

FIRST DIVISION

[G.R. No. 196637, June 03, 2019]

FAR EAST BANK AND TRUST COMPANY, PETITIONER, V. UNION BANK OF THE PHILIPPINES [NOW SUBSTITUTED BY BAYAN DELINQUENT LOAN RECOVERY 1 (SPV-AMC), INC.], RESPONDENT.

DECISION

GESMUNDO, J.:

This is an appeal by *certiorari* from the November 15, 2010 Decision^[1] and April 19, 2011 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. CV No. 86172 which reversed and set aside the March 22, 2005 and August 26, 2005 Orders^[3] of the Regional Trial Court of Pasig City, Branch 157 (RTC) in Civil Case No. 66477.

Antecedents

On September 16, 1997, the EYCO Group of Companies^[4] (EYCO) and its controlling stockholders, namely Eulogio O. Yutingco, Caroline Yutingco-Yao and Theresa^[5] T. Lao (*the Yutingcos*) filed with the Securities and Exchange Commission (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" (SEC Case No. 09-97-5764).^[6]

On September 19, 1997, a consortium of EYCO's creditors (*Consortium*) composed of 22 domestic banks, including Union Bank of the Philippines (*Union Bank*), convened for the purpose of deciding their options in the event that EYCO and its co-petitioners in SEC Case No. 09-97-5764 would invoke the provisions of Presidential Decree (PD) No. 902-A, as amended. Among the matters agreed upon during said meeting were the engagement of a lawyer to represent the creditors and composition of the management committee from seven banks with the highest exposures.^[7]

However, Union Bank, without notifying the members of the Consortium, decided to break away from the group by suing EYCO and the Yutingcos in the regular courts. Among the several suits commenced by Union Bank was Civil Case No. 66477 (*Union Bank of the Philippines v. Eulogio and Bee Kuan Yutingco, Far East Bank and Trust Company and EYCO Properties*) filed in the RTC of Pasig City, Branch 157 on September 26, 1997.^[8]

In its Complaint,^[9] Union Bank alleged that Spouses Eulogio and Bee Kuan Yutingco (*Spouses Yutingco*) were its debtors by virtue of a Continuing Surety Agreement^[10] dated September 12, 1996 to secure credit accommodations amounting to P110,000,000.00 granted to Nikon Industrial Corporation, Nikolite Industrial

Corporation and 2000 Industries Corporation (collectively known as *NIKON*), which they owned. Upon investigation, Union Bank confirmed that majority of *NIKON*'s assets were used to purchase real estate properties through *EYCO*, purposely to shield *NIKON* from answering for its debts. *EYCO* owned condominium units and parking spaces in Tektite Tower and the Strata 200 Building Condominium Project. On September 15, 1997, these properties were sold to herein petitioner, Far East Bank and Trust Company (*FEBTC*).^[11]

Union Bank claimed that the sale of the properties was fraudulent and done in bad faith to prevent them from being levied upon; in fact, it was made a day before the Spouses Yutingco and *NIKON* filed a petition for suspension of payments with the SEC. The total purchase price for the Strata 200 condominium units was P32,000,000.00, which was grossly inadequate considering that they were situated in a prime area of Pasig City. In furtherance of its conspiracy with the Spouses Yutingco and *NIKON*, *FEBTC* supposedly authorized the purchase of various golf club shares and two more units and parking spaces in the same condominium buildings, assets of *EYCO* and *NIKON* registered in their respective names. It is clear that *EYCO*, in collusion with the Spouses Yutingco and *FEBTC*, intended to transfer all or nearly all of its properties because of its insolvency or great embarrassment financially. *FEBTC*, being a vendee in fraud of creditors, was deemed an implied trustee of the properties and should hold them for the benefit of those who are entitled thereto. Union Bank, as unpaid creditor of the true owner of the property, is entitled to nullify the sale in favor of *FEBTC*.^[12]

SEC Case No. 09-97-5764

On September 19, 1997, an Order^[13] was issued by the SEC enjoining the disposition of the debtor corporations' properties in any manner except in the ordinary course of business and payment outside of legitimate business expenses during the pendency of the proceedings and suspending all actions, claims and proceedings against *EYCO* until further orders from the SEC.

