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FIRST DIVISION

[G.R. No. 160727. June 26, 2007]

UNION BANK OF THE PHILIPPINES, *petitioner, vs.* **DANILO L. CONCEPCION,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; CORPORATION LAW; PRESIDENTIAL DECREE NO. 902-A, SECTION 5(D); SECURITIES AND EXCHANGE COMMISSION; JURISDICTION; CASE AT BAR. — [T]he underlying petition EYCO filed with and over which the SEC assumed jurisdiction was one for declaration of suspension of payment, appointment of a rehabilitation receiver/committee, approval of rehabilitation plan with alternative prayer for liquidation and dissolution. That the SEC, along the way, ordained EYCO's liquidation and dissolution did not, without more, strip the SEC of jurisdiction over the liquidation process. Albeit jurisdiction over a petition to declare a corporation in a state of insolvency strictly lies with regular courts, the SEC possessed, during the period material, ample power under P.D. No. 902-A, as amended, to declare a corporation insolvent as an incident of and in continuation of its already acquired jurisdiction over the petition to be declared in the state of suspension of payments in the two instances provided in Section 5(d) thereof. Said Section 5(d) vests the SEC with exclusive and original jurisdiction over petitions for suspension of payments which may either be: (a) a simple petition for suspension of payments based on the provisions of the Insolvency Law, *i.e.*, the petitioning corporation has sufficient assets to cover all its debts, but foresees the impossibility of meeting the obligations as they fall due, or (b) a similar petition filed by an insolvent corporation accompanied by a prayer for the creation of a management committee and/or rehabilitation receiver based on the provisions of P.D. No. 902-A, as amended by P.D. No. 1758. In the case at bench, EYCO's petition for suspension of payment was, at bottom, a mix of both situations adverted to above. For, while EYCO, in the said petition, alleged being solvent but illiquid, it nonetheless pleaded for the constitution of a rehabilitation receiver/committee, with an alternative prayer for liquidation,

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if warranted. Clearly then, the SEC has, from the start, jurisdiction over EYCO's petition for suspension of payment, such jurisdiction, following *Ching*, continuing for purposes of liquidation after it (SEC) declared EYCO insolvent. The SEC appeared to be aware of the continuity angle as it even ordered the remand to the SEC Hearing Panel of SEC Case No. 09-97-5764 for purposes of liquidating and dissolving the EYCO Group.

2. REMEDIAL LAW; ACTIONS; JURISDICTION; ONCE JURISDICTION ATTACHES, THE COURT CANNOT BE OUSTED FROM THE CASE BY ANY SUBSEQUENT EVENTS, SUCH AS A NEW LEGISLATION PLACING SUCH PROCEEDINGS UNDER THE JURISDICTION OF ANOTHER BODY; EXCEPTIONS; CASE AT BAR. — The Court is certainly aware of the transfer, effected by R.A. No. 8799, to the RTC of the SEC's jurisdiction defined under Section 5(d) of P.D. No. 902-A. Such transfer, however, did not, as the petitioner and the RTC posit, divest the SEC of its jurisdiction over SEC Case No. 09-97-5764, given that it had already issued, as early as **September 19, 1998**, the suspension order after it found the petition for suspension filed on **September 16, 1998** to be sufficient in form and substance. Subsection 5.2 of R.A. No. 8799 prescribing the jurisdiction transfer and the rules on transition provides as follows: "5.2. The [Securities and Exchange] Commission's jurisdiction over all cases enumerated under Section 5 of [P.D.] No. 902-A is hereby transferred to the appropriate [RTC]: Provided that the Supreme Court . . . may designate the [RTC] branches that shall exercise jurisdiction over these cases. x x x The Commission shall **retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed**." EYCO's petition for suspension for payment was, for all intents and purposes, still pending with the SEC as of June 30, 2000. Accordingly, the SEC's jurisdiction thereon, by the express terms of R.A. No. 8999, still subsists "*until [the suspension of payment case and its incidents are] finally disposed.*" x x x When the law speaks of "*until finally disposed*," the reference should include the final disposition of the liquidation and dissolution processes since it is within the power of the SEC by law, or as incident of or in continuation of its already acquired jurisdiction over the petition for suspension of payment, to

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order the dissolution/liquidation of a corporation and accordingly appoint a liquidator. In fine, the continuing exercise of jurisdiction by the SEC over the liquidation and dissolution of the EYCO Group is warranted. Once jurisdiction attaches, the court cannot be ousted from the case by any subsequent events, such as a new legislation placing such proceedings under the jurisdiction of another body. The only recognized exceptions to the rule, which find no sway in the present case, arise when the statute expressly so provides or when the statute is clearly intended to apply to actions pending before its enactment.

