Supreme Court E-Library

SPECIAL SECOND DIVISION

[G.R. No. 144476. April 8, 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. April 8, 2003]

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.*

SYNOPSIS

In these consolidated petitions, the Ongs moved for reconsideration of the February 1, 2002 Decision of the Supreme Court affirming with modification the October 5, 1999 Decision of the Court of Appeals, which in turn upheld, likewise with modification, the decision of the SEC *en banc* dated September 11, 1998, which confirmed the unilateral rescission by the Tius of the Pre-Subscription Agreement between them and the Ongs. The Tius, on the other hand, moved for the issuance of a writ of execution of the February 1, 2002 decision of the Court.

Movants Ong argued that specific performance and not rescission was the proper remedy under the premises. According to them, their alleged breach of the Pre-Subscription Agreement was, at most casual, which did not justify the rescission of the contract. They claimed that it was the Tius who were guilty of

Supreme Court E-Library

fundamental violation in failing to remit funds to FLADC and diverting the same to their MATTERCO account. They alleged that in view of the findings that both parties were guilty of violating their Agreement, neither of them could resort to rescission under the principle of *pari delicto*. The Ongs further argued that assuming rescission to be proper, they should be given the proportionate share of the mall.

In reversing itself, the Court ruled that the Tius could not legally rescind the Pre-Subscription Agreement. According to the Court, although the Tius were adversely affected by the Ong's unwillingness to let them assume the positions of Vice-President and Treasurer of the Corporation, rescission due to breach of contract was definitely a wrong remedy for their personal grievances. The Corporation Code, SEC rules and even the Rules of Court provide for appropriate adequate intra-corporate remedies, other than rescission, in situations like this. Rescission is certainly not one of them, especially if the party asking for it has no legal personality to do so and the requirements of the law therefor have not been met. A contrary doctrine will tread on extremely dangerous ground because it will allow just any stockholder, for just about any real or imagined offense, to demand rescission of his subscription and call for the distribution of some part of the corporate assets to him without complying with the requirements of the Corporation Code. Hence, the Court held that the Tius, in their personal capacities, cannot seek the ultimate and extraordinary remedy of rescission of the subject agreement based on a less than substantial breach of the subscription contract. Moreover, the Court found that Masagana Citimall would not be what it has become today were it not for the timely infusion of ₱190 million by the Ongs in 1994. Without the Ongs, the Tius would have lost everything they originally invested in said mall. Thus, it would be totally against all rules of justice, fairness and equity to deprive the Ongs of their interest on petty and tenuous grounds. Accordingly, the Court declared null and void the unilateral rescission by the Tius of the subject Pre-Subscription Agreement. It denied Tius' motion for issuance of a writ of execution for being moot.

SYLLABUS

1. REMEDIAL LAW; MOTIONS; MOTION FOR RECONSIDERATION; NOT *PRO-FORMA* FOR THE

Supreme Court E-Library

REASON ALONE THAT IT REITERATES THE ARGUMENTS EARLIER PASSED UPON AND REJECTED BY THE APPELLATE COURT.— The procedural rule on *pro-forma* motions pointed out by the Tius should not be blindly applied to meritorious motions for reconsideration. As long as the same adequately raises a valid ground (*i.e.*, the decision or final order is contrary to law), this Court has to evaluate the merits of the arguments to prevent an unjust decision from attaining finality. In *Security Bank and Trust Company vs. Cuenca,* we ruled that a motion for reconsideration is not *pro forma* for the reason alone that it reiterates the arguments earlier passed upon and rejected by the appellate court. We explained there that a movant may raise the same arguments, if only to convince this Court that its ruling was erroneous. Moreover, the rule (that a motion is *pro-forma* if it only repeats the arguments in the previous pleadings) will not apply if said arguments were not squarely passed upon and answered in the decision sought to be reconsidered. *In the case at bar, no ruling was made on some of the petitioner Ongs' arguments.* For instance, no clear ruling was made on why an order distributing corporate assets and property to the stockholders would not violate the statutory preconditions for corporate dissolution or decrease of authorized capital stock. Thus, it would serve the ends of justice to entertain the subject motion for reconsideration since some important issues therein, although mere repetitions, were not considered or clearly resolved by this Court.

2. **COMMERCIAL LAW; CORPORATION LAW; CORPORATIONS; SUBSCRIPTION CONTRACT; A PARTY WHO HAS NOT TAKEN PART IN THE TRANSACTION CANNOT SUE OR BE SUED FOR PERFORMANCE OR FOR CANCELLATION THEREOF, UNLESS HE SHOWS THAT HE HAS A REAL INTEREST AFFECTED THEREBY.**— A subscription contract necessarily involves the corporation as one of the contracting parties since the subject matter of the transaction is property owned by the corporation — its shares of stock. Thus, the subscription contract (denominated by the parties as a Pre-Subscription Agreement) whereby the Ongs invested ₱100 million for 1,000,000 shares of stock was, from the viewpoint of the law, one between the Ongs and FLADC, not between the Ongs and the Tius. Otherwise stated, the Tius did not contract in their personal capacities with the Ongs since they were not selling any of their own shares

Supreme Court E-Library

to them. It was FLADC that did. Considering therefore that the real contracting parties to the subscription agreement were FLADC and the Ongs alone, a civil case for rescission on the ground of breach of contract filed by the Tius in their personal capacities will not prosper. Assuming it had valid reasons to do so, only FLADC (and certainly not the Tius) had the legal personality to file suit rescinding the subscription agreement with the Ongs inasmuch as it was the real party in interest therein. Article 1311 of the Civil Code provides that "contracts take effect only between the parties, their assigns and heirs. . ." Therefore, a party who has not taken part in the transaction cannot sue or be sued for performance or for cancellation thereof, unless he shows that he has a real interest affected thereby.

3. **ID.; ID.; ID.; ID.; RESCISSION BASED ON BREACH OF CONTRACT NOT PROPER REMEDY WHERE PARTY ASKING FOR IT HAS NO LEGAL PERSONALITY TO DO SO AND THE REQUIREMENTS OF THE LAW THEREFOR HAVE NOT BEEN MET.**— However, although the Tius were adversely affected by the Ongs' unwillingness to let them assume their positions, rescission due to breach of contract is definitely the wrong remedy for their personal grievances. *The Corporation Code, SEC rules and even the Rules of Court provide for appropriate and adequate intra-corporate remedies, other than rescission, in situations like this.* Rescission is certainly not one of them, specially if the party asking for it has no legal personality to do so and the requirements of the law therefor have not been met. A contrary doctrine will tread on extremely dangerous ground because it will allow just any stockholder, for just about any real or imagined offense, to demand rescission of his subscription and call for the distribution of some part of the corporate assets to him without complying with the requirements of the Corporation Code. Hence, the Tius, in their personal capacities, cannot seek the ultimate and extraordinary remedy of rescission of the subject agreement based on a less than substantial breach of subscription contract. Not only are they not parties to the subscription contract between the Ongs and FLADC; they also have other available and effective remedies under the law.