In an Omnibus Order dated October 27, 1997, the SEC Hearing Panel directed the creation of a Management Committee (*MANCOM*).^[14]

Union Bank filed a petition for *certiorari* in the CA (CA-G.R. SP No. 45774) assailing the September 19, 1997 Order declaring the suspension of payments for *EYCO* and directing the creation of the *MANCOM*. Union Bank contended that these issuances were premature and would render the motion to dismiss filed before the RTC, in Civil Case No. 66477, as moot. The steering committee of the Consortium composed of the Philippine National Bank, *FEBTC*, Allied Bank, Traders Royal Bank, Philippine Commercial International Bank, Bank of Commerce and Westmont Bank, were allowed to intervene by the CA. However, in the same decision of the CA, the petition filed by Union Bank was dismissed for failure to exhaust administrative remedies and forum shopping, prompting the latter to seek recourse in this Court (G.R. No. 131729).^[15]

On May 19, 1998, this Court promulgated its Decision in *Union Bank of the Philippines v. Court of Appeals, et al.*^[16] holding that the SEC's jurisdiction on matters of suspension of payments is confined only to those initiated by corporations, partnerships or associations. Consequently, the SEC exceeded its jurisdiction in declaring the Spouses Yutingco together with *EYCO* under suspension

of payments. Nonetheless, based on our previous ruling in *Modern Paper Products, Inc., et al. v. Court of Appeals, et al.*,^[17] the Rules of Court on misjoinder of parties may be applied. Thus, the proper remedy was not to dismiss the entire petition for suspension of payments but to dismiss it only as against the party upon whom the tribunal or court cannot acquire jurisdiction. Accordingly, this Court ordered the SEC "to drop from the petition for suspension of payments filed before it the names of Eulogio O. Yutingco, Caroline Yutingco-Yao and Theresa T. Lao without prejudice to their filing a separate petition in the Regional Trial Court."^[18]

On December 18, 1998, the SEC issued an Order^[19] adopting the Unsolicited Rehabilitation Proposal submitted by Strategies and Alliances Corporation (SAC) which was granted a period of six months within which to complete the groundwork for the effective implementation of the early "all-debt payment plan."

As described by the SEC, the SAC plan proposed to settle and extinguish all financial obligations of EYCO to its creditors, secured and unsecured, amounting to P5.2 Billion - P4 Billion by banks and P1.2 Billion by non-banks. The repayment of principal and interest thereon on stated due dates were guaranteed to be paid in cash by the Republic of the Philippines through the Home Insurance Guaranty Corporation (*HIGC*).

The SEC Order further barred all creditors from pursuing their respective claims until further orders.

The Consortium appealed the December 18, 1998 Order to the SEC *En Banc*. On September 14, 1999, the SEC *En Banc* rendered its Decision^[20] finding the SAC plan not viable and feasible for the rehabilitation of EYCO. Accordingly, the SAC plan and suspension of payment proceedings were ordered terminated, the committees created dissolved and discharged. The SEC further ordered the dissolution and liquidation of the petitioning corporations. Subsequently, a Liquidator was appointed pursuant to the provisions of the Rules of Procedure on Corporate Rehabilitation.^[21]

On October 10, 2000, the SEC issued an Order^[22] directing all creditors claiming against EYCO to file their formal claims with the Liquidator. It likewise declared that all such claims shall be deemed barred if not filed within 30 days after publication of the said order in two newspapers of general circulation in the Philippines.

Due to disagreement on Liquidator's fee, a Liquidation Committee was formed to assume the duties of the Liquidator originally appointed by the SEC. On May 31, 2001, the said committee was dissolved and the SEC finally appointed Atty. Danilo L. Concepcion (*Atty. Concepcion*) as Liquidator pursuant to the provisions of the Rules of Procedure on Corporate Recovery.^[23]

In March 2002, Atty. Concepcion submitted a proposed Liquidation Plan. Finding the said Liquidation Plan meritorious, the SEC approved it on April 11, 2002.^[24]

Motions to Dismiss Civil Case No. 66477

The Spouses Yutingco filed a Motion to Dismiss on the ground of pendency of the proceedings in the SEC which had acquired prior jurisdiction over the subject matter of the case.^[25]

FEBTC also filed a motion to dismiss on the ground of Union Bank's failure to implead NIKON, which are indispensable parties. Accordingly, the court should suspend the trial until such parties are made either as plaintiffs or defendants. Moreover, since the complaint was for rescission of a contract of sale, it should have expressly alleged that Union Bank had no other legal means to collect its credits. Thus, the complaint failed to state a cause of action. There was also no allegation whether the credit accommodations extended by Union Bank were secured or unsecured. More important, Union Bank had no legal personality to sue for the enforcement of the rights and interests of the creditors as this is vested in the rehabilitation receiver. In view of the pending SEC proceedings, Union Bank had an available remedy by participating therein.^[26] In a Manifestation, the Spouses Yutingco adopted the aforesaid arguments of FEBTC.^[27]

In its Opposition,^[28] Union Bank asserted that *litis pendentia* is not applicable in this case as it is not a party to the SEC proceedings for suspension of payments. Also, there is no identity of causes of action since the present case is founded on Union Bank's right to effect retention lien on the properties of EYCO pursuant to the provisions of the continuing surety agreement executed by the Spouses Yutingco. On the matter of jurisdiction, Union Bank contended that the court has the exclusive authority to hear Civil Case No. 66477.

