

SECOND DIVISION

[G.R. NO. 147923, October 26, 2007]

**JIMMY T. GO, PETITIONER, VS. ALBERTO T. LOOYUKO,
RESPONDENT.**

G.R. NO. 147962

**JIMMY T. GO, PETITIONER, VS. ALBERTO T. LOOYUKO AND
COURT OF APPEALS RESPONDENTS.**

G.R. NO. 154035

**JIMMY T. GO, PETITIONER, VS. ALBERTO T. LOOYUKO,
RESPONDENT.**

D E C I S I O N

VELASCO, JR., J.:

The Case

Before us are three (3) petitions. The first,^[1] G.R. No. 147962, is for certiorari under Rule 65. It assails the February 12, 2001 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 62438, which granted a Writ of Preliminary Injunction in favor of respondent Looyuko restraining the Orders of the Pasig City Regional Trial Court (RTC), Branch 69, from enforcing the Orders dated September 25, 2000,^[3] December 19, 2000,^[4] and December 29, 2000^[5] in Civil Case No. 67921 entitled *Jimmy T. Go v. Alberto T. Looyuko* for Specific Performance, Accounting, Inventory of Assets and Damages; also questioned is the April 24, 2001 CA Resolution^[6] which rejected petitioner's plea for reconsideration.

G.R. No. 147923^[7] assails the September 11, 2000 CA Decision^[8] in CA-G.R. SP No. 58639, which upheld the December 16, 1999^[9] Makati City RTC Order denying the requested inhibition of RTC Judge Nemesio Felix (now retired) and the March 8, 2000 Order^[10] which denied the recall of the December 16, 1999 Order and which likewise required the prosecution to make a formal offer of evidence. Also challenged is the March 27, 2001 CA Resolution^[11] denying petitioner's Motion for Reconsideration.

The third, **G.R. No. 154035**,^[12] assails the January 31, 2002 CA Decision^[13] in CA-G.R. SP No. 62296, which affirmed the Makati City RTC May 9, 2000 Order^[14] in Criminal Case No. 98-1643, denying petitioner's prayer to defer submission of the formal offer of evidence and at the same time granting leave to respondent to file demurrer to evidence, and the September 22, 2000 Order^[15] denying

reconsideration of the May 9, 2000 Order. Likewise challenged is the June 3, 2002 CA Resolution^[16] of the CA disallowing petitioner's Motion for Reconsideration.

The second, G.R. No. 147923, and third, G.R. No. 154035, petitions under Rule 45 of the Rules of Court arose from Criminal Case No. 98-1643 entitled *People of the Philippines v. Alberto T. Looyuko for Estafa* under Article 315, paragraph 1 (b) of the Revised Penal Code before the Makati City RTC, Branch 56.

In **G.R. No. 154035**, we consolidated the three petitions having originated from the same criminal case involving the same parties with interrelated issues. Although the latter petition raises the issue of the existence of a business partnership and propriety of the conduct of the inventory of assets and properties of Noah's Ark Sugar Refinery in Civil Case No. 67921, all the foregoing actions trace their beginnings from the same factual milieu.^[17]

The Facts

Petitioner Go and respondent Looyuko were business associates. Respondent is the registered owner of Noah's Ark Merchandising, a sole proprietorship, which includes Noah's Ark International, Noah's Ark Sugar Carriers, Noah's Ark Sugar Truckers, Noah's Ark Sugar Repacker, Noah's Ark Sugar Insurers, Noah's Ark Sugar Terminal, Noah's Ark Sugar Building and the land on which the building stood, and Noah's Ark Sugar Refinery, and the plant/building/machinery in the compound and the land on which the refinery is situated. These businesses are collectively known as the Noah's Ark Group of Companies. Go was the business manager or chief operating officer of the group of companies.

Sometime in 1997, the business associates had a falling out that spawned numerous civil lawsuits. Among these actions are Civil Case No. 67921 and Criminal Case No. 98-1643 from which arose several incidents which eventually became subject of these consolidated petitions.

