

## THIRD DIVISION

[ G. R. No. 144282, June 08, 2004 ]

**SK REALTY, INC., BAN HUA U. FLORES, LEONARDO U. FLORES, LILY UY, LILIAN UY, LILEN UY, BAN HA U. CHUA, STEPHANIE U. CHUA, MELODY U. CHUA AND GLORIA U. CHAN, PETITIONERS, VS. JOHNNY KH UY AND UBS MARKETING CORPORATION, RESPONDENTS.**

### D E C I S I O N

**SANDOVAL-GUTIERREZ, J.:**

Before us is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision<sup>[1]</sup> dated January 14, 2000 and Resolution<sup>[2]</sup> dated June 30, 2000 of the Court of Appeals in CA-G.R. CV No. 57171, entitled "*Johnny K. H. Uy and UBS Marketing Corporation vs. SK Realty, Inc., Ban Hua U. Flores, Leonardo U. Flores, Gloria U. Chan, Lily Uy, Lilian Uy, Lilen Uy, Ban Ha Chua, Stephanie Chua, Melody Chua, Wee Kiat Y. Tan, Theresa Regalado and Yolanda Kilayko.*"

The factual antecedents as borne by the records are:

The above-named petitioners and respondent Johnny KH Uy are members of the Uy family of Bacolod City and interlocking stockholders and/or officers of UBS Marketing Corporation and Soon Kee Commercial, Inc.

Subsequently, the parties had a serious disagreement and conflict on the operation and management of their businesses and properties. Thus, during conciliation meetings before the Board of Mediators, both parties, on June 5, 1987, executed several deeds of assignment wherein respondent Johnny KH Uy and his wife assigned all their stockholdings in Soon Kee Commercial, Inc. to petitioners in exchange for the latter's stockholdings in UBS Marketing Corporation. The parties then obligated themselves to render a complete accounting of their respective businesses. They also agreed that eight (8) parcels of land (covered by Transfer Certificates of Title (TCT) Nos. T-141057 to T-141064) situated at Bacolod City, owned by respondents Johnny KH Uy and UBS Marketing Corporation, shall be transferred to petitioners in exchange for their thirteen (13) parcels of land in Quezon City, Caloocan City and Baguio City.

On July 1, 1987, the parties formalized the division of their businesses and the other terms of their settlement.

However, respondent Johnny KH Uy claimed that petitioners reneged in their obligation to render an accounting and turn over corporate records, books and properties of UBS Marketing Corporation, and that petitioners formed and incorporated SK Realty, Inc. and simulated the transfer to it of eight (8) parcels of

land (earlier mentioned) through a Deed of Absolute Sale dated July 2, 1987.

Thus, on April 6, 1988, respondent filed with the Securities and Exchange Commission (SEC) a complaint for the recovery of UBS Marketing Corporation's corporate books and records, books of accounts, funds and properties; and for an accounting, docketed as SEC Case No. 3328. Impleaded as respondents therein were Ban Hua Uy-Flores, Ban Ha Uy-Chua (two of herein petitioners), Roland King and Soon Kee Commercial, Inc.

In due course, the SEC Hearing Officer rendered a Decision dated May 3, 1995 in favor of respondents Johnny KH Uy and UBS Marketing Corporation. The dispositive portion of the Decision reads:

"WHEREFORE, considering the foregoing, judgment is hereby rendered as follows:

1. Commanding the respondents (**petitioners herein**) to produce and immediately turn over to petitioners (respondents Johnny KH Uy and UBS Marketing Corporation) the Books of Account of Soon Kee Commercial, Inc. and UBS Marketing Corporation from 1981 to 1987.
2. Commanding the respondents to immediately render a full and complete accounting of all the assets, properties and moneys and the receivables for both Soon Kee (from 1981 to 1991) and UBS (from 1981 to 1987) respectively.
3. Commanding the respondents to pay the petitioners ten percent (10%) of the entire actual income (from 1988 to 1993) of Soon Kee Commercial, Inc. in the amount of P13 Million as damages.
4. To grant and pay petitioners the amount of P48 Million equivalent to 31.183 percent of the actual income from 1981 to 1987.
5. **Canceling and annulling the Transfer Certificates of Title in the name of Soon Kee Commercial, Inc., if any, the Certificates of Title in the name of SK Realty, Inc., if any, and the Certificates of Title in the name of New Challenge Resources, Inc., if still there is, and all the properties formerly belonging to and in the name of UBS, presently totaling (8) lots covered by TCT No. T-141057, TCT No. T-141058, TCT No. T-141059, TCT No. T-141060, TCT No. T-141061, TCT No. T-141062, TCT No. T-141063, TCT No. T-141064, and reverting them back to UBS Marketing Corporation.**
6. Ordering the respondents to return and/or execute the Deed of Conveyance of all the properties in the name of Soon Kee Commercial, Inc., SK Realty, Inc., New Challenge Resources, Inc. which was previously in the name of UBS in favor of the latter/Johnny KH Uy.