4. **ID.; ID.; ID.; ID.; RESCISSION THEREOF WILL RESULT IN THE PREMATURE LIQUIDATION OF THE CORPORATION IN CASE AT BAR.**— Contrary to the Tius'

Supreme Court E-Library

allegation, rescission will, in the final analysis, result in the premature liquidation of the corporation without the benefit of prior dissolution in accordance with Sections 117, 118, 119 and 120 of the Corporation Code. The Tius maintain that rescinding the subscription contract is not synonymous to corporate liquidation because all rescission will entail would be the simple restoration of the *status quo ante* and a return to the two groups of their cash and property contributions. We wish it were that simple. Very noticeable is the fact that the Tius do not explain why rescission in the instant case will not effectively result in liquidation. The Tius merely refer in cavalier fashion to the end-result of rescission (which incidentally is 100% favorable to them) but turn a blind eye to its unfair, inequitable and disastrous effect on the corporation, its creditors and the Ongs.

5. **ID.; ID.; ID.; ID.; RESCISSION THEREOF UNWARRANTED IN CASE AT BAR.**— After all is said and done, no one can close his eyes to the fact that the Masagana Citimall would not be what it has become today were it not for the timely infusion of ₱190 million by the Ongs in 1994. There are no ifs or buts about it. Without the Ongs, the Tius would have lost everything they originally invested in said mall. If only for this and the fact that this Resolution can truly pave the way for both groups to enjoy the fruits of their investments — assuming good faith and honest intentions — we cannot allow the rescission of the subject subscription agreement. The Ongs' shortcomings were far from serious and certainly less than substantial; they were in fact remediable and correctable under the law. It would be totally against all rules of justice, fairness and equity to deprive the Ongs of their interests on petty and tenuous grounds.

6. **ID.; ID.; ID.; PIERCING THE VEIL OF CORPORATE FICTION; NOT WARRANTED ABSENT PROOF THAT THE CORPORATION IS BEING USED AS A CLOAK OR COVER FOR FRAUD OR ILLEGALITY, OR TO WORK INJUSTICE.**— In their February 28, 2003 Memorandum, the Tius claim that there are two contracts embodied in the Pre-Subscription Agreement: a shareholder's agreement between the Tius and the Ongs defining and governing their relationship and a subscription contract between the Tius, the Ongs and FLADC regarding the subscription of the parties to the corporation. They point out that these two component parts form

Supreme Court E-Library

one whole agreement and that their terms and conditions are intrinsically related and dependent on each other. Thus, the breach of the shareholders' agreement, which was allegedly the consideration for the subscription contract, was also a breach of the latter. Aside from the fact that this is an entirely new angle never raised in any of their previous pleadings until after the oral arguments on January 29, 2003, we find this argument too strained for comfort. It is obviously intended to remedy and cover up the Tius' lack of legal personality to rescind an agreement in which they were personally not parties-in-interest. Assuming *arguendo* that there were two "sub-agreements" embodied in the Pre-Subscription Agreement, this Court fails to see how the shareholders agreement between the Ongs and Tius can, within the bounds of reason, be interpreted as the consideration of the subscription contract between FLADC and the Ongs. There was nothing in the Pre-Subscription Agreement even remotely suggesting such alleged interdependence. Be that as it may, however, the Tius are nevertheless not the proper parties to raise this point because they were not parties to the subscription contract between FLADC and the Ongs. Thus, they are not in a position to claim that the shareholders agreement between them and the Ongs was what induced FLADC and the Ongs to enter into the subscription contract. It is the Ongs alone who can say that. Though FLADC was represented by the Tius in the subscription contract, FLADC had a separate juridical personality from the Tius. The case before us does not warrant piercing the veil of corporate fiction since there is no proof that the corporation is being used "as a cloak or cover for fraud or illegality, or to work injustice."

7. **ID.; ID.; ID.; HAS A SEPARATE JURIDICAL PERSONALITY FROM ITS STOCKHOLDERS.**— The Tius also argue that, since the Ongs represent FLADC as its management, breach by the Ongs is breach by FLADC. This must also fail because such an argument disregards the separate juridical personality of FLADC.

8. **ID.; ID.; ID.; PRESIDENT OF THE CORPORATION IS PROHIBITED FROM ACTING CONCURRENTLY AS TREASURER THEREOF.**— The Tius allege that they were prevented from participating in the management of the corporation. There is evidence that the Ongs did prevent the rightfully elected Treasurer, Cely Tiu, from exercising her

Supreme Court E-Library

function as such. The records show that the President, Wilson Ong, supervised the collection and receipt of rentals in the Masagana Citimall; that he ordered the same to be deposited in the bank; and that he held on to the cash and properties of the corporation. Section 25 of the Corporation Code prohibits the President from acting concurrently as Treasurer of the corporation. The rationale behind the provision is to ensure the effective monitoring of each officer's separate functions.

9. **ID.; ID.; ID.; TRUST FUND DOCTRINE; ELABORATED.**— All this notwithstanding, granting but not conceding that the Tius possess the legal standing to sue for rescission based on breach of contract, said action will nevertheless still not prosper since rescission will violate the Trust Fund Doctrine and the procedures for the valid distribution of assets and property under the Corporation Code. The Trust Fund Doctrine, first enunciated by this Court in the 1923 case of *Philippine Trust Co. vs. Rivera*, provides that subscriptions to the capital stock of a corporation constitute a fund to which the creditors have a right to look for the satisfaction of their claims. This doctrine is the underlying principle in the procedure for the distribution of capital assets, embodied in the Corporation Code, which allows the distribution of corporate capital only in three instances: (1) amendment of the Articles of Incorporation to reduce the authorized capital stock, (2) purchase of redeemable shares by the corporation, regardless of the existence of unrestricted retained earnings, and (3) dissolution and eventual liquidation of the corporation. Furthermore, the doctrine is articulated in Section 41 on the power of a corporation to acquire its own shares and in Section 122 on the prohibition against the distribution of corporate assets and property unless the stringent requirements therefor are complied with.

10. **ID.; ID.; ID.; DISTRIBUTION OF CORPORATE ASSETS AND PROPERTY CANNOT BE MADE TO DEPEND ON THE WHIMS AND CAPRICES OF THE STOCKHOLDERS, OFFICERS OR DIRECTORS OR EARNEST DESIRE OF THE COURT *A QUO* TO PREVENT FURTHER SQUABBLES AND FUTURE LITIGATIONS.**— The distribution of corporate assets and property cannot be made to depend on the whims and caprices of the stockholders, officers or directors of the corporation, or even, for that matter, on the earnest desire of the court *a quo* "to prevent further squabbles

Supreme Court E-Library

and future litigations" unless the indispensable conditions and procedures for the protection of corporate creditors are followed. Otherwise, the "corporate peace" laudably hoped for by the court will remain nothing but a dream because this time, it will be the creditors' turn to engage in "squabbles and litigations" should the court order an unlawful distribution in blatant disregard of the Trust Fund Doctrine. In the instant case, the rescission of the Pre-Subscription Agreement will effectively result in the unauthorized distribution of the capital assets and property of the corporation, thereby violating the Trust Fund Doctrine and the Corporation Code, since rescission of a subscription agreement is not one of the instances when distribution of capital assets and property of the corporation is allowed.

11. **ID.; ID.; ID.; DECREASE OF CAPITAL STOCK; FORMAL REQUIREMENTS; NOT COMPLIED WITH IN CASE AT BAR.**— The Tius' case for rescission cannot validly be deemed a petition to decrease capital stock because such action never complied with the formal requirements for decrease of capital stock under Section 33 of the Corporation Code. No majority vote of the board of directors was ever taken. Neither was there any stockholders meeting at which the approval of stockholders owning at least two-thirds of the outstanding capital stock was secured. There was no revised treasurer's affidavit and no proof that said decrease will not prejudice the creditors' rights. On the contrary, all their pleadings contained were alleged acts of violations by the Ongs to justify an order of rescission. Furthermore, it is an improper judicial intrusion into the internal affairs of the corporation to compel FLADC to file at the SEC a petition for the issuance of a certificate of decrease of stock. Decreasing a corporation's authorized capital stock is an amendment of the Articles of Incorporation. It is a decision that only the stockholders and the directors can make, considering that they are the contracting parties thereto. *In this case, the Tius are actually not just asking for a review of the legality and fairness of a corporate decision. They want this Court to make a corporate decision for FLADC.* We decline to intervene and order corporate structural changes not voluntarily agreed upon by its stockholders and directors.

12. **ID.; ID.; ID.; BUSINESS JUDGMENT RULE; EXPLAINED; RATIONALE BEHIND THE RULE; CASE AT BAR.**— Truth to tell, a judicial order to decrease capital stock without the

Supreme Court E-Library

assent of FLADC's directors and stockholders is a violation of the "business judgment rule" which states that: . . . (C)ontracts *intra vires* entered into by the board of directors are binding upon the corporation and courts will not interfere unless such contracts are so unconscionable and oppressive as to amount to wanton destruction to the rights of the minority, as when plaintiffs aver that the defendants (members of the board), have concluded a transaction among themselves as will result in serious injury to the plaintiffs stockholders. The reason behind the rule is aptly explained by Dean Cesar L. Villanueva, an esteemed author in corporate law, thus: Courts and other tribunals are wont to override the business judgment of the board mainly because, courts are not in the business of business, and the *laissez faire* rule or the free enterprise system prevailing in our social and economic set-up dictates that it is better for the State and its organs to leave business to the businessmen; especially so, when courts are ill-equipped to make business decisions. More importantly, the social contract in the corporate family to decide the course of the corporate business has been vested in the board and not with courts. Apparently, the Tius do not realize the illegal consequences of seeking rescission and control of the corporation to the exclusion of the Ongs. Such an act infringes on the law on reduction of capital stock. Ordering the return and distribution of the Ongs' capital contribution without dissolving the corporation or decreasing its authorized capital stock is not only against the law but is also prejudicial to corporate creditors who enjoy absolute priority of payment over and above any individual stockholder thereof.

APPEARANCES OF COUNSEL

Feria Feria Lugtu La O'Noche for petitioners.
Estelito P. Mendoza for petitioners.
Gonzales Batiller Bilog & Asso. for W. Ong.
Tan Acut & Lopez for respondents.
Aquilino L. Pimentel III for Landlink, etc.
Arturo Santos for Masagana.

Supreme Court E-Library

RESOLUTION

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,[1] dated February 1, 2002, in G.R. Nos. 144476 and 144629 affirming with modification the decision[2] 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 incompletion 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 ₱190 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 ₱100.00 each while the Tius were to subscribe to an additional 549,800 shares at ₱100.00

---

[1] *Ong Yong, et al. vs. Tiu, et al.*, G.R. No. 144476; *Tiu, et al. vs. Ong Yong, et al.*, G.R. No. 144629.

[2] *Rollo* of G.R. No. 144476, pp. 111-135.

Supreme Court E-Library

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 ₱100 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 ₱20 million (for 200,000 shares), ₱30 million (for 300,000 shares) and ₱49.8 million (for 49,800 shares) to cover their additional 549,800 stock subscription therein. The Ongs paid in another ₱70 million[3] to FLADC and ₱20 million to the Tius over and above their ₱100 million investment, the total sum of which (₱190 million) was used to settle the ₱190 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.

---

[3] The testimony of Wilson Ong, never refuted by the Tius, was that the parties' original agreement was to increase FLADC's authorized capital stock from ₱50 million to ₱340 million (which explains the Ongs' 50% share of ₱170 million). Later on, the parties decided to downgrade the proposed new authorized capital stock to only ₱200 million but the Ongs decided to leave the overpayment of ₱70 million in FLADC to help pay off the loan to PNB. (TSN at the SEC, January 29, 1997 cited in CA *Rollo*, pp. 429-452; TSN at the SEC, February 6, 1997 cited in CA *Rollo*, pp. 485-489).

Supreme Court E-Library

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 ₱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

Supreme Court E-Library

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[4] 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 ₱170,000,000.00 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);

---

[4] Docketed as SEC Case No. 02-96-5269.

Supreme Court E-Library

(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 ₱8,866,669.00 and all interest payments as well as any payments on principal received from the ₱70,000,000.00 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 ₱20,000,000.00 representing his loan from said defendants plus legal interest from the date of receipt of such amount.

SO ORDERED.[5]

On motion of both parties, the above decision was partially reconsidered but only insofar as the Ongs' ₱70 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.[6]

Both parties appealed[7] 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 ₱70 million paid by the Ongs as premium on capital and not as a loan or advance to FLADC, hence, not entitled to earn interest.[8]

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

---

[5] *Rollo* of G.R. No. 144476, pp. 114-116.

[6] *Ibid.*, pp. 116-117.

[7] Docketed as SEC Cases Nos. 598 and 601.

[8] *Rollo* of G.R. No. 144476, pp. 117-118.

Supreme Court E-Library

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 — ₱100,000,000.00 cash contribution for one (1) million shares in First Landlink Asia Development Corporation at a par value of ₱100.00 per share;

   (b) Tiu Group:

      1) ₱45,020,000.00 original cash contribution for 450,200 shares in First Landlink Asia Development Corporation at a par value of ₱100.00 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 ₱20,000,000.00 for 200,000 shares in First Landlink Asia Development Corporation at a par value of ₱100.00 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 ₱30,000,000.00 for 300,000 shares in First Landlink Asia Development Corporation at a par value of ₱100.00 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 ₱70,000,000.00 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.

Supreme Court E-Library

4) The Tius are hereby ordered to pay the amount of ₱20,000,000.00 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.[9]

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.[10] These were findings later on affirmed in our own February 1, 2002 Decision which is the subject of the instant motion for reconsideration.[11]

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

---

[9] *Ibid.*, pp. 133-135.

[10] CA Decision dated October 5, 1999, p. 18; CA Records, p. 1045; Penned by Associate Justice Ramon A. Barcelona and concurred in by Associate Justices Mariano M. Umali and Edgardo P. Cruz. Then Associate Justice Demetrio G. Demetria dissented while also then Associate Justice Conchita Carpio Morales concurred and dissented.

[11] Supreme Court Decision dated February 1, 2002, pp. 34-35; *Rollo*, pp. 299-300.

Supreme Court E-Library

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 15587) was due to the refusal of the Tius to pay the required transfer taxes to secure the approval of the SEC for the property contribution and, thereafter, the issuance of title in FLADC's name. They also argued that the liquidation of FLADC may not legally be ordered by the appellate court even for so called "practical considerations" or even to prevent "further squabbles and numerous litigations," since the same are not valid grounds under the Corporation Code. Moreover, the Ongs bewailed the failure of the CA to grant interest on their ₱70 million and ₱20 million advances to FLADC and David S. Tiu, respectively, and to award costs and damages.

In their petition docketed as G.R. No. 144629, *Tiu et al. vs. Ong et al.*, the Tius, on the other hand, contended that the rescission should have been limited to the restitution of the parties' respective investments and not the liquidation of FLADC based on the erroneous perception by the court that: the Masagana Citimall was threatened with incompletion since FLADC was in financial distress; that the Tius invited the Ongs to invest in FLADC to settle its ₱190 million loan from PNB; that they violated the Pre-Subscription Agreement when it was the Lichaucos and not the Tius who executed the deed of assignment over the 151 square-meter property commensurate to 49,800 shares in FLADC thereby failing to pay the price for the said shares; that they did not turn over to the Ongs the entire amount of FLADC funds; that they were diverting rentals from lease contracts due to FLADC to their own MATTERCO account; that the ₱70 million paid by the Ongs was an advance and not a premium on capital; and that, by rescinding the Pre-Subscription Agreement, they wanted to wrestle away the management of

Supreme Court E-Library

the mall and prevent the Ongs from enjoying the profits of their ₱190 million investment in FLADC.

On February 1, 2002, this Court promulgated its Decision (the subject of the instant motions), affirming the assailed decision of the Court of Appeals but with the following modifications:

1. the ₱20 million loan extended by the Ongs to the Tius shall earn interest at twelve percent (12%) per annum to be computed from the time of judicial demand which is from April 23, 1996;
2. the ₱70 million advanced by the Ongs to the FLADC shall earn interest at ten percent (10%) per annum to be computed from the date of the FLADC Board Resolution which is June 19, 1996; and
3. the Tius shall be credited with 49,800 shares in FLADC for their property contribution, specifically, the 151 sq. m. parcel of land.

This Court affirmed the fact that both the Ongs and the Tius violated their respective obligations under the Pre-Subscription Agreement. The Ongs prevented the Tius from assuming the positions of Vice-President and Treasurer of the corporation. On the other hand, the Decision established that the Tius failed to turn over FLADC funds to the Ongs and that the Tius diverted rentals due to FLADC to their MATTERCO account. Consequently, it held that rescission was not possible since both parties were in *pari delicto*. However, this Court agreed with the Court of Appeals that the remedy of specific performance, as espoused by the Ongs, was not practical and sound either and would only lead to further "squabbles and numerous litigations" between the parties.

On March 15, 2002, the Tius filed before this Court a Motion for Issuance of a Writ of Execution on the grounds that: (a) the SEC order had become executory as early as September 11, 1998 pursuant to Sections 1 and 12, Rule 43 of the Rules of Court; (b) any further delay would be injurious to the rights of the Tius since the case had been pending for more than six

Supreme Court E-Library

years; and (c) the SEC no longer had quasi-judicial jurisdiction under RA 8799 (Securities Regulation Code). The Ongs filed their opposition, contending that the Decision dated February 1, 2002 was not yet final and executory; that no good reason existed to issue a warrant of execution; and that, pursuant to Section 5.2 of RA 8799, the SEC retained jurisdiction over pending cases involving intra-corporate disputes already submitted for final resolution upon the effectivity of the said law.

Aside from their opposition to the Tius' Motion for Issuance of Writ of Execution, the Ongs filed their own "Motion for Reconsideration; Alternatively, Motion for Modification (of the February 1, 2002 Decision)" on March 15, 2002, raising two main points: (a) that specific performance and not rescission was the proper remedy under the premises; and (b) that, assuming rescission to be proper, the subject decision of this Court should be modified to entitle movants to their proportionate share in the mall.

On their first point (specific performance and not rescission was the proper remedy), movants Ong argue that their alleged breach of the Pre-Subscription Agreement was, at most, casual which did not justify the rescission of the contract. They stress that providing appropriate offices for David S. Tiu and Cely Y. Tiu as Vice-President and Treasurer, respectively, had no bearing on their obligations under the Pre-Subscription Agreement since the said obligation (to provide executive offices) pertained to FLADC itself. Such obligation arose from the relations between the said officers and the corporation and not any of the individual parties such as the Ongs. Likewise, the alleged failure of the Ongs to credit shares of stock in favor of the Tius for their property contributions also pertained to the corporation and not to the Ongs. Just the same, it could not be done in view of the Tius' refusal to pay the necessary transfer taxes which in turn resulted in the inability to secure SEC approval for the property contributions and the issuance of a new TCT in the name of FLADC.

Supreme Court E-Library

Besides, according to the Ongs, the principal objective of both parties in entering into the Pre-Subscription Agreement in 1994 was to raise the ₱190 million desperately needed for the payment of FLADC's loan to PNB. Hence, in this light, the alleged failure to provide office space for the two corporate officers was no more than an inconsequential infringement. For rescission to be justified, the law requires that the breach of contract should be so "substantial or fundamental" as to defeat the primary objective of the parties in making the agreement. At any rate, the Ongs claim that it was the Tius who were guilty of fundamental violations in failing to remit funds due to FLADC and diverting the same to their MATTERCO account.

The Ongs also allege that, in view of the findings of the Court that both parties were guilty of violating the Pre-Subscription Agreement, neither of them could resort to rescission under the principle of *pari delicto*. In addition, since the cash and other contributions now sought to be returned already belong to FLADC, an innocent third party, said remedy may no longer be availed of under the law.

On their second point (assuming rescission to be proper, the Ongs should be given their proportionate share of the mall), movants Ong vehemently take exception to the second item in the dispositive portion of the questioned Decision insofar as it decreed that whatever remains of the assets of FLADC and the management thereof (after liquidation) shall be transferred to the Tius. They point out that the mall itself, which would have been foreclosed by PNB if not for their timely investment of ₱190 million in 1994 and which is now worth about ₱1 billion mainly because of their efforts, should be included in any partition and distribution. They (the Ongs) should not merely be given interest on their capital investments. The said portion of our Decision, according to them, amounted to the unjust enrichment of the Tius and ran contrary to our own pronouncement that the act of the Tius in unilaterally rescinding the agreement was "the height of ingratitude" and an attempt "to pull a fast one" as it would prevent the Ongs from enjoying the fruits of their ₱190 million investment in FLADC. It also

Supreme Court E-Library

contravenes this Court's assurance in the questioned Decision that the Ongs and Tius "will have a bountiful return of their respective investments derived from the profits of the corporation."

Willie Ong filed a separate "Motion for Partial Reconsideration" dated March 8, 2002, pointing out that there was no violation of the Pre-Subscription Agreement on the part of the Ongs; that, after more than seven years since the mall began its operations, rescission had become not only impractical but would also adversely affect the rights of innocent parties; and that it would be *highly inequitable and unfair to simply return the ₱100 million investment of the Ongs and give the remaining assets now amounting to about ₱1 billion to the Tius.*

The Tius, in their opposition to the Ongs' motion for reconsideration, counter that the arguments therein are a mere re-hash of the contentions in the Ongs' petition for review and previous motion for reconsideration of the Court of Appeals' decision. The Tius compare the arguments in said pleadings to prove that the Ongs do not raise new issues, and, based on well-settled jurisprudence,[12] the Ongs' present motion is therefore *pro-forma* and did not prevent the Decision of this Court from attaining finality.

On January 29, 2003, the Special Second Division of this Court held oral arguments on the respective positions of the parties. On February 27, 2003, Dr. Willie Ong and the rest of the movants Ong filed their respective memoranda. On February 28, 2003, the Tius submitted their memorandum.

We grant the Ongs' motions for reconsideration.

This is not the first time that this Court has reversed itself on a motion for reconsideration. In *Philippine Consumers*

---

[12] *Estrada vs. Sto. Domingo*, 28 SCRA 890 [1969]; *Cruz vs. Tuazon & Co., Inc.*, 76 SCRA 543 [1977]; *Llanter vs. Court of Appeals*, 105 SCRA 609 [1981]; *Luzon Brokerage Co., Inc. vs. Maritime Building Co., Inc.*, 86 SCRA 305 [1978].

Supreme Court E-Library

Foundation, Inc. vs. National Telecommunications Commission,[13] this Court, through then Chief Justice Felix V. Makasiar, said that its members may and do change their minds, after a re-study of the facts and the law, illuminated by a mutual exchange of views.[14] After a thorough re-examination of the case, we find that our Decision of February 1, 2002 overlooked certain aspects which, if not corrected, will cause extreme and irreparable damage and prejudice to the Ongs, FLADC and its creditors.

The procedural rule on *pro-forma* motions pointed out by the Tius should not be blindly applied to meritorious motions for reconsideration. As long as the same adequately raises a valid ground[15] (*i.e.*, the decision or final order is contrary to law), this Court has to evaluate the merits of the arguments to prevent an unjust decision from attaining finality. In *Security Bank and Trust Company vs. Cuenca*,[16] we ruled that a motion for reconsideration is not *pro-forma* for the reason alone that it reiterates the arguments earlier passed upon and rejected by the appellate court. We explained there that a movant may raise the same arguments, if only to convince this Court that its ruling was erroneous. Moreover, the rule (that a motion is *pro-forma* if it only repeats the arguments in the previous pleadings) will not apply if said arguments were not squarely passed upon and answered in the decision sought to be reconsidered. *In the case at bar, no ruling was made on some of the petitioner Ongs' arguments*. For instance, no clear ruling was made on why an order distributing corporate assets and property to the stockholders would not violate the statutory preconditions for corporate dissolution or decrease of authorized capital stock. Thus, it would serve the ends of justice to entertain the subject motion for reconsideration since some important issues therein,

---

[13] 131 SCRA 200 [1984].

[14] *Id.* at 221.

[15] See Section 1, Rule 37 of the 1997 Rules of Civil Procedure.

[16] G.R. No. 138544, October 3, 2000 citing *Guerra Enterprises vs. CFI*, 32 SCRA 314 [1970].

Supreme Court E-Library

although mere repetitions, were not considered or clearly resolved by this Court.

Going now to the merits, we resolve whether the Tius could legally rescind the Pre-Subscription Agreement. We rule that they could not.

FLADC was originally incorporated with an authorized capital stock of 500,000 shares with the Tius owning 450,200 shares representing the paid-up capital. When the Tius invited the Ongs to invest in FLADC as stockholders, an increase of the authorized capital stock became necessary to give each group equal (50-50) shareholdings as agreed upon in the Pre-Subscription Agreement. The authorized capital stock was thus increased from 500,000 shares to 2,000,000 shares with a par value of ₱100 each, with the Ongs subscribing to 1,000,000 shares and the Tius to 549,800 more shares in addition to their 450,200 shares to complete 1,000,000 shares. Thus, the subject matter of the contract was the 1,000,000 *unissued* shares of FLADC stock allocated to the Ongs. Since these were unissued shares, the parties' Pre-Subscription Agreement was in fact a subscription contract as defined under Section 60, Title VII of the Corporation Code:

> Any contract for the acquisition of *unissued stock* in an *existing corporation* or a corporation still to be formed shall be deemed a subscription within the meaning of this Title, notwithstanding the fact that the *parties refer to it as a purchase or some other contract* (Italics supplied).

A subscription contract necessarily involves the corporation as one of the contracting parties since the subject matter of the transaction is property owned by the corporation — its shares of stock. Thus, the subscription contract (denominated by the parties as a Pre-Subscription Agreement) whereby the Ongs invested ₱100 million for 1,000,000 shares of stock was, from the viewpoint of the law, one between the Ongs and FLADC, not between the Ongs and the Tius. Otherwise stated, the Tius did not contract in their personal capacities with the Ongs since they were not selling any of their own shares to them. It was FLADC that did.

Supreme Court E-Library

Considering therefore that the real contracting parties to the subscription agreement were FLADC and the Ongs alone, a civil case for rescission on the ground of breach of contract filed by the Tius in their personal capacities will not prosper. Assuming it had valid reasons to do so, only FLADC (and certainly not the Tius) had the legal personality to file suit rescinding the subscription agreement with the Ongs inasmuch as it was the real party in interest therein. Article 1311 of the Civil Code provides that "contracts take effect only between the parties, their assigns and heirs. . ." Therefore, a party who has not taken part in the transaction cannot sue or be sued for performance or for cancellation thereof, unless he shows that he has a real interest affected thereby.[17]

In their February 28, 2003 Memorandum, the Tius claim that there are two contracts embodied in the Pre-Subscription Agreement: a shareholder's agreement between the Tius and the Ongs defining and governing their relationship and a subscription contract between the Tius, the Ongs and FLADC regarding the subscription of the parties to the corporation. They point out that these two component parts form one whole agreement and that their terms and conditions are intrinsically related and dependent on each other. Thus, the breach of the shareholders' agreement, which was allegedly the consideration for the subscription contract, was also a breach of the latter.

Aside from the fact that this is an entirely new angle never raised in any of their previous pleadings until after the oral arguments on January 29, 2003, we find this argument too strained for comfort. It is obviously intended to remedy and cover up the Tius' lack of legal personality to rescind an agreement in which they were personally not parties-in-interest. Assuming *arguendo* that there were two "sub-agreements" embodied in the Pre-Subscription Agreement, this Court fails to see how the shareholders agreement between the Ongs and Tius can, within the bounds of reason, be interpreted as the

---

[17] *Sustiguer vs. Tamayo,* 176 SCRA 579 [1989] citing *Marimperio Compania Naviera vs. Court of Appeals*, 156 SCRA 368 [1987].

Supreme Court E-Library

consideration of the subscription contract between FLADC and the Ongs. There was nothing in the Pre-Subscription Agreement even remotely suggesting such alleged interdependence. Be that as it may, however, the Tius are nevertheless not the proper parties to raise this point because they were not parties to the subscription contract between FLADC and the Ongs. Thus, they are not in a position to claim that the shareholders agreement between them and the Ongs was what induced FLADC and the Ongs to enter into the subscription contract. It is the Ongs alone who can say that. Though FLADC was represented by the Tius in the subscription contract, FLADC had a separate juridical personality from the Tius. The case before us does not warrant piercing the veil of corporate fiction since there is no proof that the corporation is being used "as a cloak or cover for fraud or illegality, or to work injustice."[18]

The Tius also argue that, since the Ongs represent FLADC as its management, breach by the Ongs is breach by FLADC. This must also fail because such an argument disregards the separate juridical personality of FLADC.

The Tius allege that they were prevented from participating in the management of the corporation. There is evidence that the Ongs did prevent the rightfully elected Treasurer, Cely Tiu, from exercising her function as such. The records show that the President, Wilson Ong, supervised the collection and receipt of rentals in the Masagana Citimall;[19] that he ordered the same to be deposited in the bank;[20] and that he held on to the cash and properties of the corporation.[21] Section 25 of the Corporation Code prohibits the President from acting concurrently as Treasurer of the corporation. The rationale behind the provision is to ensure the effective monitoring of each officer's separate functions.

---

[18] *Boyer-Roxas vs. Court of Appeals*, 211 SCRA 470 [1992].

[19] TSN, December 11, 1996, pp. 699-702; *Rollo*, pp. 705-706.

[20] TSN, December 17, 1996, pp. 28-34; *Rollo*, pp. 699-702.

[21] TSN, January 17, 1997, pp. 92-93; *Rollo*, pp. 705-706.

Supreme Court E-Library

However, although the Tius were adversely affected by the Ongs' unwillingness to let them assume their positions, rescission due to breach of contract is definitely the wrong remedy for their personal grievances. *The Corporation Code, SEC rules and even the Rules of Court provide for appropriate and adequate intra-corporate remedies, other than rescission, in situations like this.* Rescission is certainly not one of them, specially if the party asking for it has no legal personality to do so and the requirements of the law therefor have not been met. A contrary doctrine will tread on extremely dangerous ground because it will allow just any stockholder, for just about any real or imagined offense, to demand rescission of his subscription and call for the distribution of some part of the corporate assets to him without complying with the requirements of the Corporation Code.

Hence, the Tius, in their personal capacities, cannot seek the ultimate and extraordinary remedy of rescission of the subject agreement based on a less than substantial breach of subscription contract. Not only are they not parties to the subscription contract between the Ongs and FLADC; they also have other available and effective remedies under the law.

All this notwithstanding, granting but not conceding that the Tius possess the legal standing to sue for rescission based on breach of contract, said action will nevertheless still not prosper since rescission will violate the Trust Fund Doctrine and the procedures for the valid distribution of assets and property under the Corporation Code.

The Trust Fund Doctrine, first enunciated by this Court in the 1923 case of *Philippine Trust Co. vs. Rivera*,[22] provides that subscriptions to the capital stock of a corporation constitute a fund to which the creditors have a right to look for the satisfaction of their claims.[23] This doctrine is the underlying principle in the procedure for the distribution of capital assets, embodied in the Corporation Code, which allows the distribution

---

[22] 44 Phil. 469 [1923].

[23] *Id.; Garcia vs. Lim Chu Sing*, 59 Phil. 562 [1934]; *Boman Environmental Dev't. Corp. vs. Court of Appeals*, 167 SCRA 540 [1988].

Supreme Court E-Library

of corporate capital only in three instances: (1) amendment of the Articles of Incorporation to reduce the authorized capital stock,[24] (2) purchase of redeemable shares by the corporation, regardless of the existence of unrestricted retained earnings,[25] and (3) dissolution and eventual liquidation of the corporation. Furthermore, the doctrine is articulated in Section 41 on the power of a corporation to acquire its own shares[26] and in Section

---

[24] Section 38 of the Corporation Code provides for the process to be followed for reduction of the authorized capital stock. First, a proposal to decrease capital stock must be approved by a majority vote of the board of directors and affirmed by stockholders who own 2/3 of the outstanding capital stock in a meeting duly called for that purpose. Written notice of the time and place of the meeting on the proposed decrease in the capital stock must be served to each of the stockholders at his place of residence as shown in the corporate books. Thereafter, the SEC shall approve the certificate of decrease of capital stock only if the same is accompanied by a new treasurer's affidavit stating that 25% of the authorized capital stock has been subscribed while 25% of the subscribed capital stock has been paid-up, and also if said decrease will not prejudice the rights of corporate creditors.

[25] Section 8 of the Corporation Code provides that:

SEC. 8. Redeemable shares. — Redeemable shares may be issued by the corporation when expressly so provided in the articles of incorporation. They may be purchased or taken up by the corporation upon the expiration of a fixed period, regardless of the existence of unrestricted retained earnings in the books of the corporation, and upon such other terms and conditions as may be stated in the articles of incorporation, which terms and conditions must also be stated in the certificate of stock representing said shares.

Section 5, par. 5, SEC Rules Governing Redeemable and Treasury Shares provides that redeemable shares may be redeemed regardless of the existence of unrestricted retained earning, provided that the corporation has, after such redemption, assets in its books to cover debts and liabilities of capital stock. Therefore, redemption, according to SEC Opinion, January 23, 1985, may not be made where the corporation is insolvent or if such redemption would cause insolvency or inability of the corporation to meet its debts as they mature. (cited in Hector De Leon, *The Corporation Code of the Philippines*, 1999 Ed., pp. 96-97).

[26] Section 41 of the Corporation Code provides that:

Sec. 41. *Power to acquire own shares.* — A stock corporation shall have the power to purchase or acquire its own shares for a legitimate corporate purpose or purposes, including but not limited to the following cases: Provided, That the corporation has unrestricted retained earnings in its books to cover the shares to be purchased or acquired:

Supreme Court E-Library

122 on the prohibition against the distribution of corporate assets and property unless the stringent requirements therefor are complied with.[27]

The distribution of corporate assets and property cannot be made to depend on the whims and caprices of the stockholders, officers or directors of the corporation, or even, for that matter, on the earnest desire of the court *a quo* "to prevent further squabbles and future litigations" unless the indispensable conditions and procedures for the protection of corporate creditors are followed. Otherwise, the "corporate peace" laudably hoped for by the court will remain nothing but a dream because this time, it will be the creditors' turn to engage in "squabbles and litigations" should the court order an unlawful distribution in blatant disregard of the Trust Fund Doctrine.