Criminal Case No. 98-1643

On May 21, 1998, petitioner filed *People of the Philippines v. Alberto T. Looyuko*, an Affidavit Complaint^[18] before the Makati City RTC, Branch 56, charging respondent with *Estafa* under Article 315, paragraph 1 (b) of the Revised Penal Code. The case was docketed as Criminal Case No. 98-1643. Petitioner alleged that respondent misappropriated and converted in his name petitioner's 41,376 China Banking Corporation (CBC) shares of stock. Petitioner averred that he entrusted the stock certificates to respondent for the latter to sell. The Information reads:

That sometime during the month of May, 1997 or prior thereto, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, received in trust from complainant Jimmy T. Go China Banking Corporation stock certificates numbers 25447, 25449, 25450, 26481, 28418, 30916, 32501, 34697 and 36713 representing the 41,376 shares of stocks of the complainant with China Banking Corporation, with a market value of P1,400.00 per share, more or less, with the obligation on the part of the accused to sell the same and remit the proceeds thereof to the complainant, but the accused, once

in possession of said stock certificates, far from complying with his aforesaid obligation, with intent to gain and abuse of confidence, did then and there willfully, unlawfully and feloniously misappropriated, misapply and convert the said shares of stocks to his own personal benefit by causing the transfer of said stock certificates to his name considering that the same were endorsed in blank by the complainant out of the latter's trust to the accused, and the accused never paid the market value of said shares of stocks, which is P1,400.00 per share, more or less, or a total market value of P57,926,400.00 for the 41,376 shares of stocks, to the damage and prejudice of the complainant in the amount of P7,926,400.00.

CONTRARY TO LAW.^[19]

After respondent pleaded "Not Guilty," and after the testimonies of the prosecution witnesses among them, Go and Amalia de Leon, an employee of CBC, who testified that certificates of stocks in Go's name were cancelled and new certificates were issued in Looyuko's name. Earlier, *subpoena ad testificandum* and *subpoena duces tecum* were issued to Peter Dee, President of CBC, Atty. Arsenio Lim, Corporate Secretary of CBC, and Gloria Padecio. The trial court also felt no need for the testimonies of Dee, Lim, and Padecio and ordered the prosecution to offer its evidence.

Petitioner filed a Motion for Reconsideration and asked that the prosecution be allowed to present its last witness from Amsteel Securities, Inc., Bohn Bernard J. Briones. The RTC granted the motion. However, at the conclusion of Briones' testimony, the prosecution moved to subpoena Alvin Padecio which was vehemently objected to by the defense. The trial court denied the motion. The prosecution thereafter opted to ask for ten (10) days to formally offer its documentary evidence. The trial court granted the request.

Instead of filing its formal offer of evidence, the prosecution filed an Urgent Motion for Reconsideration,^[20] then a Supplemental Motion with Manifestation, and a Second Supplemental Motion with Manifestation,^[21] all praying that the testimony of Alvin Padecio be allowed.

For his part, respondent filed a Motion to Declare the Prosecution as Having Waived its Right to Make a Formal Offer of Evidence.^[22] Hence, petitioner filed an Omnibus Motion to Withdraw the Urgent Motion for Reconsideration with Motion for Inhibition.^[23]

On December 16, 1999, the trial court denied petitioner's motion for inhibition;^[24] petitioner's motion to declare the prosecution to have waived its right to file formal offer of evidence; and gave the prosecution a last chance to submit its formal offer of documentary evidence within ten (10) days from notice.^[25]

Petitioner moved to defer compliance with the submission of its formal offer of documentary evidence pending petitioner's motion for reconsideration of the trial court's December 16, 1999 Order denying petitioner's motion for inhibition.^[26] The RTC denied petitioner's motion and granted the prosecution a last opportunity to

submit its formal offer of documentary evidence within five (5) days from notice.^[27]

Frustrated, petitioner adamantly reiterated his motion for inhibition in a Manifestation/Motion^[28] praying that the trial court reconsider its Order directing the prosecution to formally offer its documentary evidence in deference to the petition for certiorari it intends to file with the CA, where it would assail the December 16, 1999 and March 8, 2000 Orders denying the inhibition of the judge.

Subsequently, petitioner filed a Petition for Certiorari^[29] under Rule 65 before the CA. It again sought the reversal of the orders denying his motion for inhibition. The petition was docketed as CA-G.R. SP No. 58639.

Meanwhile, before the RTC hearing the criminal case, respondent filed an Omnibus Motion^[30] dated March 20, 2000 to declare petitioner to have rested his case on the basis of the prosecution's testimonial evidence and to grant respondent leave to file his demurrer to evidence. The RTC denied the Omnibus Motion. Petitioner timely filed a Motion for Reconsideration/Manifestation, which was denied. Respondent filed his demurrer to evidence incorporating in it his offer of evidence.