7. Ordering the respondents to pay the separation pay of Johnny KH Uy plus interest amounting to P946,455.31.
8. Ordering the respondents to return/pay the petitioners contingency fund representing 31.183% of P3M plus interest in the amount of P1,957,280.86.
9. Ordering the respondents to turn over to the petitioners the Nissan or Isuzu Truck in good condition or the value thereof in the amount of P500,000.00.
10. Ordering respondent Ban Hua Flores to return to petitioner Johnny KH Uy the Hong Kong property in Northpoint Metropole Flat 1121 previously owned by Johnny KH Uy.
11. Ordering respondents to pay P600,000.00 as attorney's fees.
12. Making the Writ of Preliminary Mandatory Injunction permanent.

SO ORDERED.”

Upon appeal, the **SEC En Banc**, in an Order dated December 21, 1995,<sup>[3]</sup> set aside the Hearing Officer's Decision. Hence, respondents filed with the Court of Appeals a petition for certiorari, docketed as CA-G.R. SP No. 41198. In its Decision dated August 21, 1997, the Appellate Court **affirmed the Order of the SEC En Banc**, prompting respondents to file with this Court, on October 10, 1997, a petition for review on certiorari, docketed as G.R. No. 130328, which is still pending resolution.

On September 18, 1995, while the case was pending in the SEC En Banc, respondents filed with the Regional Trial Court (RTC), Branch 43, Bacolod City, a complaint for reconveyance of properties and cancellation of titles of the same eight (8) parcels of land, damages and accounting against petitioners, docketed as Civil Case No. 95-9051. Respondents also filed with the Office of the Register of Deeds a notice of *lis pendens*.

Immediately, petitioners filed a motion to dismiss the complaint on the following grounds: (1) the cause of action has prescribed or is barred by the statute of limitations; (2) the claim has been waived or abandoned; (3) failure of respondents to attach to their complaint an actionable document; (4) *litis pendentia*; and (5) forum shopping.

On November 9, 1995, the trial court promulgated a Resolution **dismissing the complaint for forum shopping**. And in an Order dated December 8, 1995, the trial court **granted petitioners' motion to cancel the notice of *lis pendens***. Respondents then filed an urgent motion to recall the Order but was denied.

On appeal, the Court of Appeals, in a Decision dated January 14, 2000, reversed and set aside the trial court's assailed Resolution dismissing the complaint on the ground of forum-shopping and the Orders canceling the notice of *lis pendens*, thus:

“Premised on all the foregoing –

(a) The Resolution dated November 9, 1995, and Orders dated December 8, 1995 (canceling the notice of *lis pendens*) and January 4, 1996, all issued in Civil Case No. 95-9051 of the Regional Trial Court of Negros Occidental, Bacolod City, are hereby reversed and set aside.

(b) The appellants' notice of *lis pendens* dated September 18, 1995 filed before the Register of Deeds, Bacolod City, is allowed to remain in full force and effect.

(c) The Regional Trial Court of Negros Occidental, Bacolod City, is hereby ordered to admit appellants' complaint therein; after appropriate proceedings, to conduct a trial on the merits and thereafter decide the aforesaid case.

No costs.

SO ORDERED."

The Appellate Court, in holding that respondents did not violate the rule against forum-shopping, emphasized that SEC Case No. 3328 and Civil Case No. 95-9051 involve different parties and raise distinct causes of action.

From the said Decision, petitioners filed a motion for reconsideration but was denied.

Hence, this petition for review on certiorari. Petitioners contend that the Court of Appeals erred (1) in declaring that respondents have not violated the rule against forum-shopping; and (2) in not ordering the cancellation of the notice of *lis pendens*.

The decisive issue posed by petitioners is whether respondents' filing of the complaint for reconveyance of properties, cancellation of titles (TCT Nos. T-141057 to T-141064), damages and accounting, docketed as Civil Case No. 95-9051 in the RTC, Branch 43, Bacolod City, constitutes forum-shopping. It bears stressing that prior to the filing of this civil case, the same respondents filed with the SEC a complaint against petitioners for recovery of the same parcels of lands, books of accounts and funds. This SEC case finally reached this Court as G.R. No. 130328 now pending resolution.

This very issue has been resolved by this Court in Adm. Case No. 4500,<sup>[4]</sup> entitled "*Ban Hua U. Flores vs. Atty. Enrique S. Chua*," wherein respondent was declared guilty, among others, of forum-shopping and ordered disbarred from the practice of law. In our *Per Curiam* Decision, we sustained not only the charges of falsification, forgery of a deed of sale, and unprofessional conduct against him, but also of forum-shopping. He was the former counsel of the respondents in the instant case. Although he knew that his clients had filed SEC Case No. 3328 for recovery of corporate books, funds and properties, he still filed Civil Case No. 95-9051 for reconveyance of the same properties and cancellation of titles against petitioners. We adopted the finding of the IBP Investigating Commissioner that he (Atty. Chua) is guilty of forum-shopping, thus: