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FIRST DIVISION

[G.R. No. 164958. January 27, 2006]

SY CHIM and FELICIDAD CHAN SY, *petitioners, vs.* **SY SIY HO & SONS, INC., doing business under the name and style GUAN YIAC HARDWARE,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATIONS; INTERIM RULES OF PROCEDURE FOR INTRA-CORPORATE CONTROVERSIES; CREATION OF MANAGEMENT COMMITTEE; REQUISITES.— "Section 1, Rule 9 of the Interim Rules provides: SECTION 1. *Creation of a management committee.* – As an incident to any of the cases filed under these Rules or the Interim Rules on Corporate Rehabilitation, a party may apply for the appointment of a management committee for the corporation, partnership or association, when there is imminent danger of: (1) Dissipation, loss, wastage or destruction of assets or other properties; *and* (2) Paralyzation of its business operations which may be prejudicial to the interest of the minority stockholders, parties-litigants or the general public." The said Rules, which took effect on April 1, 2001, was promulgated by the Court pursuant to its power to promulgate rules concerning "pleading, practice and procedure in all courts xxx providing for simplified and inexpensive procedure for the speedy disposition of cases" under Section 5(5), Article VIII of the Constitution. We do not agree with petitioners' contention that the word "and" in Section 1, Rule 9 of the Interim Rules should be interpreted to mean "or." xxx The rationale for the need to establish the confluence of the two (2) requisites under Section 1, Rule 9 by an applicant for the appointment of a management committee is primarily based upon the fact that such committee and receiver appointed by the court will immediately take over the management of the corporation, partnership or association, including such power as it may deem appropriate, and any of the powers specified in Section 5 of the Rule. Indeed, upon the appointment of a receiver, the duly elected/appointed officers of the corporation are divested of the management of such

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corporation in favor of the management committee/receiver. Such transference of the corporation's management will certainly have a negative, if not crippling effect, on the operations/affairs of the corporation not only with banks and other business institutions including those abroad which it deals business with. A wall of uncertainty is erected; the short and long-term plans of the management of the corporation are disrupted, if not derailed.

2. **ID.; ID.; CREATION AND APPOINTMENT OF A MANAGEMENT COMMITTEE AND A RECEIVER; MUST BE EXERCISED ONLY WHEN THE REQUIREMENTS UNDER THE INTERIM RULES ARE SHOWN; RATIONALE.**— [T]he creation and appointment of a management committee and a receiver is an extraordinary and drastic remedy to be exercised with care and caution; and only when the requirements under the Interim Rules are shown. It is a drastic course for the benefit of the minority stockholders, the parties-litigants or the general public are allowed only under pressing circumstances and, when there is inadequacy, ineffectual or exhaustion of legal or other remedies. The power to intervene before the legal remedy is exhausted and misused when it is exercised in aid of such a purpose. The power of the court to continue a business of a corporation, partnership or association must be exercised with the greatest care and caution. There should be a full consideration of all the attendant facts, including the interest of all the parties concerned.

3. **ID.; ID.; ID.; MERE POSSIBILITY WITHOUT PROOF OF ABUSING CORPORATE POSITIONS AND DISSIPATION OF ASSETS AND PROPERTIES OF THE CORPORATION IS NOT A VALID GROUND THEREFOR.**— Mere possibility without proof of abusing corporate positions and dissipation of assets and properties of the corporation is not a valid ground for the appointment of a management committee/receiver.

4. **ID.; ID.; ID.; CANNOT BE AUTHORIZED BY MERE APPREHENSION OF FUTURE MISCONDUCT BASED UPON PRIOR MISMANAGEMENT OF THE CORPORATION.**— We agree that past conduct and condition of the corporation may be considered in determining the present situation and what the future will be. However, a management committee or receiver will not be appointed merely because of things done or

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attempted at a past time *when the present situation and the prospects for the future are not such as to warrant taking the control of the property out of the hands of its owners*. The circumstances to justify the appointment of a management committee/ receiver must be extraordinary and something more must be shown than past misconduct and a mere apprehension based thereon of future wrongdoing. To repeat, in the absence of a strong showing of an imminent danger of dissipation, loss, wastage or destruction of assets or other properties of a corporation and paralysis of its business operations, the mere apprehension of future misconduct based upon prior mismanagement will not authorize the appointment of a management committee/receiver.

APPEARANCES OF COUNSEL

Divino & Gavino for petitioners.
E.L. Sayo & Associates for respondent.

D E C I S I O N

CALLEJO, SR., *J.*:

The Sy Siy Ho & Sons, Inc. (hereinafter referred to as the corporation) is a domestic corporation which was organized in the 1940s,[1] engaged primarily in importing, buying and selling hardware, machineries, spare parts, supplies and other allied products and merchandise to be sold exclusively on wholesale basis. It was doing business under the name and style Guan Yiac Hardware[2] with office at No. 453-455 T. Pinpin Street, Binondo, Manila.

The corporation was owned and controlled by Sy Chim and his children. Sometime in 1990, a controversy ensued between Sy Chim's two sons, Sy Tiong Shiou and Sy Tiong Bio who was then the Vice President for Finance. Sy Chim sided with Sy Tiong Shiou. The intra-corporate dispute reached the Securities and Exchange Commission (SEC), docketed as SEC Case No. 04443.

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[1] *Rollo*, p. 6.

[2] Records Vol. II, p. 31.

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On May 31, 1993, the stockholders of record, Sy Chim and Sy Tiong Shiou (Sy Chim Group), on the one hand, and Sy Tiong Bio, Sy Tiong Gue, Sy Tiong Sim, Sy Tiong Han and Sy Tiong Yan (Sy Tiong Bio Group), on the other, executed a Compromise Agreement,[3] where the latter group relinquished their shares to Sy Chim. The parties also agreed to divide and distribute the assets and liabilities of the corporation as follows:

(a) Mr. SY CHIM GROUP — Four (4) parts, or three (3) parts Sy Chim, one (1) part Sy Tiong Shiou.
(b) Mr. SY TIONG BIO GROUP — Five (5) parts at the rate of one (1) each.[4]

Some of the shares of stocks were assigned to Felicidad Chan Sy, wife of Sy Chim. The spouses Sy Chim and Felicidad Chan Sy, and spouses Sy Tiong Shiou and Juanita Tan Sy, and their children, Charlie, Romer and Jesse James Tan, then became stockholders and members of the Board of Directors of the corporation. The officers of the corporation were as follows: Sy Chim, President; Felicidad Chan Sy, Assistant Treasurer; Sy Tiong Shiou, Vice President and General Manager; Juanita Tan Sy (wife of Sy Tiong Shiou), Corporate Treasurer; and Charlie Tan (son of spouses Sy Tiong Shiou), Assistant General Manager.

As of the year 2000, the corporation had a gross profit of ₱45,084,908.11 and ₱42,954,252.32 in 2001.[5] As of April 19, 2002, it had a capital stock of ₱150,000,000.00, divided into 150,000 shares, with a par value of ₱1,000.00 per share. The treasury stocks amounted to ₱70,720,000.00. It had a subscribed and paid-up capital of 103,733 shares and ₱103,733,000.00 respectively. The stockholders and the respective shareholdings were as follows:

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[3] Records, Vol. III, pp. 57-68.

[4] *Id.* at 57.

[5] Comparative Income Statement for the Years Ending December 31, 2000 & 2001, *rollo*, p. 956.