In the instant case, the rescission of the Pre-Subscription Agreement will effectively result in the unauthorized distribution of the capital assets and property of the corporation, thereby violating the Trust Fund Doctrine and the Corporation Code, since rescission of a subscription agreement is not one of the instances when distribution of capital assets and property of the corporation is allowed.

Contrary to the Tius' allegation, rescission will, in the final analysis, result in the premature liquidation of the corporation without the benefit of prior dissolution in accordance with

---

(1) To eliminate fractional shares arising out of stock dividends;

(2) To collect or compromise an indebtedness to the corporation, arising out of unpaid subscription, in a delinquency sale, and to purchase delinquent shares sold during said sale; and

(3) *To pay dissenting or withdrawing stockholders entitled to payment for their shares under the provisions of this Code. (Italics supplied)*

[27] x x x x x x x x x

Except by decrease of capital stock and as otherwise allowed by this Code, no corporation shall distribute any of its assets or property except upon lawful dissolution and after payment of all its debts and liabilities.

Supreme Court E-Library

Sections 117, 118, 119 and 120 of the Corporation Code.[28] The Tius maintain that rescinding the subscription contract is not synonymous to corporate liquidation because all rescission will entail would be the simple restoration of the *status quo ante* and a return to the two groups of their cash and property contributions. We wish it were that simple. Very noticeable is the fact that the Tius do not explain why rescission in the instant case will not effectively result in liquidation. The Tius merely refer in cavalier fashion to the end-result of rescission (which incidentally is 100% favorable to them) but turn a blind eye to its unfair, inequitable and disastrous effect on the corporation, its creditors and the Ongs.

In their Memorandum dated February 28, 2003, the Tius claim that rescission of the agreement will not result in an

---

[28] Sections 117, 118, 119, and 120 of the Corporation Code provide that:

SEC. 117. Methods of dissolution. — A corporation formed or organized under the provisions of this Code may be dissolved voluntarily or involuntarily. (n)

SEC. 118. Voluntary dissolution where no creditors are affected. — If dissolution of a corporation does not prejudice the rights of any creditor having a claim against it, the dissolution may be effected by majority vote of the board of directors or trustees, and by a resolution duly adopted by the affirmative vote of the stockholders owning at least two-thirds (2/3) of the outstanding capital or of at least two-thirds (2/3) of the members at a meeting to be held upon call of the directors or trustees after publication of the notice of time, place and object of the meeting for three (3) consecutive weeks in a newspaper published in the place where the principal office of said corporation is located; and if no newspaper is published in such place, then in a newspaper of general circulation in the Philippines, after sending such notice to each stockholder or member either by registered mail or by personal delivery at least thirty (30) days prior to said meeting. A copy of the resolution authorizing the dissolution shall be certified by a majority of the board of directors or trustees and countersigned by the secretary of the corporation. The Securities and Exchange Commission shall thereupon issue the certificate of dissolution. (62a)

SEC. 119. Voluntary dissolution where creditors are affected. — Where the dissolution of a corporation may prejudice the rights of any creditor, the petition for dissolution shall be filed with the Securities and Exchange Commission. The petition shall be signed by a majority of its board of directors

Supreme Court E-Library

unauthorized liquidation of the corporation because their case is actually a petition to decrease capital stock pursuant to Section 38 of the Corporation Code. Section 122 of the law provides that "(e)xcept by decrease of capital stock . . ., no corporation shall distribute any of its assets or property except upon lawful dissolution and after payment of all its debts and liabilities." The Tius claim that their case for rescission, being a petition to decrease capital stock, does not violate the liquidation

---

or trustees or other officers having the management of its affairs, verified by its president or secretary or one of its directors or trustees, and shall set forth all claims and demands against it, and that its dissolution was resolved upon by the affirmative vote of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock or by at least two-thirds (2/3) of the members, at a meeting of its stockholders or members called for that purpose.

If the petition is sufficient in form and substance, the Commission shall, by an order reciting the purpose of the petition, fix a date on or before which objections thereto may be filed by any person, which date shall not be less than thirty (30) days nor more than sixty (60) days after the entry of the order. Before such date, a copy of the order shall be published at least once a week for three (3) consecutive weeks in a newspaper of general circulation published in municipality or city where the principal office of the corporation is situated, or if there be no such newspaper, then in a newspaper of general circulation in the Philippines, and a similar copy shall be posted for three (3) consecutive weeks in three (3) public places in such municipality or city.

Upon five (5) days' notice, given after the date on which the right to file objections as fixed in the order has expired, the Commission shall proceed to hear the petition and try any issue made by the objections filed; and if no such objection is sufficient, and the material allegations of the petition are true, it shall render judgment dissolving the corporation and directing such disposition of its assets as justice requires, and may appoint a receiver to collect such assets and pay the debts of the corporation. (Rule 104, RCa)

SEC. 120. Dissolution by shortening corporate term. — A voluntary dissolution may be effected by amending the articles of incorporation to shorten the corporate term pursuant to the provisions of this Code. A copy of the amended articles of incorporation shall be submitted to the Securities and Exchange Commission in accordance with this Code. Upon approval of the amended articles of incorporation or the expiration of the shortened term, as the case may be, the corporation shall be deemed dissolved without any further proceedings, subject to the provisions of this Code on liquidation. (n)

Supreme Court E-Library

procedures under our laws. All that needs to be done, according to them, is for this Court to order (1) FLADC to file with the SEC a petition to issue a certificate of decrease of capital stock and (2) the SEC to approve said decrease. This new argument has no merit.

The Tius' case for rescission cannot validly be deemed a petition to decrease capital stock because such action never complied with the formal requirements for decrease of capital stock under Section 33 of the Corporation Code. No majority vote of the board of directors was ever taken. Neither was there any stockholders meeting at which the approval of stockholders owning at least two-thirds of the outstanding capital stock was secured. There was no revised treasurer's affidavit and no proof that said decrease will not prejudice the creditors' rights. On the contrary, all their pleadings contained were alleged acts of violations by the Ongs to justify an order of rescission.

Furthermore, it is an improper judicial intrusion into the internal affairs of the corporation to compel FLADC to file at the SEC a petition for the issuance of a certificate of decrease of stock. Decreasing a corporation's authorized capital stock is an amendment of the Articles of Incorporation. It is a decision that only the stockholders and the directors can make, considering that they are the contracting parties thereto. *In this case, the Tius are actually not just asking for a review of the legality and fairness of a corporate decision. They want this Court to make a corporate decision for FLADC.* We decline to intervene and order corporate structural changes not voluntarily agreed upon by its stockholders and directors.

