

## THIRD DIVISION

[ G.R. No. 165887, June 06, 2011 ]

**MAJORITY STOCKHOLDERS OF RUBY INDUSTRIAL CORPORATION, PETITIONERS, VS. MIGUEL LIM, IN HIS PERSONAL CAPACITY AS STOCKHOLDER OF RUBY INDUSTRIAL CORPORATION AND REPRESENTING THE MINORITY STOCKHOLDERS OF RUBY INDUSTRIAL CORPORATION AND THE MANAGEMENT COMMITTEE OF RUBY INDUSTRIAL CORPORATION, RESPONDENTS.**

[G.R. NO. 165929 ]

**CHINA BANKING CORPORATION, PETITIONER, VS. MIGUEL LIM, IN HIS PERSONAL CAPACITY AS A STOCKHOLDER OF RUBY INDUSTRIAL CORPORATION AND REPRESENTING THE MINORITY STOCKHOLDERS OF RUBY INDUSTRIAL CORPORATION, RESPONDENTS.**

### D E C I S I O N

**VILLARAMA, JR., J.:**

This case is brought to us on appeal for the *fourth* time, involving the same parties and interests litigating on issues arising from rehabilitation proceedings initiated by Ruby Industrial Corporation wayback in 1983.

Following is the factual backdrop of the present controversy, as culled from the records and facts set forth in the *ponencia* of Chief Justice Reynato S. Puno in *Ruby Industrial Corporation v. Court of Appeals*.<sup>[1]</sup>

#### The Antecedents

Ruby Industrial Corporation (RUBY) is a domestic corporation engaged in glass manufacturing. Reeling from severe liquidity problems beginning in 1980, RUBY filed on December 13, 1983 a petition for suspension of payments with the Securities and Exchange Commission (SEC) docketed as SEC Case No. 2556. On December 20, 1983, the SEC issued an order declaring RUBY under suspension of payments and enjoining the disposition of its properties pending hearing of the petition, except insofar as necessary in its ordinary operations, and making payments outside of the necessary or legitimate expenses of its business.

On August 10, 1984, the SEC Hearing Panel created the management committee (MANCOM) for RUBY, composed of representatives from Allied Leasing and Finance Corporation (ALFC), Philippine Bank of Communications (PBCOM), China Banking Corporation (China Bank), Pilipinas Shell Petroleum Corporation (Pilipinas Shell), and RUBY represented by Mr. Yu Kim Giang. The MANCOM was tasked to perform the

following functions: (1) undertake the management of RUBY; (2) take custody 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.

Subsequently, two (2) rehabilitation plans were submitted to the SEC: the BENHAR/RUBY Rehabilitation Plan of the majority stockholders led by Yu Kim Giang, and the Alternative Plan of the minority stockholders represented by Miguel Lim (Lim).

Under the BENHAR/RUBY Plan, Benhar International, Inc. (BENHAR) -- a domestic corporation engaged in the importation and sale of vehicle spare parts which is wholly owned by the Yu family and headed by Henry Yu, who is also a director and majority stockholder of RUBY -- 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. 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.

The BENHAR/RUBY Plan was opposed by 40% of the stockholders, including Lim, a minority shareholder of RUBY. ALFC, 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.

On the other hand, the Alternative Plan of RUBY's minority stockholders 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.

Both plans were endorsed by the SEC to the MANCOM for evaluation.

On October 28, 1988, the SEC Hearing Panel approved the BENHAR/RUBY Plan. The minority stockholders thru Lim appealed to the SEC *En Banc* which, in its November 15, 1988 Order, enjoined the implementation of the BENHAR/RUBY Plan. On December 20, 1988 after the expiration of the temporary restraining order (TRO), the SEC *En Banc* granted the writ of preliminary injunction against the enforcement of the BENHAR/RUBY Plan. BENHAR, Henry Yu, RUBY and Yu Kim Giang questioned the issuance of the writ in their petition filed in the Court of Appeals (CA), docketed as CA-G.R. SP No. 16798. The CA denied their appeal.<sup>[2]</sup> Upon elevation to this Court (*G.R. No. L-88311*), we issued a minute resolution dated February 28, 1990 denying the petition and upholding the injunction against the implementation of the BENHAR/RUBY Plan.