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Stockholder	No. of Shares Subscribed	Amount Subscribed and Paid (PHP)
SY CHIM	35,013	35,013,000
FELICIDAD CHAN SY	17,509	17,509,000
CHARLIE TAN	20,338	20,338,000
ROMER TAN	19,636	19,636,000
JESSE JAMES TAN	11,233	11,233,000
SY TIONG SHIOU	2	2,000
JUANITA TAN SY	2	2,000
TOTAL	*103,733*	*PHP103,733,000*[6]

After almost a decade later, another intra-corporate dispute ensued, this time between Sy Chim and his wife, on the one hand, and their son Sy Tiong Shiou, on the other. In a letter addressed to the corporation dated February 3, 2003, Corporate Treasurer Juanita Tan Sy requested that she immediately be "removed from all responsibilities and obligations pertaining to all corporate funds" of the corporation, considering that Felicidad Chan Sy was the one who handled and managed all deposits and funds while Sy Chim supervised all expenditures. She further reported that Felicidad Chan Sy did not make any cash deposit to any bank from November 1, 2002 to January 31, 2003, and that the total amount of cash as reflected in the bank statements is far less than that reported in the corporation's financial statements and other records. She then proposed that the Board call a special meeting to discuss these matters.[7] Thus, on March 24, 2003, a special meeting of the board of directors was held with the spouses Sy Tiong Shiou and Juanita Tan Sy and their sons Charlie, Romer and Jesse James Tan in attendance. In two separate resolutions, Juanita Tan Sy was removed as corporate treasurer and relieved of all responsibilities; the spouses Sy Chim were held accountable for the undeposited money; and a new external auditor was hired to make a complete audit of all books and records.[8] Banaria Banaria and Company then submitted Financial Reports covering 2001 and 2002.[9]

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[6] Records, Vol. II, p. 54.

[7] Records, Vol. I, pp. 20-21.

[8] *Id.* at 23-27.

[9] *Id.* at 28-36.

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In a Letter[10] dated April 15, 2003, Sy Tiong Shiou informed his parents of the corporation's cash balance shortage as of March 31, 2003 (as reflected in the auditor's report) and that there was also an undeposited amount of ₱2,000,000.00 for the current salary and emergency funds, and they had several postdated checks in their possession. Sy Tiong Shiou requested that the shortage be accounted for, and that the undeposited funds be remitted. He also requested that the postdated checks and original receipts for all disbursements of corporate funds be turned over to Corporate Treasurer Juanita Tan Sy. The spouses Sy Chim did not respond.

Spouses Sy Tiong Shiou and Juanita Tan Sy, their three sons held another meeting on April 21, 2003, again without written notice to the spouses Sy Chim, and approved a resolution[11] authorizing Romer Tan to file a complaint for and in behalf of the corporation against the said spouses in the Regional Trial Court (RTC) of Manila. Sy Tiong Shiou was elected President of the corporation.

The complaint[12] for accounting and damages against the spouses Sy Chim was filed on May 6, 2003. The complaint alleged that Felicidad Chan Sy, as custodian of all cash collections, had been depositing amounts less than those appearing in the financial statements which are in the defendants' custody and that no deposits were made in the corporation's account from November 1, 2002 to January 31, 2003. Based on the accountant's report, Felicidad Chan Sy failed to account for ₱67,117,230.30. Plaintiff further alleged that, based on the corporation's General Information Sheet for 2003, the subscribed shares of the corporation were as follows:

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[10] *Id.* at 37.

[11] *Id.* at 13.

[12] *Id.* at 3-12.

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Name of Subscriber	No. of Shares Subscribed	Amount Paid-Up
Sy Tiong Shiou	27,987	₱27,987,000.00
Juanita Tan	32,017	32,017,000.00
Charlie Tan	12,512	12,512,000.00
Romer Tan	12,079	12,079,000.00
Jesse James Tan	6,910	6,910,000.00
Sy Chim	21,539	21,539,000.00
Felicidad Chan Sy	10,771	10,771,000.00
Total	123,815	₱123,815,000.00[13]

Plaintiff prayed that, after due proceedings, judgment be rendered in its favor, as follows:

a. Ordering defendants to render a full, complete and true accounting of all the amounts, proceeds and funds paid to, received and earned by the plaintiff since 1993 and to restitute to the plaintiff, jointly and severally, all such amounts, proceeds and funds that they have misappropriated;

b. Ordering defendants to pay, jointly and severally, the plaintiff the amount of One Million (₱1,000,000.00) Pesos by way of exemplary damages, and One Million (₱1,000,000.00) Pesos by way of attorney's fees plus Five Thousand (₱5,000.00) Pesos per court appearance and litigation expenses in the amount of not less than One Hundred Thousand (₱100,000.00) Pesos;

c. Cost of suit.

Plaintiff further prays for such other reliefs [it] deems just and equitable in the premises.[14]

In their answer[15] to the complaint, defendants averred, *inter alia*, that any unaccounted cash account and irregularities in the management of the corporation, if any, were the full responsibility of Sy Tiong Shiou, Romer Tan's own father, since he has direct and actual management of the corporation under

[13] *Id.* at 5.

[14] *Id.* at 10-11.

[15] *Id.* at 40-60.

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the by-laws. Sy Chim, as corporate president, was a mere figurehead, who only had general supervision over the corporation's officers. Juanita Tan Sy, as corporate treasurer, had custody of the corporation's funds and should have kept a complete and accurate record of receipts, disbursements, and other commercial transactions of the corporation. Felicidad Chan Sy merely performed clerical work and acted as Corporate Treasurer only in the absence of Juanita Tan Sy and under the latter's close supervision. They averred that any and all meetings of the stockholders and members of the corporation's Board of Directors were null and void as they violated the corporate by-laws as well as the Corporation Code. Defendants further denied executing any deed or document authorizing the transfer of their shares, or that treasury shares had been issued by the corporation. Assuming that treasury shares were validly issued in 2002 as claimed in the complaint, defendants should have been allowed to exercise their pre-emptive rights over such shares.

Defendants prayed that they be granted the following reliefs:

(1) Dismissing the instant Complaint for utter lack of merit;

(2) Ordering Plaintiff Mr. Romer S. Tan to pay the following:

(a) *Three Million Pesos (PHP3,000,000.00),* by way of moral damages;

(b) *Three Million Pesos (PHP3,000,000.00),* by way of exemplary damages;

(c) *Two Million Pesos (PHP2,000,000.00),* by way of attorney's fees;

(d) Costs of suit.

Other reliefs just and equitable under the premises are, likewise prayed for.[16]

Feeling aggrieved, the spouses Sy Chim and Felicidad Chan Sy filed a criminal complaint in the Office of the City Prosecutor

[16] *Id.* at 57-58.

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of Makati against the spouses Sy Tiong Shiou and their children for violation of Section 74 of the Corporation Code.

In the meantime, Sy Chim, as corporate president, called for a stockholders' meeting on June 11, 2003. An amended complaint was filed on July 1, 2003, praying for the issuance of a temporary restraining order and/or writ of preliminary prohibitory injunction. It was alleged, among others, that on April 15, 2003, defendant Sy Chim and his other children and the siblings of Sy Tiong Shiou, namely, Sy Yu Hui-Pabilona, Sy Tiong Gue, Sy Tiong Yan, Sy Yu San, Sy Yu Siong, Sy Yu Bun and her son, Bryan Lim, with two armed unidentified men, forcibly entered the office and took ₱6,500,000.00 in cash and postdated checks and other important documents, including five boxes of Hennesy X.O. wine. Since defendant Sy Chim abandoned his duties and responsibilities as president, the board of directors elected Sy Tiong Shiou as president during a special meeting on May 6, 2003. Sy Chim issued a Notice of Stockholders' Meeting on June 11, 2003 although he was no longer the president of the corporation. The amended complaint further alleged that a criminal complaint for robbery was filed against the culprits in the Office of the City Prosecutor of Manila.

The plaintiff corporation prayed for that the court grant injunctive relief, as follows:

a. **An order be issued making the preliminary injunction permanent**;

b. Ordering defendants to render a full, complete and true accounting of all the amounts, proceeds and funds paid to, received and earned by the plaintiff since 1993 and to restitute to the plaintiff, jointly and severally, all such amounts, proceeds and funds that they have misappropriated;

c. Ordering defendants to pay, jointly and severally, the plaintiff the amount of One Million (₱1,000,000.00) Pesos by way of exemplary damages, and One Million (₱1,000,000.00) Pesos by way of attorney's fees plus Five Thousand (₱5,000.00) Pesos per court appearance and litigation expenses in the amount of not less than One Hundred Thousand (₱100,000.00) Pesos;

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d. Cost of suit.

Plaintiff further prays for such other reliefs [it] deems just and equitable in the premises.[17]

During the hearing of plaintiff's petition for injunctive relief, defendants submitted the following to the court: a Joint Affidavit,[18] the Joint Supporting Affidavit[19] of See Cha and See Su Pe, and the Complaint-Affidavit[20] of Felicidad Chan Sy for violation of Section 74 of the Corporation Code against the spouses Sy Tiong Shiou and Juanita Tan Sy, Jolie Ross Tan, Charlie Tan, Romer Tan and Jesse James Tan filed in the Office of the City Prosecutor.

On August 6, 2003, the RTC issued an Order[21] granting the plea for a writ of preliminary injunction on a bond of ₱500,000.00, and enjoined defendant Sy Chim or any person acting for and in his behalf from "calling or holding a stockholders' and/or Board of Directors' meetings" of the corporation. This was followed by a writ of preliminary injunction.[22]

On July 18, 2003, defendants filed a "Motion for Production and Inspection of Documents"[23] (all the corporate books, accounting records, financial statements and other documents mentioned in, and pertinent to, the allegations of the complaint), praying that they be permitted to inspect, examine and photocopy such documents. Plaintiff opposed the motion, contending that it was premature because defendants had not yet filed their answer to the complaint.[24] On August 5, 2003, defendants also filed a "Motion for the Appointment of an Independent Auditor,"

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[17] *Id.* at 133-134.

[18] Records, Vol. II, pp. 6-9.

[19] *Id.* at 10-13.

[20] *Id.* at 25-29.

[21] *Id.* at 289-291.

[22] *Id.* at 416.

[23] *Id.* at 230-234.

[24] *Id.* at 238-241.

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to conduct an audit of the funds and assets of the plaintiff corporation.[25]

Plaintiff did not object to the motion.[26] The RTC granted the motion on August 8, 2003 and appointed the accounting firm of Punongbayan & Araullo to conduct the audit of the corporation's books and records covering the period from 1993 to the present. The Motion for Production and Inspection of Documents filed by the defendants was, however, denied. Instead, the parties have been directed to provide the accounting firm of all the books of accounts, vouchers, receipts, purchase orders and similar other documents necessary, and warned that failure to comply with the order will be dealt with as for contempt. The RTC also directed plaintiff to make its records available to the accounting firm, and after completion of the firm's task, to make such records available for defendants' inspection.[27]

In their answer to the amended complaint, defendants averred that the meetings of the stockholders and board of directors were null and void for having been conducted without prior notice to them.[28]

Meanwhile, plaintiff moved that the court set aside its Order appointing an independent auditor.

On August 26, 2003, defendants filed a "Motion for the Appointment of a Management Committee,"[29] thus:

3. Defendants alleged that under Article IV of the By-Laws of Sy Siy Ho & Sons, Inc., the funds of the corporation are under the supervision, control and administration of Sy Tiong Shiou, as the General Manager, and Sy Tiong Shiou's wife, Juanita Tan, as Treasurer; and that the direction and control of the business and operations of Guan Yiac Hardware were in the hands of the General

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[25] *Id.* at 245-251.

[26] *Id.* at 417.

[27] *Id.*

[28] Records, Vol. III, pp. 18-21.

[29] *Id.* at 105-110.

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Manager Sy Tiong Shiou, who had the power to direct and actively manage Guan Yiac Hardware.

4. Thus, defendants alleged that for any unaccounted difference of the corporation's account, including the PHP67,117,230.30 alleged in the *Amended Complaint,* it is Sy Tiong Shiou and Juanita Tan who are at fault in view of their powers as General Manager and Treasurer under the By-Laws of the Corporation and in actual practice since they have active control of the day-to-day operations of the Corporation.

5. However, while this Honorable Court will still determine, in the course of these proceedings, whether it is defendants Sy Chim and Felicidad Chan Sy or whether it is Sy Tiong Shiou and Juanita Tan who are the parties responsible for the dissipation and loss of the corporate funds and assets of Sy Siy Ho & Sons, Inc., the active day-to-day control and management of Sy Siy Ho & Sons, Inc. is still under the control and supervision of Sy Tiong Shiou and Juanita Tan, especially so since defendants had been physically ousted from their residence by Sy Tiong Shiou and his family since 15 April 2003, and defendants have been denied access to the corporate premises and its books and records.

6. The plaintiff itself has alleged that there has been a massive dissipation and loss of its corporate assets and funds, and this Court is still in the process of determining whether the General Manager, Sy Tiong Shiou, and Treasurer, Juanita Tan, are the parties responsible for such dissipation and loss. In view of the foregoing, until this Honorable Court resolves with finality that Sy Tiong Shiou and his wife, Juanita Tan, are not responsible for the dissipation and loss, the control and management of the Corporation must be transferred to an independent party to ensure the preservation of the corporate assets.

7. While Sy Tiong Shiou and Juanita Tan remain in control of the management of the corporation, there is imminent danger of further dissipation, loss, wastage or destruction of the corporate funds and assets.

8. Nor can control and management of the corporation be transferred to the other stockholders Romer Sy Tan, Jesse James Tan and Charlie Tan, or the Corporate Secretary Jolie Ross S. Tan, who are all children of Sy Tiong Shiou and Juanita Tan.

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9. Annexes "E" and "J" of the *Amended Complaint*, show that Romer Sy Tan, Jesse James Tan and Charlie Tan, and Jolie Ross S. Tan, allegedly acting as the members of the Board of Directors and the corporate secretary of Sy Siy Ho & Sons, Inc., took part in the actuations against defendants.

9.1 Plaintiff's Annex "E" shows that Romer Sy Tan, Jesse James Tan and Charlie Tan all signed the minutes of the purported special meeting of the board of directors wherein, in a highly self-serving manner, Juanita Tan was declared to have no knowledge of the deposits, disbursements and expenditures of the plaintiff since 1993, and that all of these as well as the deposits were in the control of the defendants. Jolie Ross Tan, on the other hand, signed the Secretary's Certificate wherein Juanita Tan was removed of all responsibilities pertaining to the funds of the corporation since 1993.

9.2 On the other hand, Annex "J" of plaintiff's Amended Complaint shows that Romer Sy Tan, Jesse James Tan and Charlie Tan, and Jolie Ross S. Tan all signed the minutes of the purported special joint meeting of the board of directors and stockholders wherein they supposedly declared defendant Sy Chim as having abandoned his position, made Sy Tiong Shiou the President and Chairman of the Board of Directors of the corporation, made Juanita Tan the Vice President of the corporation, and cancelled defendant Sy Chim's authority as a signatory on the corporation's bank accounts.

9.3 Romer Sy Tan is also acting as the representative of Sy Siy Ho & Sons, Inc. in this and in another case against the defendants.

10. Hence, all of the children of Sy Tiong Shiou and Juanita Tan have taken action against their grandparents, defendants Sy Chim and Felicidad Chan Sy. Obviously, the entire family of Sy Tiong Shiou and Juanita Tan is acting against the defendants. In view of the foregoing, the management and control of Sy Siy Ho & Sons, Inc. cannot be transferred to any or all of the children of Sy Tiong Shiou and Juanita Tan since they obviously would not protect the interests of defendants Sy Chim and Felicidad Chan Sy as stockholders of Sy Siy Ho & Sons, Inc.

