

## **SPECIAL SECOND DIVISION**

**[ G.R. No. 144476, April 08, 2003 ]**

**ONG YONG, JUANITA TAN ONG, WILSON T. ONG, ANNA L. ONG, WILLIAM T. ONG, WILLIE T. ONG, AND JULIE ONG ALONZO, PETITIONERS, VS. DAVID S. TIU, CELY Y. TIU, MOLY YU GAW, BELEN SEE YU, D. TERENCE Y. TIU, JOHN YU, LOURDES C. TIU, INTRALAND RESOURCES DEVELOPMENT CORP., MASAGANA TELAMART, INC., REGISTER OF DEEDS OF PASAY CITY, AND THE SECURITIES AND EXCHANGE COMMISSION, RESPONDENTS.**

**[G.R. NO. 144629]**

**DAVID S. TIU, CELY Y. TIU, MOLY YU GAW, BELEN SEE YU, D. TERENCE Y. TIU, JOHN YU, LOURDES C. TIU, AND INTRALAND RESOURCES DEVELOPMENT CORP., PETITIONERS, VS. ONG YONG, JUANITA TAN ONG, WILSON T. ONG, ANNA L. ONG, WILLIAM T. ONG, WILLIE T. ONG, AND JULIA ONG ALONZO, RESPONDENTS.**

### **R E S O L U T I O N**

#### **CORONA, J.:**

Before us are the (1) motion for reconsideration, dated March 15, 2002, of petitioner movants Ong Yong, Juanita Tan Ong, Wilson Ong, Anna Ong, William Ong, Willie Ong and Julia Ong Alonzo (the Ongs); (2) motion for partial reconsideration, dated March 15, 2002, of petitioner movant Willie Ong seeking a reversal of this Court's Decision,<sup>[1]</sup> dated February 1, 2002, in G.R. Nos. 144476 and 144629 affirming with modification the decision<sup>[2]</sup> of the Court of Appeals, dated October 5, 1999, which in turn upheld, likewise with modification, the decision of the SEC *en banc*, dated September 11, 1998; and (3) motion for issuance of writ of execution of petitioners David S. Tiu, Cely Y. Tiu, Moly Yu Gow, Belen See Yu, D. Terence Y. Tiu, John Yu and Lourdes C. Tiu (the Tius) of our February 1, 2002 Decision.

A brief recapitulation of the facts shows that:

In 1994, the construction of the Masagana Citimall in Pasay City was threatened with stoppage and incompleteness when its owner, the First Landlink Asia Development Corporation (FLADC), which was owned by the Tius, encountered dire financial difficulties. It was heavily indebted to the Philippine National Bank (PNB) for P190 million. To stave off foreclosure of the mortgage on the two lots where the mall was being built, the Tius invited Ong Yong, Juanita Tan Ong, Wilson T. Ong, Anna L. Ong, William T. Ong and Julia Ong Alonzo (the Ongs), to invest in FLADC. Under the Pre-Subscription Agreement they entered into, the Ongs and the Tius agreed to maintain equal shareholdings in FLADC: the Ongs were to subscribe to 1,000,000 shares at a par value of P100.00 each while the Tius were to subscribe to an additional 549,800

shares at P100.00 each in addition to their already existing subscription of 450,200 shares. Furthermore, they agreed that the Tius were entitled to nominate the Vice-President and the Treasurer plus five directors while the Ongs were entitled to nominate the President, the Secretary and six directors (including the chairman) to the board of directors of FLADC. Moreover, the Ongs were given the right to manage and operate the mall.

Accordingly, the Ongs paid P100 million in cash for their subscription to 1,000,000 shares of stock while the Tius committed to contribute to FLADC a four-storey building and two parcels of land respectively valued at P20 million (for 200,000 shares), P30 million (for 300,000 shares) and P49.8 million (for 49,800 shares) to cover their additional 549,800 stock subscription therein. The Ongs paid in another P70 million<sup>[3]</sup> to FLADC and P20 million to the Tius over and above their P100 million investment, the total sum of which (P190 million) was used to settle the P190 million mortgage indebtedness of FLADC to PNB.

The business harmony between the Ongs and the Tius in FLADC, however, was shortlived because the Tius, on February 23, 1996, rescinded the Pre-Subscription Agreement. The Tius accused the Ongs of (1) refusing to credit to them the FLADC shares covering their real property contributions; (2) preventing David S. Tiu and Cely Y. Tiu from assuming the positions of and performing their duties as Vice-President and Treasurer, respectively, and (3) refusing to give them the office spaces agreed upon.