Truth to tell, a judicial order to decrease capital stock without the assent of FLADC's directors and stockholders is a violation of the "business judgment rule" which states that:

> x x x (C)ontracts *intra vires* entered into by the board of directors are binding upon the corporation and courts will not interfere unless such contracts are so unconscionable and oppressive as to amount to wanton destruction to the rights of the minority, as when plaintiffs

Supreme Court E-Library

aver that the defendants (members of the board), have concluded a transaction among themselves as will result in serious injury to the plaintiffs stockholders.[29]

The reason behind the rule is aptly explained by Dean Cesar L. Villanueva, an esteemed author in corporate law, thus:

> Courts and other tribunals are wont to override the business judgment of the board mainly because, courts are not in the business of business, and the *laissez faire* rule or the free enterprise system prevailing in our social and economic set-up dictates that it is better for the State and its organs to leave business to the businessmen; especially so, when courts are ill-equipped to make business decisions. More importantly, the social contract in the corporate family to decide the course of the corporate business has been vested in the board and not with courts.[30]

Apparently, the Tius do not realize the illegal consequences of seeking rescission and control of the corporation to the exclusion of the Ongs. Such an act infringes on the law on reduction of capital stock. Ordering the return and distribution of the Ongs' capital contribution without dissolving the corporation or decreasing its authorized capital stock is not only against the law but is also prejudicial to corporate creditors who enjoy absolute priority of payment over and above any individual stockholder thereof.

Stripped to its barest essentials, the issue of rescission in this case is not difficult to understand. If rescission is denied, will injustice be inflicted on any of the parties? The answer is no because the financial interests of both the Tius and the Ongs will remain intact and safe within FLADC. On the other hand, if rescission is granted, will any of the parties suffer an injustice? Definitely yes because the Ongs will find themselves out in the streets with nothing but the money they had in 1994 while the Tius will not only enjoy a windfall estimated to be anywhere

---

[29] *Gamboa vs. Victoriano*, 90 SCRA 40 [1979].

[30] Cesar L. Villanueva, *Philippine Corporate Law*, 1998 Ed., p. 228.

Supreme Court E-Library

from ₱450 million to ₱900 million[31] but will also take over an extremely profitable business without much effort at all.

Another very important point follows. The Court of Appeals and, later on, our Decision dated February 1, 2002, stated that both groups were in *pari delicto*, meaning, that both the Tius and the Ongs committed breaches of the Pre-Subscription Agreement. This may be true to a certain extent but, judging from the comparative gravity of the acts separately committed by each group, we find that the Ongs' acts were relatively tame *vis-à-vis* those committed by the Tius in not surrendering FLADC funds to the corporation and diverting corporate income to their own MATTERCO account. The Ongs were right in not issuing to the Tius the shares corresponding to the four-story building and the 1,902.30 square-meter lot because no title for it could be issued in FLADC's name, owing to the Tius' refusal to pay the transfer taxes. And as far as the 151 square-meter lot was concerned, why should FLADC issue additional shares to the Tius for property already owned by the corporation and which, in the final analysis, was already factored into the shareholdings of the Tius before the Ongs came in?

We are appalled by the attempt by the Tius, in the words of the Court of Appeals, to "pull a fast one" on the Ongs because that was where the problem precisely started. It is clear that, when the finances of FLADC improved considerably after the equity infusion of the Ongs, the Tius started planning to take over the corporation again and exclude the Ongs from it. It appears that the Tius' refusal to pay transfer taxes might not have really been at all unintentional because, by failing to pay that relatively small amount which they could easily afford, the Tius should have expected that they were not going to be given the corresponding shares. It was, from every angle, the perfect excuse for blackballing the Ongs. In other words, the Tius created a problem then used that same problem as their pretext for showing their partners the door. In the process, they

---

[31] Estimates of FLADC's current net worth cited during the oral arguments on January 29, 2003 ranged from ₱450 million to ₱1 billion.

Supreme Court E-Library

stood to be rewarded with a bonanza of anywhere between ₱450 million to ₱900 million in assets (from an investment of only ₱45 million which was nearly foreclosed by PNB), to the extreme and irreparable damage of the Ongs, FLADC and its creditors.

After all is said and done, no one can close his eyes to the fact that the Masagana Citimall would not be what it has become today were it not for the timely infusion of ₱190 million by the Ongs in 1994. There are no ifs or buts about it. Without the Ongs, the Tius would have lost everything they originally invested in said mall. If only for this and the fact that this Resolution can truly pave the way for both groups to enjoy the fruits of their investments — assuming good faith and honest intentions — we cannot allow the rescission of the subject subscription agreement. The Ongs' shortcomings were far from serious and certainly less than substantial; they were in fact remediable and correctable under the law. It would be totally against all rules of justice, fairness and equity to deprive the Ongs of their interests on petty and tenuous grounds.

WHEREFORE, the motion for reconsideration, dated March 15, 2002, of petitioners Ong Yong, Juanita Tan Ong, Wilson Ong, Anna Ong, William Ong, Willie Ong and Julie Ong Alonzo and the motion for partial reconsideration, dated March 15, 2002, of petitioner Willie Ong are hereby *GRANTED*. The Petition for Confirmation of the Rescission of the Pre-Subscription Agreement docketed as SEC Case No. 02-96-5269 is hereby *DISMISSED* for lack of merit. The unilateral rescission by the Tius of the subject Pre-Subscription Agreement, dated August 15, 1994, is hereby declared as null and void.

The motion for the issuance of a writ of execution, dated March 15, 2002, of petitioners David S. Tiu, Cely Y. Tiu, Moly Yu Gow, Belen See Yu, D. Terence Y. Tiu, John Yu and Lourdes C. Tiu is hereby *DENIED* for being moot.

Accordingly, the Decision of this Court, dated February 1, 2002, affirming with modification the decision of the Court of Appeals, dated October 5, 1999, and the SEC *en banc*, dated September 11, 1998, is hereby *REVERSED*.

Supreme Court E-Library

Costs against the petitioner Tius.

SO ORDERED.

Bellosillo (Chairman), Quisumbing, and *Callejo, Sr., JJ.,* concur.

EN BANC

[G.R. No. 149022. April 8, 2003]

CARMENCITA D. CORONEL, *petitioner, vs.* **HON. ANIANO A. DESIERTO,* as Ombudsman, and PEDRO SAUSAL, JR.,** *respondents.*

SYNOPSIS

Imputing grave abuse of discretion amounting to lack or excess of jurisdiction, petitioner filed the instant petition for *certiorari* before the Supreme Court assailing the Decision of the Ombudsman dismissing her from the service for dishonesty for falsifying a receipt by making it appear that the luncheon bill was ₱1,213.00 when actually it was only ₱213.00. The Ombudsman found that petitioner had acted dishonestly when she increased the amount that she could reimburse by adding the necessary numeral and punctuation mark on the subject cash invoice before she filed for reimbursement of the meal expenses incurred. Petitioner argued that the Ombudsman's finding of falsification was based on an unauthenticated photocopy of the alleged duplicate original receipt, which has no probative value. The Solicitor General, however, asked that the petition be dismissed contending, among others, that petitioner should have filed her petition with the Court of Appeals, not the Supreme Court, in accordance with its ruling that appeals from the decisions

---

* Now retired.