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11. Thus, there exists an urgent need for the immediate appointment of a management committee to administer, manage and preserve the assets, funds, properties and records of Sy Siy Ho & Sons, Inc. in order to prevent any further dissipation, wastage and loss.[30]

The control and management of the corporation must be transferred *pendente lite* to an independent party to ensure the preservation of the corporate assets.[31]

Plaintiff opposed the motion, contending that defendants failed to allege and establish the two requisites for the creation of a management committee under Section 1, Rule 9 of the Interim Rules of Procedure for Intra-Corporate Controversies (Interim Rules for brevity) under Republic Act No. 8799. It averred that, compared to previous years under the management of Sy Tiong Shiou, the volume of sales and importation of the corporation had considerably increased, and that its obligation of ₱29,404,664.00 to Metrobank was paid, and was thus in "current status." Plaintiff also alleged that:

8. The kind of plaintiff's business requires a special talent or managerial sagacity that only a person who has been exposed to it for a long and continuous period of time possesses. Sy Tiong Shiou is that kind of individual because he has been in this kind of business for more than forty (40) years, starting as an ordinary employee and now as President and General Manager of the plaintiff. As such, he knows its intimate details and nuances.

9. The appointment of a management committee to manage the business affairs of the plaintiff would not only be unwise and ill-advised. It might lead to a disastrous consequence for all its stockholders and instead of saving the enterprise, as defendants would claim, it will only result to its untimely demise. If this will happen, the interest of all the stockholders as well as the welfare of its more than seventy (70) employees, including that of their families, will be greatly affected and jeopardized. x x x[32]

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[30] *Id.* at 106-108.

[31] *Id.*

[32] *Id.* at 117.

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On September 9, 2003, defendants filed a Motion for Leave to File and Third-Party Complaint against Sy Tiong Shiou and Juanita Tan Sy, with the following prayer:

1. Declaring third-party defendants Sy Tiong Shiou and Juanita Tan directly and solely liable in respect of plaintiff's claim for accounting and damages and, in the same judgment, in the remote event that third-party plaintiffs Sy Chim and/or Felicidad Chan Sy are adjudged liable to plaintiff, ordering Sy Tiong Shiou and Juanita Tan to pay all amounts necessary to discharge Sy Chim's and Felicidad Chan Sy's liability to plaintiff by way of indemnity or reimbursement;

2. Ordering third-party defendants to pay third-party plaintiffs the amount of ₱300,000.00 as litigation expenses and attorney's fees.

Third-party plaintiffs further pray for such other reliefs as the Honorable Court may deem just and equitable under the premises.[33]

For their part, Sy Tiong Shiou and Juanita Tan Sy alleged —

31. As shown, since 1993, third-party defendants Sy Tiong Shiou and Juanita Tan have had full and complete control of the day-to-day operations and complete custody and control of the corporate funds of Sy Siy Ho & Sons, Inc., hence, they are the real parties-in-interest in this case.

32. As shown, third-party defendants Sy Tiong Shiou and Juanita Tan are liable for any shortfall or unaccounted difference of cash account of Sy Siy Ho & Sons, Inc. for the period 1993 to 2003, including the PHP67,117,230.30 alleged in paragraph 12 of the Amended Complaint dated 30 June 2003, especially so since third-party plaintiffs have been physically ousted from their residence by Sy Tiong Shiou and his family since 15 April 2003, and denied access to the corporate premises by Sy Tiong Shiou and his family as well as its books and records.

33. Hence, third-party defendants Sy Tiong Shiou and Juanita Tan should render a full, complete and true accounting of all the amounts, proceeds and funds paid to, received and earned by Sy Siy Ho & Sons, Inc. since 1993, and should be declared solely liable to Sy Siy Ho & Sons, Inc. for any shortfall or unaccounted difference of cash account of Sy Siy Ho & Sons, Inc. for the period 1993-2003,

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[33] *Id.* at 145.

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including the PHP67,117,230.30 alleged in paragraph 12 of the Amended Complaint dated 30 June 2003, and in the remote event that this Honorable Court holds Sy Chim and Felicidad Chan Sy liable to plaintiff, Sy Chim and Felicidad Chan Sy are entitled to full indemnity and reimbursement from Sy Tiong Shiou and Juanita Tan in respect of plaintiff's claim.[34]

On September 12, 2003, the RTC issued an Order[35] granting the motion for the creation of a management committee *pendente lite* to be composed of three members, one to be designated by the court as chairman, and two others to be nominated by the parties within 10 days, failing which the court would appoint the same. Such management committee would have the power and functions enumerated under Section 5, Rule 9 of the Interim Rules.[36] The RTC justified the issuance of its order on its finding that the parties were pointing accusing fingers at each other for the unaccounted funds. According to the trial court, the question of who should be held responsible for the unaccounted funds would only be determined after an extensive audit of the company's books. Moreover, while the main case is yet to be heard, the fact remains that corporate assets, funds, properties and records were in imminent danger of further dissipation or total loss. Thus, it would serve the best interest of the company, as well as its stockholders and creditors, to have the corporation managed by an independent committee exclusively accountable to the court. According to the RTC, the corporation's assets, income and properties would be protected and preserved until the final determination of the main controversy.

The court further stated that the appointment of a receiver was justified where pleadings requesting appointment were without qualification as to information and belief and were not controverted by defendants.[37] It noted that sufficient allegations

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[34] *Id.* at 144.

[35] *Id.* at 184-187.

[36] *Id.* at 186.

[37] Citing *Richardson v. Arizona Fuels Corp.*, 614 P.2d 636, cited in 16 Fletcher (1989), p. 99.

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of misappropriation of corporate assets were made, and that the appointment of a receiver is justified upon a showing that one who is president, director, managing officer and controlling stockholder has allowed himself unauthorized salary increases, used corporate funds for his private purposes, entrusted his duties to others, conducted a competing business and made a secret profit by transactions between the two concerns, used employees and equipment of the company for his own business, failed to keep complete corporate accounts, incurred penalties for delinquent corporate taxes, and otherwise caused waste and loss.[38]

On October 8, 2003, the RTC granted defendants' Motion to File a Third-Party Complaint and ordered that such complaint be admitted.[39] Third-party defendants failed to file their answer thereon and were declared in default upon motion of the third-party plaintiffs.

Plaintiff corporation filed a motion for reconsideration of the September 12, 2003 Order of the trial court creating a management committee. Plaintiff reiterating its claim that defendants failed to adduce evidence to prove the twin requisites for the creation of a management committee under Section 1, Rule 9 of the Interim Rules.

On October 15, 2003, the trial court issued a Supplemental Order[40] directing the president, vice president, secretary, treasurer, accountant, bookkeeper of the corporation or any person acting on their behalf or under their instruction to allow the parties or their duly-authorized representatives to be present during the audit. The said officers were likewise enjoined to secure court approval before disbursing funds in excess of ₱10,000.00. Finally, the officers were directed to submit the names of the banks the corporation did business with and to

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[38] *Id.*, citing 16 Fletcher (1989), 204, citing *Howell v. Poff*, 122 Neb. 793, 241 NW 548.

[39] *Rollo*, pp. 344-347.

[40] *Id.* at 363-364.

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indicate the balance of its accounts. The trial court gave the said officers ten (10) days to comply with this order and that, upon their failure to do so, would be dealt with as for contempt and meted the appropriate penalty as warranted by the evidence.

However, Punongbayan & Araullo withdrew as independent auditor.[41] Plaintiff filed a motion for the reconsideration of the Supplemental Order, and, thereafter, a Manifestation and Motion,[42] praying that the order of the court appointing an independent auditor be executed. On December 11, 2003, defendants filed a Comment/Opposition to Plaintiff Manifestation and Motion.[43] Plaintiff made a reply thereto.