In their Reply to Opposition,^[29] EYCO and Spouses Yutingco reiterated that NIKON are indispensable parties considering that Union Bank claimed that the assets of said corporations were allegedly diverted to purchase real properties "under the name" of EYCO. Union Bank's theory is the true ownership of NIKON of the properties, the same being merely registered under EYCO. NIKON, being the actual sellers, were indispensable parties without whom no final determination of action can be had. Moreover, an action for rescission being subsidiary, cannot be instituted except "when the party suffering damages has no other legal means to obtain reparation of the same." No allegation of unavailability of other remedies was made by Union Bank in its complaint. Lastly, it was reiterated that it was now the SEC appointed interim receiver who was given specific authority to take custody of all assets of the distressed corporations. Hence, Union Bank should bring its claims before the said receiver.

In a Supplemental Motion to Dismiss,^[30] EYCO and Spouses Yutingco averred that Union Bank was guilty of forum shopping and the RTC had no jurisdiction over the subject matter. Union Bank's allegation of fraud was the same claim it made in the motion to dismiss it filed before the SEC. And, not waiting for the SEC to rule on the issue, Union Bank went to the CA in a petition for *certiorari* (CA-G.R. SP No. 45774), in which it again placed in issue the same allegations of fraud raised before the RTC and SEC. Aggravating its act of forum shopping, Union Bank raised the very same issues in the pending civil suits before RTC of Pasig City, Branch Nos. 158 and 159, and RTC of Valenzuela (Civil Case Nos. 66478 and 66479; 5360-V-97). This further shows the other legal remedies being availed of by Union Bank in seeking rescission of the sale of the properties of NIKON. Specifically, Union Bank had a pending collection case before the RTC of Makati City, Branch 148 (Civil Case No. 97-2184). Union Bank knew it could not simultaneously seek rescission and collection, but it did so anyway. Finally, it was emphasized that when PD No. 902-A vested SEC with jurisdiction over petitions for suspension of payments, the law necessarily conferred

exclusive jurisdiction to it over all incidents of the petition, including enforcement of claims.^[31]

RTC Ruling

On March 22, 2005, the RTC issued an Order^[32] granting the motions to dismiss on the ground of *litis pendentia*, as follows:

It cannot be denied that there is a pending action between the same parties over the same transactions involving the same properties before the instant case was filed. Plaintiff as one of the creditors of defendants is a compulsory party in the Petition for Declaration of Suspension of Payments, Formation and Appointment of Rehabilitation Receiver/Committee filed by defendants with the SEC on September 16, 1997 or before the institution of instant case on October 16, 1997. By filing a motion to dismiss the petition, plaintiff made itself a party to the case and voluntarily submitted to the jurisdiction of the SEC. Further, it was conceded that among the properties subject of the order of suspension issued by the SEC are the properties subject of the instant controversy. Indubitably, all the elements of *litis pendentia* are present.

It must also be emphasized that even before the instant case was filed, the SEC has already acquired jurisdiction over the petition for declaration of suspension, which jurisdiction has been sustained by no less than the Supreme Court. In fact, the SEC had issued several directives for the rehabilitation of the petitioning corporations with the end in view of settling their obligations to all their creditors, plaintiff included. The actions taken by the SEC, including the issuance of an order of suspension and the creation of the Management Committee were all well in accord with Sec. 5 of P.D. No. 902-A, as amended.

With the MANCOM having been created by order of the SEC, plaintiff has been deprived of legal personality to impugn through the instant case the disposition of the properties in controversy made by defendant EYCO PROPERTIES, INC., which in the first place is not plaintiff's debtor.

Finally, the finding by the Court of Appeals and sustained by the Supreme Court, that plaintiff was guilty of forum shopping, is binding upon this Court.

WHEREFORE, the motions to dismiss separately filed by defendants Spouses Yutingco and EYCO PROPERTIES, INC[.] and FAR EAST BANK and TRUST COMPANY (FEBTC) are hereby [GRANTED]. This case is **DISMISSED**.

SO ORDERED.^[33] (italics supplied)

Union Bank's motion for reconsideration was likewise denied under the RTC's Order^[34] dated August 26, 2005.

CA Ruling

On appeal to the CA, Union Bank argued that there was no *litis pendentia* as it never submitted itself to the jurisdiction of the SEC and even filed a motion to dismiss SEC