Petitioner filed another petition for certiorari before the CA, docketed as CA-G.R. SP No. 62296. It sought to reverse the orders of the trial court declaring petitioner to have waived his right to formally offer his documentary evidence and allowing respondent to file a demurrer to evidence.

While these motions were being considered by the trial court, petitioner filed an administrative case docketed as OCA I.P.I. No. 00-971-RTJ against the trial court Presiding Judge Nemesio S. Felix. It charged Judge Felix with *Partiality*, relative to Criminal Case No. 98-1643.

Citing the administrative case he filed against Judge Felix, petitioner filed a Second Motion for Voluntary Inhibition^[31] before the trial court. The trial court denied the second motion.^[32] His Motion for Reconsideration was opposed^[33] by respondent.

Civil Case No. 67921

Meanwhile, during the pendency of Crim. Case No. 98-1643, on May 23, 2000, petitioner filed a Complaint^[34] docketed as Civil Case No. 67921 entitled *Jimmy T. Go v. Alberto T. Looyuko* for Specific Performance, Accounting, Inventory of Assets and Damages against respondent before the Pasig City RTC. Petitioner claimed that in two (2) Agreements executed on February 9, 1982^[35] and October 10, 1986,^[36] respondent and petitioner agreed to have their venture registered with the Department of Trade and Industry (DTI) in the name of Looyuko as sole proprietor, and both agreed to be equally entitled to 50% of the business, goodwill, profits, and real and personal properties owned by the group of companies. Petitioner alleged that respondent had committed and continued to commit insidious acts to oust him from the ownership of half of the assets of the firms under Noah's Ark Group of Companies in breach of their agreements. Thus, petitioner's action for specific performance, accounting, and inventory of assets and damages was instituted against respondent.

Respondent filed a motion to dismiss on the grounds of forum shopping, *litis pendentia*, and abandonment or laches. The motion to dismiss was denied.^[37] The trial court likewise denied respondent's Motion for Reconsideration.^[38] The trial court nevertheless granted petitioner's motion to conduct an inventory of the assets of the group of companies but under the direct supervision and control of the Branch Clerk of Court.^[39]

On January 2, 2001, respondent filed before the CA a Petition for Certiorari^[40] with application for a temporary restraining order (TRO) and preliminary injunction assailing the trial court's orders denying respondent's motion to dismiss and grant of the motion of petitioner to conduct an inventory.

Respondent also filed a Manifestation and Motion for Reconsideration of the grant of the motion to inventory before the trial court. Therein, respondent informed the trial court of his intention to elevate the denial of his motion to dismiss before the CA, praying that no further proceedings be conducted in view thereof. Apparently, respondent's petition for certiorari before the CA did not mention the fact of the Manifestation and Motion for Reconsideration filed and pending before the trial court.

After filing the petition for certiorari, respondent filed an Urgent *Ex-Parte* Motion to Admit Additional Annexes to Petition.^[41] In the meantime, on January 5, 2001, the inventory of assets in the Noah's Ark Sugar Refinery was completed.

Three days after the CA issued a Resolution^[42] enjoining the trial court from enforcing its orders denying the motion to dismiss and grant of motion to inventory, it set the hearing for the application of the injunctive writ on January 29, 2001.

On February 9, 2001, petitioner filed his opposition^[43] to respondent's urgent motion to admit additional annexes to petition which was replied^[44] by respondent with additional annexes appended thereto.

The Ruling of the Court of Appeals in CA-G.R. SP No. 58639 (Criminal Case No. 98-1643)

On September 11, 2000, the CA rendered the assailed Decision dismissing the petition.

The CA explained that the petition was initiated solely by petitioner and was dismissible for it did not implead nor have the participation of the Office of the Solicitor General. And, on the merits, the appellate court ruled that the voluntary inhibition prayed by petitioner had no legal and factual basis. The appellate court found that three (3) alleged grounds of partiality raised by petitioner were not badges of partiality.

The appellate court ruled that the denial of the testimony of three (3) witnesses and that of Alvin Padecio was an exercise of sound discretion by the judge. Besides, the CA added, Alvin Padecio, son of respondent, was entitled to the testimonial privilege set forth in Section 25,^[45] Rule 130 of the Rules of Court. Moreover, the appellate court found baseless the other two (2) grounds of partiality. *In fine*, the CA held that