In an Order[44] dated December 19, 2003, the RTC denied plaintiff's motion for reconsideration of the Supplemental Order. The trial court designated Wencita C. Salvador as comptroller tasked to oversee the maintenance of corporate books of accounts, budget administration, internal control on disbursements, reporting and interpretation of financial statements, tax administration, protection of assets, financial evaluation and government reporting. She was also designated as a co-signatory to all checks or withdrawals of funds, to receive a monthly fee of ₱50,000.00. The RTC reserved the authority to expand her authority. However, it modified its Order dated October 15, 2003, in that its prior approval was no longer required in the disbursement of funds, except those in excess of ₱500,000.00. It further ordered plaintiff not to obtain any loan or other credit accommodations without its prior approval, and directed plaintiff's depository banks to be advised of its order.

The hearing for the formation of the management committee was set on January 9, 2004.[45] Plaintiff filed a motion for reconsideration of the trial court's Order dated December 19, 2003.

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[41] *Id.* at 384-385.

[42] *Id.* at 411-414.

[43] *Id.* at 416-423.

[44] *Id.* at 433-438.

[45] *Id.* at 437.

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The spouses Sy Tiong Shiou and Juanita Tan Sy filed a petition for *certiorari* in the Court of Appeals (CA) assailing the October 8, 2003 and December 19, 2003 Orders of the RTC. The petition, docketed as CA-G.R. SP No. 81897 and raffled to the appellate court's 7th Division, contained the following prayer:

> 1. Upon the filing of this petition, a temporary restraining order and/or writ of preliminary injunction be issued restraining/enjoining the Honorable Respondent JUDGE from undertaking further proceedings in Civil Case No. 03-106456 until further orders from this Honorable Court;
>
> 2. After due proceedings, this petition be given due course and, thereafter, judgment be rendered annulling and setting aside the assailed Orders dated October 8, 2003 (Annex "H", *supra*) and the Order dated December 19, 2003 (Annex "R", *supra*) and striking out and quashing the Third-Party Complaint or ordering the Honorable Respondent JUDGE to strike out and quash the Third-Party Complaint.
>
> Petitioners also pray for costs and for such other reliefs as just and equitable under the premises.[46]

Meantime, in an Order[47] dated January 27, 2004, the RTC declared that its December 19, 2003 Order designating Wencita Salvador as comptroller was immediately executory. She was, likewise, directed to immediately assume her functions and ordered all the corporation officers to immediately turn over all corporate books and records as may be required by her, and to cooperate fully. The court designated the accounting firm of R.S. Bernaldo & Associates to conduct the audit. The court also directed the parties to provide the firm with all the financial books of the corporation.

In a Letter dated January 30, 2004, Salvador informed the corporation that she was assuming the position of comptroller effective February 2, 2004.

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[46] *Id.* at 460.

[47] *Id.* at 477-478.

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The corporation filed an Urgent Motion[48] to lift the January 27, 2004 Order of the RTC, but before the RTC could resolve the motion, the corporation filed a petition for *certiorari* with injunctive relief in the CA, docketed as CA-G.R. SP No. 82171. The following allegations were made:

A. THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION AND ACTED WITHOUT OR IN EXCESS OF JURISDICTION AND VIOLATED PETITIONER'S RIGHT TO DUE PROCESS IN ISSUING THE ORDER OF 12 SEPTEMBER 2003 (Annex "F") GRANTING THE MOTION OF THE DEFENDANTS (Private Respondents herein) FOR THE CREATION OF A MANAGEMENT COMMITTEE *PENDENTE LITE*, AND IN NOT RESOLVING BUT INSTEAD MOOTING PETITIONER'S MOTION FOR RECONSIDERATION (Annex "G") AND SUPPLEMENTAL MOTION FOR RECONSIDERATION OF SAID ORDER (Annex "H").

B. THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION AND ACTED WITHOUT OR IN EXCESS OF JURISDICTION AND VIOLATED PETITIONER'S RIGHT TO DUE PROCESS IN ISSUING THE SUPPLEMENTARY ORDER DATED OCTOBER 15, 2003 (Annex "I"), AND IN NOT RESOLVING BUT INSTEAD MOOTING PETITIONER'S MOTION FOR RECONSIDERATION OF SAID ORDER (Annex "J").

C. THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION AND ACTED WITHOUT OR IN EXCESS OF JURISDICTION AND VIOLATED PETITIONER'S RIGHT TO DUE PROCESS IN ISSUING THE ORDER DATED DECEMBER 19, 2003 (Annex "P"), AND IN NOT RESOLVING BUT INSTEAD MOOTING PETITIONER'S MOTION FOR RECONSIDERATION OF SAID ORDER (Annex "Q").

D. THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION AND ACTED WITHOUT OR IN EXCESS OF JURISDICTION AND VIOLATED PETITIONER'S RIGHT TO DUE PROCESS IN ISSUING THE ORDER DATED JANUARY

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[48] *Id.* at 479-481.

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27, 2004 (Annex "S") AND IN NOT RESOLVING BUT INSTEAD MOOTING PETITIONER'S URGENT MOTION TO LIFT ORDER DATED JANUARY 27, 2004 (Annex "T").[49]

The appellate court set the hearing on the plea for injunctive relief.[50]

On June 29, 2005, the CA rendered judgment granting the petition and nullifying the orders issued by the RTC. The *fallo* of the decision reads:

WHEREFORE, in view of the foregoing, the petition is *GRANTED.* The Orders of September 12, 2003, October 15, 2003, December 19, 2003 and January 27, 2004, are hereby *ANNULLED* and *SET ASIDE.* The instant case is remanded to the Regional Trial Court of Manila, Branch 46, for further proceedings with special instructions to resolve the same with deliberate dispatch in accordance with the rules on summary procedure as defined by the *Interim Rules of Procedure for Intra-Corporate Controversies.* No pronouncement as to cost.

SO ORDERED.[51]

The CA ruled that respondents failed to prove a requirement for the creation of a management committee under Section 1, Rule 9 of the Interim Rules: that there was imminent danger of massive dissipation, loss, wastage or destruction of assets and other properties of the corporation. The appellate court declared that other than the bare allegations of Sy Chim and Felicidad Chan Sy that they could not protect their interests because of dissention among themselves on the one hand, and members of the board of directors on the other, they failed to show that the business operations of the corporation were paralyzed. The CA emphasized that the creation of a management committee is for the benefit of all the interested parties, not exclusively for the benefit of the party at whose instance it is to be created. The appellate court stated that a simple turn over of pertinent receipts would facilitate the accounting sought for, without resorting to the creation of a

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[49] CA *rollo*, Vol. I, p. 19.

[50] *Id.* at 446-447.

[51] *Rollo*, pp. 1245-1246.

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management committee; the accuracy of the validity of the accounting report made as basis of the complaint for accounting and damages should then be validated during trial on the merits. Citing *Jacinto v. First Women's Credit Corporation,*[52] the CA ruled that the trial court abused its discretion amounting to excess of jurisdiction in ordering the creation of a management committee *pendente lite.*

The CA also ruled that the trial court abused its discretion in designating a comptroller and an accounting firm to assess the corporation's financial books and records. The CA stated that the appointment of a comptroller was not authorized by the Interim Rules. Thus, while Section 2, Rule 9 of the Interim Rules allows the appointment of a receiver, there was no point in discussing the same since the trial court committed abuse of its discretion in creating a management committee. The CA concluded that, when the trial court created a management committee and designated an auditing firm and a comptroller, it thereby imposed additional burden on the corporation.

The CA likewise declared that "the order imposing a limitation of Five Hundred Thousand Pesos (₱500,000.00) disbursement without prior court approval was likewise unnecessary and has no direct bearing to the issue involved in the case pending before the court *a quo.*

Spouses Sy Chim and Felicidad Chan Sy filed a motion for the partial reconsideration of the decision, which the appellate court denied.[53]

Said spouses, now petitioners, filed the instant petition for review on *certiorari*, alleging that:

I

RESPONDENT COURT OF APPEALS ERRED IN INTERPRETING SECTION 1, RULE 9 OF THE INTERIM RULES OF PROCEDURE GOVERNING INTRA-CORPORATE CONTROVERSIES BECAUSE IT

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[52] G.R. No. 154049, August 28, 2003, 410 SCRA 140 (2003).

