [the] law applies only to corporations, partnership[s] and other forms of associations, and not to individual petitioners who are not clearly covered by P.D. 902-A as amended". According to petitioner, what should have been applied instead was the provision on suspension of payments under Act No. 1956, otherwise known as the "Insolvency Law," which mandated the filing of the petition in the Regional Trial Court and not in the SEC. Finally, petitioner disputed private respondents' recourse to suspension of payments alleging that the latter prejudiced their creditors by fraudulently disposing of corporate properties within the 30-day period prior to the filing of such petition.

Subsequently, a creditor's meeting was again convened pursuant to SEC's earlier order dated September 19, 1997, wherein the matter of creating a management committee (the "Mancom") was submitted for resolution. Apparently, only petitioner opposed the creation of said Mancom as it filed earlier with the SEC its Motion to Dismiss.

The SEC Hearing Panel composed of Hon. Fe Eloisa C. Gloria and Manolito S. Soller subsequently issued an Omnibus Order^[13] on October 27, 1997, directing this time the creation of the Mancom consisting of seven (7) members; four (4) of whom shall come from the creditor banks, one (1) from the non-bank creditors, one (1) from the petitioners and one (1) to be appointed by the SEC. Moreover, the panel likewise granted an earlier **Urgent Motion for Reconsideration** filed by creditor banks

which sought to annotate the September 19, 1997 suspension order on the titles of the properties of the private respondent corporations. In issuing said order, the panel resolved that the interest of private respondents and their creditors could be best served if such Mancom is created. It is noteworthy, however, that this directive expressly stated that the same was without prejudice to the resolution of petitioner's Motion to Dismiss whose scheduled hearing was set by petitioner itself on October 29, 1997

Aggrieved, petitioner immediately took recourse to the Court of Appeals on October 29, 1997 by filing therewith a **Petition for Certiorari with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction**^[14] under Rule 65 of the 1997 Rules of Civil Procedure. It imputed grave abuse of discretion on the part of the SEC Hearing Panel in precipitately issuing the suspension order dated September 19, 1997 and in prematurely directing the creation of the Mancom prior to the scheduled hearing of its Motion to Dismiss on October 29, 1997. Petitioner lamented that these actions of the panel deprived it of due process by effectively rendering moot and academic its Motion to Dismiss which allegedly presented a prejudicial question to the propriety of creating a Mancom. Furthermore, it insisted that jurisdiction over private respondents' petition properly pertained to the Regional Trial Courts under Act No. 1956 and that, in any event, private respondents were not entitled to suspension of payments since they had already committed fraudulent dispositions of their properties.

Without giving due course to Union Bank's petition, the appellate court issued a resolution^[15] on October 31, 1997 directing private respondents to submit their comment on the petition while temporarily restraining the SEC from appointing the members of Mancom, annotating the suspension orders on the titles of the properties of private respondents, and taking further proceedings with regard to the suspension of payments and/or rehabilitation.

Meanwhile, members of so-called *steering committee* of the consortium composed of the Philippine National Bank, Far East Bank and Trust Company, Allied Bank, Traders Royal Bank, Philippine Commercial International Bank, Bank of Commerce, and Westmont Bank (the "Intervenors") filed with the appellate court an **Urgent Motion for Intervention**^[16] and a **Consolidated Intervention and Counter-Motion for Contempt and for the Imposition of Disciplinary Measures Against Petitioner's Counsel**^[17] both dated November 3, 1997 claiming that they were not impleaded at all by petitioner in its petition before the appellate court when in fact they had actual, material, direct and legal interest in the outcome of said case as owners of at least eighty-five percent (85%) of private respondents' obligations. Moreover, they opposed said petition because of petitioner's ostensible failure to exhaust administrative remedies in the consortium and in the SEC and for being guilty of forum-shopping in the appellate court as its Motion to Dismiss in the SEC was yet to be resolved at the time.

Petitioner, however, countered intervenors' motion in its **Opposition to Urgent Motion for Intervention and Reply to the Comment-in-Intervention**,^[18] vehemently challenging the existence of a consortium, its membership therein, the intervenors' ownership of at least eighty-five percent (85%) of private respondents' obligations and their due representation of the twenty-two (22) creditor banks, the existence of an agreement drawn up during the September 19, 1997 meeting regarding the satisfaction of the individual exposures of the creditor banks, and its

consent to the creation of the Mancom. It also denied intervenors' accusation of forum-shopping and non-exhaustion of administrative remedies on the ground that it was acting with a sense of urgency, the Hearing Panel having already created the Mancom and was about to appoint the members thereof at the same time.

After several exchanges of pleadings between the parties, the Court of Appeals First Division finally rendered its assailed decision^[19] on December 22, 1997, granting intervention of the seven (7) creditor banks named above while dismissing the petition for failure to exhaust administrative remedies and forum-shopping. Nothing in the said decision, however, indicates that the appellate court squarely confronted the issue of jurisdiction raised earlier by petitioner.

Without moving for reconsideration of the appellate court's decision, petitioner elevated the said matter to this Court through a **Petition for Certiorari with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction**^[20] filed on December 29 1997. Petitioner, however, seasonably amended^[21] the same on January 5, 1998.

Upon being notified by petitioner that the SEC Hearing Panel had already appointed members of the proposed Mancom on January 5, 1998,^[22] this Court issued a resolution^[23] on January 6, 1998, granting the **temporary restraining order** (TRO) prayed for in the petition and requiring all the respondents to comment thereon.

Both EYCO and the Yutingcos duly filed their **Comment**^[24] on January 14, 1998 asking the Court to cite petitioner and its counsel for contempt because of deliberate forum shopping, assailing the propriety of the temporary restraining order which we issued, and arguing that Union Bank's petition should be dismissed outright for (1) categorizing it as having been filed both under Rule 45 and Rule 65 of the 1997 Rules of Civil Procedure; (2) failing to move for reconsideration before the Court of Appeals; (3) failing to implead indispensable parties; (4) raising factual allegations of fraud; (5) forum shopping; and (6) failing to exhaust administrative remedies.

On January 27, 1998, the intervenors before the appellate court also came to as through an **Urgent Manifestation**,^[25] seeking the outright dismissal of the petition on grounds of forum-shopping and failure to implead them as indispensable parties which allegedly violated Section 4, Rule 45 of the 1997 Rules of Civil Procedure requiring that the petition should "state the name of the appealing party as the petitioner and the adverse party as respondent."

For their part, the interim receivers who are also impleaded as private respondents in the instant petition, filed their own **Comment**^[26] on January 30, 1998, likewise contending that petitioner failed to exhaust administrative remedies when it leap-frogged to the Court of Appeals and that, in any case, the SEC had jurisdiction to entertain private respondents' petition for suspension of payments.

In response to the respective comments of private respondents and interim receivers, petitioner filed its **Consolidated Reply and Opposition**^[27] on February 5, 1998, reiterating its earlier position that (1) the SEC had no jurisdiction to entertain private respondents' petition for suspension of payments; (2) private respondents are already bankrupt because of the alleged fraudulent disposition they have made and hence, are no longer entitled to the remedy of suspension of