Meanwhile, BENHAR paid off Far East Bank & Trust Company (FEBTC), one of RUBY's secured creditors. By May 30, 1988, FEBTC had already executed a deed of assignment of credit and mortgage rights in favor of BENHAR. BENHAR likewise paid the other secured creditors who, in turn, assigned their rights in favor of

BENHAR. These acts were done by BENHAR despite the SEC's TRO and injunction *and* even before the SEC Hearing Panel approved the BENHAR/RUBY Plan on October 28, 1988.

ALFC and Miguel 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. They also charged that in paying off FEBTC's credits, FEBTC was given undue preference over the other creditors of RUBY. Acting on the 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. BENHAR and RUBY appealed to the SEC *En Banc* which denied their appeal. BENHAR and RUBY joined by Henry Yu and Yu Kim Giang appealed to the CA (CA-G.R. SP No. 18310). By Decision<sup>[3]</sup> dated August 29, 1990, the CA affirmed the SEC ruling nullifying the deeds of assignment. The CA also declared its decision final and executory as to RUBY and Yu Kim Giang for their failure to file their pleadings within the reglementary period. By Resolution dated August 26, 1991 in *G.R. No. 96675*,<sup>[4]</sup> this Court affirmed the CA's decision.

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 its revised rehabilitation plan to its creditors for comment and approval while 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 percent (90%) 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 (Lim, ALFC and Pilipinas Shell) opposed the Revised BENHAR/RUBY Plan on grounds that: (1) it would legitimize the entry of BENHAR, a total stranger, to RUBY as BENHAR would become the biggest creditor of RUBY; (2) it would put RUBY's assets beyond the reach of the unsecured creditors and the minority stockholders; and (3) it was not approved by RUBY's stockholders in a meeting called for the purpose.

Notwithstanding the objections of 90% of RUBY's creditors and three members of the MANCOM, the SEC Hearing Panel approved on September 18, 1991 the Revised BENHAR/RUBY Plan and dissolved the existing management committee. It also created a new management committee and appointed BENHAR as one of its members. In addition to the powers originally conferred to the management committee under Presidential Decree (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.

The original management committee (MANCOM), Lim and ALFC appealed to the SEC *En Banc* which affirmed the approval of the Revised BENHAR/RUBY Plan and the creation of a new management committee on July 30, 1993. To ensure that the management of RUBY will not be controlled by any group, 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.

Lim, ALFC and MANCOM moved for reconsideration while RUBY and BENHAR 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 the motion of Lim, ALFC and the original management committee but granted RUBY and BENHAR's 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. Lim, ALFC and MANCOM appealed to the CA (CA-G.R. SP Nos. 32404, 32469 & 32483) which by Decision [5] dated March 31, 1995 set aside the SEC's approval of the Revised BENHAR/RUBY Plan and remanded the case to the SEC for further proceedings. The CA 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. Since 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, such payments made by BENHAR under the void Deeds of Assignment, in effect were recognized as payable to BENHAR under the revised plan. The motion for reconsideration filed by BENHAR and RUBY was likewise denied by the CA. [6]

Undaunted, RUBY and BENHAR filed a petition for review in this Court (G.R. Nos. 124185-87 entitled *Ruby Industrial Corporation v. Court of Appeals*) alleging that the CA gravely abused its discretion in substituting its judgment for that of the SEC, and in allowing Lim, ALFC and MANCOM to file separate petitions prepared by lawyers representing themselves as belonging to different firms. By Decision [7] dated January 20, 1998, we sustained the CA's ruling that the Revised BENHAR/RUBY Plan contained provisions which circumvented its final decision 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 the said CA's decision. We thus held:

...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.

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These orders were upheld by the SEC *en banc* and the Court of Appeals.

In CA-G.R. SP No. 18310, the Court of Appeals ruled as follows:

"x x x   x x x   x x x

"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 Assignment, 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 Sec. 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*