[53] *Rollo*, pp. 1266-1267.

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FAILS TO GIVE FULL FORCE AND EFFECT TO THE PROTECTIVE POWERS OF THE COURT.

II

RESPONDENT COURT OF APPEALS ERRED IN RULING THAT THE AUDIT AND ASSESSMENT OF THE CORPORATE BOOKS AND RECORDS OF THE CORPORATION IS UNNECESSARY AND IS MORE THAN WHAT THE CASE DEMANDS.

III

RESPONDENT COURT OF APPEALS ERRED IN RULING ON THE 8 AUGUST 2003 ORDER OF THE TRIAL COURT DIRECTING THE CONDUCT OF AN AUDIT OF THE BOOKS AND RECORDS OF SY SIY HO & SONS, INC. (SSHI) BECAUSE SUCH ORDER WAS NOT COVERED BY THE PETITION BEFORE THE COURT OF APPEALS.

IV

RESPONDENT COURT OF APPEALS ERRED IN RULING THAT THE TRIAL COURT HAS NO POWER AND AUTHORITY TO DESIGNATE A COMPTROLLER AND TO MONITOR THE DISBURSEMENTS OF THE CORPORATION.

V

RESPONDENT COURT OF APPEALS ERRED IN RULING THAT THE APPOINTMENT OF AN AUDITING FIRM IS PREMATURE.

VI

RESPONDENT COURT OF APPEALS ERRED IN RULING THAT THE TRIAL COURT GRAVELY ABUSED ITS DISCRETION IN ISSUING THE ASSAILED ORDERS.[54]

The threshold issue is whether or not the RTC committed grave abuse of its discretion amounting to excess or lack of jurisdiction in (a) creating a management committee; (b) designating an independent auditor and ordering an audit of the corporate books and records of the corporation; and (c) appointing a comptroller; and whether the issues raised in this Court are factual in nature and proscribed by Rule 45 of the Rules of Civil Procedure.

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[54] *Id.* at 23-24.

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On the first issue, petitioners aver that the CA erred in strictly applying the requisites under Section 1, Rule 9 of the Interim Rules regarding the creation of a management committee. The petitioners posit that the word "and" in Section 1(1), Rule 9 should be interpreted as "or," since a literal interpretation of the provision would frustrate the plain intention of the Rule. They point out that the appellate court's strict interpretation of the rule is contrary to the spirit of Presidential Decree No. 902-A. They further assert that the RTC is empowered to act and put a stop to misappropriation of a corporation's funds and thus prevent business operations from being paralyzed. According to the petitioners, for the Court to idly wait and watch as assets of the corporation are plundered until the business is paralyzed, would render inutile Section 1, Rule 9 of the Interim Rules.

Petitioners assert that at the time the complaint was filed in the trial court, respondents abused their positions and mismanaged corporate affairs, thus necessitating the immediate creation of a management committee.

Petitioners maintain that corporate funds have massively dissipated and would continue as long as the management and control of the corporation remained with respondents. In fact, respondents admitted in their complaint that there had been massive dissipation of the funds and assets of the corporation since 1993 when they (respondents) were still corporate officers. Contrary to the ruling of the CA, the creation of the management committee would ensure the continuity of the corporation's business operations and remove the management of the business from the hands of those responsible for the dissipation of its assets. Thus, petitioners insist, the interest of the corporation and its stockholders would be preserved and protected through the creation of a management committee.

Petitioners further assert that the appointment of an independent auditing firm would satisfy the corporation's claim for a full accounting and ensure that all books, records and documents of the corporation would be submitted to the auditor to ensure a fair, impartial and full accounting. Such accounting

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would determine the full extent of misappropriation of corporate funds, as well as the shareholdings of its stockholders. Petitioners insist that there was a necessity for the court to do so in order to determine the true status of corporate funds, and to determine who should be held responsible for the alleged misappropriation. Petitioners assert that the auditor's report is of doubtful credibility as it is inconsistent with the external auditor's report (which has no indication of any missing fund). Moreover, the appointment of an external auditor is necessitated by time constraints and the volume of financial records to be examined. Petitioners point out that, as gleaned from the amended complaint, the corporation prayed for the accounting of the missing funds; the appointment of an impartial and competent auditor to conduct the audit achieves this purpose.

Petitioners maintain that respondent corporation's failure to question the trial court's appointment of an independent auditor and accounting firm through a motion for reconsideration effectively estopped them from assailing such orders; instead of filing a petition for *certiorari* in the CA, respondent should have moved that such orders be reconsidered.

On the issue of whether or not the trial court may designate a comptroller, petitioners point out that although Section 1, Rule 9 of the Interim Rules does not specifically authorize the RTC to appoint a comptroller, the same rule authorizes such court to appoint a receiver; this latter power necessarily implies the authority to designate a comptroller. According to petitioners, a comptroller would exercise more limited functions and ensure that no illegitimate corporate expenditures would be made and that all government requirements will be complied with before the formation of a management committee.

By way of comment, respondent avers that the issues raised by petitioners are factual, which is proscribed by Rule 45 of the Rules of Civil Procedure; whether or not there is factual basis for the creation of a management committee under Section 1, Rule 9 of the Interim Rules is a question of fact. The CA correctly ruled that petitioners failed to allege and substantiate the need for the appointment of an auditing firm, as well as the requisites for the creation of a

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management committee. The Order of the trial court dated August 8, 2003 had already been overtaken and rendered moot by the January 27, 2004 Order of the RTC which the CA affirmed. Also, whether or not there is a need for the appointment of comptroller and the limits of her power are questions of fact which should not be raised in this Court.

The petition is partially granted.

Section 1, Rule 9 of the Interim Rules provides:

> SECTION 1. *Creation of a management committee.* — As an incident to any of the cases filed under these Rules or the Interim Rules on Corporate Rehabilitation, a party may apply for the appointment of a management committee for the corporation, partnership or association, when there is imminent danger of:
>
> (1) Dissipation, loss, wastage or destruction of assets or other properties; *and*
>
> (2) Paralyzation of its business operations which may be prejudicial to the interest of the minority stockholders, parties-litigants or the general public.[55]

The said Rules, which took effect on April 1, 2001, was promulgated by the Court pursuant to its power to promulgate rules concerning "pleading, practice and procedure in all courts x x x providing for simplified and inexpensive procedure for the speedy disposition of cases" under Section 5(5), Article VIII of the Constitution.

We do not agree with petitioners' contention that the word "and" in Section 1, Rule 9 of the Interim Rules should be interpreted to mean "or." While it is true that in Section 6(d) of Presidential Decree No. 902-A,[56] an applicant for the appointment of a

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[55] Emphasis supplied.

[56] Sec. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:x x x d) To create and appoint a management committee, board, or body upon petition or *motu propio when there is imminent danger of dissipation, loss, wastage or destruction of assets or other properties or paralization of business operations of such corporations or entities which may be prejudicial to the interest of minority stockholders, parties-litigants or the general public* (italics supplied).

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management committee is mandated to prove only one of the two requisites provided therein, the Court, in *Jacinto v. First Women's Credit Corporation*,[57] ruled that the two requisites should be present before a management committee may be created and a receiver appointed by the RTC:

> A reading of the aforecited legal provision reveals that for a minority stockholder to obtain the appointment of an interim management committee, he must do more than merely make a *prima facie* showing of a denial of his right to share in the concerns of the corporation; he must show that the corporate property is in danger of being wasted and destroyed; that the business of the corporation is being diverted from the purpose for which it has been organized; and that there is serious paralyzation of operations all to his detriment. . . .