According to the Tius, the agreement was for David S. Tiu and Cely S. Tiu to assume the positions and perform the duties of Vice-President and Treasurer, respectively, but the Ongs prevented them from doing so. Furthermore, the Ongs refused to provide them the space for their executive offices as Vice-President and Treasurer. Finally, and most serious of all, the Ongs refused to give them the shares corresponding to their property contributions of a four-story building, a 1,902.30 square-meter lot and a 151 square-meter lot. Hence, they felt they were justified in setting aside their Pre-Subscription Agreement with the Ongs who allegedly refused to comply with their undertakings.

In their defense, the Ongs said that David S. Tiu and Cely Y. Tiu had in fact assumed the positions of Vice-President and Treasurer of FLADC but that it was they who refused to comply with the corporate duties assigned to them. It was the contention of the Ongs that they wanted the Tius to sign the checks of the corporation and undertake their management duties but that the Tius shied away from helping them manage the corporation. On the issue of office space, the Ongs pointed out that the Tius did in fact already have existing executive offices in the mall since they owned it 100% before the Ongs came in. What the Tius really wanted were new offices which were anyway subsequently provided to them. On the most important issue of their alleged failure to credit the Tius with the FLADC shares commensurate to the Tius' property contributions, the Ongs asserted that, although the Tius executed a deed of assignment for the 1,902.30 square-meter lot in favor of FLADC, they (the Tius) refused to pay P 570,690 for capital gains tax and documentary stamp tax. Without the payment thereof, the SEC would not approve the valuation of the Tius' property contribution (as opposed to cash contribution). This, in turn, would make it impossible to secure a new Transfer Certificate of Title (TCT) over the property in FLADC's name. In any event, it was easy for the Tius to simply pay the said transfer taxes and, after the new TCT was issued in FLADC's name, they could then be given

the corresponding shares of stocks. On the 151 square-meter property, the Tius never executed a deed of assignment in favor of FLADC. The Tius initially claimed that they could not as yet surrender the TCT because it was "still being reconstituted" by the Lichaucos from whom the Tius bought it. The Ongs later on discovered that FLADC had in reality owned the property all along, even before their Pre-Subscription Agreement was executed in 1994. This meant that the 151 square-meter property was at that time already the corporate property of FLADC for which the Tius were not entitled to the issuance of new shares of stock.

The controversy finally came to a head when this case was commenced<sup>[4]</sup> by the Tius on February 27, 1996 at the Securities and Exchange Commission (SEC), seeking confirmation of their rescission of the Pre-Subscription Agreement. After hearing, the SEC, through then Hearing Officer Rolando G. Andaya, Jr., issued a decision on May 19, 1997 confirming the rescission sought by the Tius, as follows:

WHEREFORE, judgment is hereby rendered confirming the rescission of the Pre-Subscription Agreement, and consequently ordering:

- (a) The cancellation of the 1,000,000 shares subscription of the individual defendants in FLADC;
- (b) FLADC to pay the amount of P170,000,000.00 to the individual defendants representing the return of their contribution for 1,000,000 shares of FLADC;
- (c) The plaintiffs to submit with (sic) the Securities and Exchange Commission amended articles of incorporation of FLADC to conform with this decision;
- (d) The defendants to surrender to the plaintiffs TCT Nos. 132493, 132494, 134066 (formerly 15587), 135325 and 134204 and any other title or deed in the name of FLADC, failing in which said titles are declared void;
- (e) The Register of Deeds to issue new certificates of titles in favor of the plaintiffs and to cancel the annotation of the Pre-Subscription Agreement dated 15 August 1994 on TCT No. 134066 (formerly 15587);
- (f) The individual defendants, individually and collectively, their agents and representatives, to desist from exercising or performing any and all acts pertaining to stockholder, director or officer of FLADC or in any manner intervene in the management and affairs of FLADC;
- (g) The individual defendants, jointly and severally, to return to FLADC interest payment in the amount of P8,866,669.00 and all interest payments as well as any payments on principal received from the P70,000,000.00 inexistent loan, plus the legal rate of interest thereon from the date of their receipt of such payment until fully paid;
- (h) The plaintiff David Tiu to pay individual defendants the sum of P20,000,000.00 representing his loan from said defendants

plus legal interest from the date of receipt of such amount.