The rationale for the need to establish the confluence of the two (2) requisites under Section 1, Rule 9 by an applicant for the appointment of a management committee is primarily based upon the fact that such committee and receiver appointed by the court will immediately take over the management of the corporation, partnership or association, including such power as it may deem appropriate, and any of the powers specified in Section 5 of the Rule.[58]

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[57] *Supra*, note 52.

[58] SEC. 5. *Powers and functions of the management committee.* — Upon assumption to office of the management committee, the receiver shall immediately render a report and turn over the management and control of the entity under his receivership to the management committee.

The management committee shall have the power to take custody of and control all assets and properties owned or possessed by the entity under management. It shall take the place of the management and board of directors of the entity under management, assume their rights and responsibilities, and preserve the entity's assets and properties in its possession.

Without limiting the generality of the foregoing, the management committee shall exercise the following powers and functions:

(1) To investigate the acts, conduct, properties, liabilities, and financial condition of the corporation, association or partnership under management;

(2) To examine under oath the directors and officers of the entity and any other witnesses that it may deem appropriate;

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Indeed, upon the appointment of a receiver, the duly elected/appointed officers of the corporation are divested of the management of such

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(3) To report to the court any fact ascertained by it pertaining to the causes of the problems, fraud, misconduct, mismanagement and irregularities committed by the stockholders, directors, management or any other person;

(4) To employ such person or persons such as lawyers, accountants, auditors, appraisers and staff as are necessary in performing its functions and duties as management committee;

(5) To report to the court any material adverse change in the business of the corporation, association or partnership under management;

(6) To evaluate the existing assets and liabilities, earnings and operations of the corporation, association or partnership under management;

(7) To determine and recommend to the court the best way to salvage and protect the interest of the creditors, stockholders and the general public, including the rehabilitation of the corporation, association or partnership under management;

(8) To prohibit and report to the court any encumbrances, transfer, or disposition of the debtor's property outside of the ordinary course of business or what is allowed by the court;

(9) To prohibit and report to the court any payments made outside of the ordinary course of business;

(10) To have unlimited access to the employees, premises, books, records and financial documents during business hours;

(11) To inspect, copy, photocopy or photograph any document, paper, book account or letter, whether in the possession of the corporation, association or partnership or other persons;

(12) To gain entry into any property for the purposes of inspecting, measuring, surveying, or photographing it or any designated relevant object or operation thereon;

(13) To bring to the attention of the court any material change affecting the entity's ability to meet its obligations;

(14) To revoke resolutions passed by the Executive Committee or Board of Directors/Trustees or any governing body of the entity under management and pass resolution in substitution of the same to enable it to more effectively exercise its powers and functions;

(15) To modify, nullify or revoke transactions coming to its knowledge which it deems detrimental or prejudicial to the interest of the entity under management;

(16) To recommend the termination of the proceedings and the dissolution of the entity if it determines that the continuance in business of such entity is no longer feasible or profitable or no longer works to the best interest of the stockholders, parties-litigants, creditors or the general public;

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corporation in favor of the management committee/receiver. Such transference of the corporation's management will certainly have a negative, if not crippling effect, on the operations/affairs of the corporation not only with banks and other business institutions including those abroad which it deals business with. A wall of uncertainty is erected; the short and long-term plans of the management of the corporation are disrupted, if not derailed.[59]

Thus, the creation and appointment of a management committee and a receiver is an extraordinary and drastic remedy to be exercised with care and caution; and only when the requirements under the Interim Rules are shown. It is a drastic course for the benefit of the minority stockholders, the parties-litigants or the general public are allowed only under pressing circumstances and, when there is inadequacy, ineffectual or exhaustion of legal or other remedies. The power to intervene before the legal remedy is exhausted and misused when it is exercised in aid of such a purpose.[60] The power of the court to continue a business of a corporation, partnership or association must be exercised with the greatest care and caution. There should be a full consideration of all the attendant facts, including the interest of all the parties concerned.

Neither Presidential Decree No. 902-A and Republic Act No. 8799 nor the Interim Rules of Procedure define "imminent danger." "Danger" is a general term, including peril, jeopardy, hazard and risk; as used in the Rule, it refers to exposure or liability to injury. "Imminent" refers to something which is threatening to happen at once, something close at hand, something

(17) To apply to the court for any order or directive that it may deem necessary or desirable to aid it in the exercise of its powers and performance of its duties and functions; and

(18) To exercise such other powers as may, from time to time, be conferred upon it by the court.

[59] *State v. Londe*, 132 S.W.2d 501.

[60] *Shapiro v. Wilgus*, 287 US 348, 53 S.Ct. 142.

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to happen upon the instant, close although not yet happening, and on the verge of happening.[61]

In the present case, petitioners failed to make a strong showing that there was an imminent danger of dissipation, loss, wastage or destruction of assets or other properties of respondent corporation *and* paralysis of its business operations which may be prejudicial to the interest of the parties-litigants, petitioners, or the general public. The RTC thus committed grave abuse of its discretion amounting to excess of jurisdiction in creating a management committee and the subsequent appointment of a comptroller.

The bone of contention between the parties is whether there was a shortage or unaccounted funds of the corporation, including ₱67,117,230.30 allegedly incurred from 1993 (when petitioner Sy Chim assumed office as President, Felicidad Chan Sy as Assistant Treasurer, Sy Tiong Shiou as General Manager, and Juanita Tan Sy as Corporate Treasurer); and who should be held accountable therefor. Petitioners blame Sy Tiong Shiou and Juanita Tan Sy, while the latter pin liability on petitioners based on the financial report of the Banaria Banaria and Company and the claim of Juanita Tan Sy. However, these issues of fact have yet to be determined by the trial court after due proceedings. Indeed, petitioners admitted the following in their motion for the appointment of a management committee:

4. Thus, defendants allege that for any unaccounted difference of the corporation's account, including the PHP67,117,230.30 alleged in the *Amended Complaint,* it is Sy Tiong Shiou and Juanita Tan who are at fault in view of their powers as General Manager and Treasurer under the By-laws of the Corporation and in actual practice since they have active control of the day-to-day operations of the Corporation.

5. However, while this Honorable Court will still determine, in the course of these proceedings, whether it is defendants Sy Chim and

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[61] *Continental Illinois Western Bank, etc. v. United States of America,* 504 F.2d 586 (1974).

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Felicidad Chan Sy or whether it is Sy Tiong Shiou and Juanita Tan who are the parties responsible for the dissipation and loss of the corporate funds and assets of Sy Siy Ho & Sons, Inc., the active day-to-day control and management of Sy Siy Ho and Sons, Inc. is still under the control and supervision of Sy Tiong Shiou and Juanita Tan, especially so since defendants have been physically ousted from their residence by Sy Tiong Shiou and his family since 15 April 2003, and defendants have been denied access to the corporate premises and its books and records.[62]

Petitioners failed to adduce a shred of evidence during the hearing of their motion to prove their claim that there was imminent danger of dissipation, loss, wastage or destruction of the assets or other properties of respondent ever since Sy Tiong Shiou became president and Juanita Tan Sy continued discharging her duties as corporate treasurer; nor is there proof that there was imminent danger of paralyzing the business operations of the corporation.

We have reviewed the records and find that, contrary to the findings of the RTC, there is no imminent danger of dissipation or total loss of the assets, funds, properties and records of respondent corporation, or paralysis of business operations. In fact, records show that there has been no slack in the business operations of respondent corporation.

Petitioners were divested of their corporate positions, and thus stockholdings in the corporation were reduced. Petitioners claim that Sy Tiong Shiou and Juanita Tan Sy (third-party defendants below) and their children unlawfully ousted them from their positions and reduced their shareholdings in the corporation. They posit that the former's claim that they (petitioners) misappropriated the funds and assets of respondent was designed to justify the unlawful ouster of petitioners from the management of respondent corporation. *Such claims, however, have yet to be proven.*

While the allegation that Sy Tiong Shiou and Juanita Tan Sy abused their positions and mismanaged the affairs of respondent

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[62] *Rollo*, p. 621.

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corporation is a distinct possibility, petitioners failed to adduce proof thereon. Mere possibility without proof of abusing corporate positions and dissipation of assets and properties of the corporation is not a valid ground for the appointment of a management committee/ receiver. Petitioners even failed to adduce evidence to controvert the following allegations of respondent:

> b. A comparative breakdown of the volume of sales and importation of the plaintiff for the years 2002 and 2003, during the watch of defendant Sy Chim as President and during the time that Sy Tiong Shiou took over as President would clearly show that it has tremendously increased. A copy of the comparative chart is attached hereto as Annex "B";
>
> c. In a certification dated August 29, 2003 issued by Amelin S. Yap, SVP, Center Head of Metrobank, it is demonstrated that plaintiff, through the able and competent management and leadership of Sy Tiong Shiou, has been able to service and pay its financial obligations when it paid Fourteen Million Nine Hundred Eleven Thousand Six Hundred Sixty-Four (₱14,911,664.00) Pesos under trust receipt obligation from the period of April 2003 up to August 2003. Likewise, it has also paid Fourteen Million Four Hundred Ninety-Three Thousand (₱14,493,000.00) Pesos under loan obligation from the period April 2003 to August 2003. Further, the bank certified that plaintiff's obligations are in current status. Photocopy of the said certification is attached hereto as Annex "C";
>
> d. On September 1, 2003, CHINABANK, through its Senior Assistant Vice President, International Banking Group, Elaine Marissa L. Ong issued a certification that, as per records as of August 28, 2003, plaintiff's outstanding trust receipts amounted only to ₱9,462,835.90 and that these trust receipts are not beyond 180 days. Photocopy of the said certification is attached hereto as Annex "D";
>
> e. Likewise, on September 1, 2003, Allied Banking Corporation, through its Senior Assistant Vice President Florentina Garrovillo, issued a certification that, as per records as of August 29, 2003, plaintiff's outstanding trust receipts amounted to Seven Million Two Hundred Ninety-Four Thousand Three Hundred Six Pesos & 77/100 (Php7,294,306.77) and that, as of

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that date, these trust receipts are not beyond 180 days. Photocopy of the said certification is attached hereto as Annex "E".

. . . . . .

7. In contrast, during defendant Sy Chim's incumbency as President, the plaintiff could hardly pay its financial obligations with its creditor banks. In fact, it has to ask and request for extensions. When Trust Receipt with Reference No. 014/TR/000631/02 fell due on February 7, 2003 after 180 days, defendant Sy Chim as President of the plaintiff could not pay the same and instead asked for an extension of 90 days or up to May 8, 2003. Photocopy of the document showing this transaction is attached hereto as Annex "F". [63]

We agree that past conduct and condition of the corporation may be considered in determining the present situation and what the future will be. However, a management committee or receiver will not be appointed merely because of things done or attempted at a past time *when the present situation and the prospects for the future are not such as to warrant taking the control of the property out of the hands of its owners.*[64] The circumstances to justify the appointment of a management committee/receiver must be extraordinary and something more must be shown than past misconduct and a mere apprehension based thereon of future wrongdoing[65] To repeat, in the absence of a strong showing of an imminent danger of dissipation, loss, wastage or destruction of assets or other properties of a corporation and paralysis of its business operations, the mere apprehension of future misconduct based upon prior mismanagement will not authorize the appointment of a management committee/receiver.[66]

We also agree with the CA ruling that the RTC committed grave abuse of its discretion in excess of its jurisdiction in appointing a comptroller and ordering her to immediately assume office before

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[63] *Rollo*, pp. 628-630.

[64] *Original Vienna Bakery v. Heissler,* 1893 W.L. 2136; Ill. App. 1 Dist; 50 Ill. App. 406.

[65] *Waterbury v. Merchants' Union Exp. Co.,* 1867 WL 6250, 50 Barb. N.Y. 157.

[66] See *Campbell v. Pennsylvania Industries, Inc.*, 99 F. Supp. 199 (1951).

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the creation of a management committee. However, the CA ruled that the RTC committed a grave abuse of its discretion amounting to excess of its jurisdiction, thus:

> As defined in Black's Law Dictionary, a "comptroller" is an officer of a business, charged with certain duties in relation to the fiscal affairs of the same, principally to examine and audit the accounts, to keep records, and report the financial situation from time to time. We have perused the Interim Rules of Procedure for Intra-Corporate Controversies and nowhere in the said rules does it authorize the designation of a comptroller. Rule 9, Section 2 of the Procedure, however, mandates that, in the event the court finds the application for the creation of a management committee sufficient in form and substance, the court shall issue an order appointing a *receiver* of known probity, integrity and competence and without any conflict of interest as therein defined to immediately take over the corporation, partnership or association, specifying such powers as it may deem appropriate under the circumstances, including any of the powers specified in Section 5 of said Rule. We see no need to discuss whether it would have been appropriate for the *court-a-quo* to appoint a receiver in view of the finding of this Court that the creation of a management committee was done in grave abuse of discretion.[67]

Indeed, the RTC committed grave abuse of its discretion in ordering the appointment of Wencita Salvador as comptroller. We do not foreclose the power of a management committee to appoint a comptroller under Section 5, Rule 9 of the Interim Rules. However, with the Court's ruling that the creation of such committee and the appointment of a receiver is without factual basis, it follows that the appointment of a comptroller is, likewise, unnecessary.

We agree with petitioners' contention that the RTC acted in the exercise of its discretion in appointing an independent auditor. Such appointment is appropriate and even necessary if only to limit the issues for trial and thus abbreviate the proceedings. The ouster of petitioners as president and treasurer of respondent and the takeover by third-party defendants and their children of the management and control of the corporation is based on the claim of Juanita Tan Sy that petitioner Felicidad Chan Sy

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[67] *Rollo*, pp. 1244-1245.

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had a shortage of ₱67,117,230.30 for 2001 and 2002 per the report of the auditing firm, Banaria Banaria & Company. Petitioners, for their part, claim that such report is inconsistent with that of respondent's external auditor Anita Uy from 1994 to 2002 which were submitted to the Bureau of Internal Revenue and the SEC showing that no amount was due to stockholders. In the report of the Banaria Banaria & Company, the corporation had retained earnings of ₱56,170,114.89 for the period ending December 31, 2001, whereas per report of Uy, respondent had net earnings of only ₱16,252,114.89, hence, the need for an independent auditor. Moreover, such audit would forestall any misappropriation of corporate funds and assets of respondent corporation in the interim.

We note that petitioners prayed for the appointment of an independent auditor, and that respondent did not even object to the motion. Consequently, the RTC appointed the Punongbayan & Araullo firm to conduct the audit. However, respondent made *a volte face* and filed its Manifestation and Motion dated November 26, 2003 and posited that an independent auditor was not necessary since in its complaint, it merely prayed for an accounting of the funds which were missing based on the report of the Banaria Banaria & Company auditing firm.

We hold that an independent audit is imperative in this case so that, based on such report, the RTC would be able to determine the veracity not only of respondent's claim that petitioners misappropriated corporate funds and assets, but also that of petitioners who claim otherwise.

IN LIGHT OF ALL THE FOREGOING, the petition is *PARTIALLY GRANTED.* The Decision of the Court of Appeals is *AFFIRMED WITH THE MODIFICATION* that the Orders of the Regional Trial Court dated August 8, 2003, October 15, 2003 and January 27, 2004, relative to the appointment of R.S. Bernabe and Associates as independent auditor, are *AFFIRMED.*

No costs.

SO ORDERED.

Panganiban, C.J. (Chairperson), Ynares-Santiago, Austria-Martinez, and *Chico-Nazario, JJ.,* concur.