SO ORDERED.<sup>[5]</sup>

On motion of both parties, the above decision was partially reconsidered but only insofar as the Ongs' P70 million was declared not as a premium on capital stock but an advance (loan) by the Ongs to FLADC and that the imposition of interest on it was correct.<sup>[6]</sup>

Both parties appealed<sup>[7]</sup> to the SEC *en banc* which rendered a decision on September 11, 1998, affirming the May 19, 1997 decision of the Hearing Officer. The SEC *en banc* confirmed the rescission of the Pre-Subscription Agreement but reverted to classifying the P70 million paid by the Ongs as premium on capital and not as a loan or advance to FLADC, hence, not entitled to earn interest.<sup>[8]</sup>

On appeal, the Court of Appeals (CA) rendered a decision on October 5, 1999, thus:

WHEREFORE, the Order dated September 11, 1998 issued by the Securities and Exchange Commission En Banc in SEC AC CASE NOS. 598 and 601 confirming the rescission of the Pre-Subscription Agreement dated August 15, 1994 is hereby AFFIRMED, subject to the following MODIFICATIONS:

1. The Ong and Tiu Groups are ordered to liquidate First Landlink Asia Development Corporation in accordance with the following cash and property contributions of the parties therein.
  - (a) Ong Group – P100,000,000.00 cash contribution for one (1) million shares in First Landlink Asia Development Corporation at a par value of P100.00 per share;
  - (b) Tiu Group:
    - 1) P45,020,000.00 original cash contribution for 450,200 shares in First Landlink Asia Development Corporation at a par value of P100.00 per share;
    - 2) A four-storey building described in Transfer Certificate of Title No. 15587 in the name of Intraland Resources and Development Corporation valued at P20,000,000.00 for 200,000 shares in First Landlink Asia Development Corporation at a par value of P100.00 per share;
    - 3) A 1,902.30 square-meter parcel of land covered by Transfer Certificate of Title No. 15587 in the name of Masagana Telamart, Inc. valued at

P30,000,000.00 for 300,000 shares in First Landlink Asia Development Corporation at a par value of P100.00 per share.

- 2) Whatever remains of the assets of the First Landlink Asia Development Corporation and the management thereof is (sic) hereby ordered transferred to the Tiu Group.
- 3) First Landlink Asia Development Corporation is hereby ordered to pay the amount of P70,000,000.00 that was advanced to it by the Ong Group upon the finality of this decision. Should the former incur in delay in the payment thereof, it shall pay the legal interest thereon pursuant to Article 2209 of the New Civil Code.
- 4) The Tius are hereby ordered to pay the amount of P20,000,000.00 loaned them by the Ongs upon the finality of this decision. Should the former incur in delay in the payment thereof, it shall pay the legal interest thereon pursuant to Article 2209 of the New Civil Code.

SO ORDERED.<sup>[9]</sup>

An interesting sidelight of the CA decision was its description of the rescission made by the Tius as the "height of ingratitude" and as "pulling a fast one" on the Ongs. The CA moreover found the Tius guilty of withholding FLADC funds from the Ongs and diverting corporate income to their own MATTERCO account.<sup>[10]</sup> These were findings later on affirmed in our own February 1, 2002 Decision which is the subject of the instant motion for reconsideration.<sup>[11]</sup>

But there was also a strange aspect of the CA decision. The CA concluded that both the Ongs and the Tius were in *pari delicto* (which would not have legally entitled them to rescission) but, "for practical considerations," that is, their inability to work together, it was best to separate the two groups by rescinding the Pre-Subscription Agreement, returning the original investment of the Ongs and awarding practically everything else to the Tius.

Their motions for reconsideration having been denied, both parties filed separate petitions for review before this Court.

In their petition docketed as G.R. No. 144476, *Ong et al. vs. Tiu et al.*, the Ongs argued that the Tius may not properly avail of rescission under Article 1191 of the Civil Code considering that the Pre-Subscription Agreement did not provide for reciprocity of obligations; that the rights over the subject matter of the rescission (capital assets and properties) had been acquired by a third party (FLADC); that they did not commit a substantial and fundamental breach of their agreement since they did not prevent the Tius from assuming the positions of Vice-President and Treasurer of FLADC, and that the failure to credit the 300,000 shares corresponding to the 1,902.30 square-meter property covered by TCT No. 134066 (formerly