3. ID.; CIVIL PROCEDURE; INTERVENTION; REQUISITES. — Intervention is a procedure by which a third person, not originally party to the suit, but claiming an interest in the subject matter, comes into the case, in order to protect his right or interpose his claim. Its main purpose is to settle in one action and by a single judgment all conflicting claims of or the whole controversy among the persons involved. To warrant intervention under Rule 19, Section 1 of the Rules of Court, two requisites must concur: (a) the movant has a legal interest in the matter in litigation, and (b) intervention must not unduly delay or prejudice the adjudication of the rights of the parties, nor should the claim of the intervenor be capable of being properly decided in a separate proceeding. The interest, which entitles one to intervene, must involve the matter in litigation and of such direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment.

4. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; MAY BE AVAILED OF WHEN APPEAL DOES NOT AFFORD A SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW. — It is true that *certiorar*i may not be resorted to when appeal is available as a remedy. However, it is also true that the Court has allowed the issuance of a writ of *certiorari* when appeal does not afford a speedy and adequate remedy in the ordinary course of law. As in the past, the Court has ruled that the availability of an appeal does not foreclose recourse to the ordinary remedies or *certiorari* or prohibition where appeal is not adequate, equally beneficial, expeditious and sufficient. Stated a bit differently, *certiorari* may be availed of where an appeal would be slow, inadequate

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and insufficient. The determination as to what exactly constitutes plain, speedy and adequate remedy rests on judicial discretion and depends on the particular circumstances of each case.

APPEARANCES OF COUNSEL

Fe B. Macalino and Associates for petitioner.
Tan and Concepcion and *Castillo Zamora and Poblador Law Offices* for respondent.
Bernas Law Offices for intervenor.

D E C I S I O N

GARCIA, *J.*:

In this petition for review under Rule 45 of the Rules of Court, petitioner Union Bank of the Philippines (Union Bank) assails and seeks the setting aside of the Decision[1] dated July 22, 2003 of the Court of Appeals (CA) in *CA-G.R. SP No. 75355*, as effectively reiterated in its Resolution[2] of November 7, 2003 denying the petitioner's motion for reconsideration.

The records, which include a copy of this Court's Decision dated May 19, 1998 in *G.R. No. 131729* entitled "*Union Bank of the Philippines v. Court of Appeals, et al., respondents,*"[3] yield the following material facts:

On **September 16, 1997**, the EYCO Group of Companies[4] (EYCO or EYCO Group) filed with the Securities and Exchange

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[1] Penned by Associate Justice Juan Enriquez, Jr., concurred in by Associate Justices Rodrigo V. Cosico and Arturo D. Brion (now resigned); *rollo*, pp. 44 *et seq*.

[2] *Id*. at 57 *et seq*.

[3] Reported in 290 SCRA 198; *id*. at 199 *et seq*.

[4] Consisting of 11 corporations among which are Nikon Industrial Corp., Nikolite Industrial Corp., 2000 Industries Corp., Thames (Phil.), Inc., and Eyco Properties, Inc.

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Commission (SEC) a *PETITION*[5] for the declaration of suspension of payment, appointment of a rehabilitation receiver/ committee and approval of rehabilitation plan with an alternative prayer for liquidation and dissolution of corporations (Petition for Suspension of Payment, hereinafter). In it, EYCO depicted the Group's composite corporations as having a combined assets that are more than enough to pay off all their debts, but nonetheless unable to pay them as they fall due. Joining EYCO as co-petitioners were Eulogio Yutingco and two other individuals holding controlling interests in the composite corporations (collectively, the Yutingcos).

Finding the petition, docketed as *SEC Case No. 09-97-5764*, to be sufficient in form and substance, the SEC Hearing Panel, by an order of **September 19, 1997**, directed the suspension of all actions, claims and proceedings against EYCO, *et al*. pending before any court, tribunal, board or office[6] (the Suspension Order). At the same time, the Panel set the petition for hearing.

Meanwhile, a consortium of private banks which had granted credit facilities to EYCO, among them, Union Bank, convened to map out their collective collection options. The formation of a management committee (ManCom) to represent the creditor banks was agreed upon in that meeting.

Subsequently, Union Bank decided to break away from the consortium and, without notifying its members, filed a slew of civil cases against EYCO, *et al*. Of relevance is the first, a complaint for a sum of money instituted on **September 23, 1997** before the Regional Trial Court (RTC) of Makati City, against four (4) members of the EYCO Group and spouses Eulogio and Bee Kuan Yutingco, as sureties of the corporate obligations, with application for preliminary attachment. This complaint,[7] docketed as *Civil Case No. 97-2184*, eventually ended up in Branch 148 of the court. The next day, the Makati

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[5] *Rollo*, pp. 159 *et seq.*

[6] See p. 3 of the Decision in *Union Bank v. CA*, *supra* note 3.

[7] Annex "J" of Petition; *Rollo*, pp. 135 *et seq.*

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RTC issued the desired writ of preliminary attachment,[8] pursuant to which levy on attachment was annotated on the titles, *i.e.*, TCT Nos. V-48192[9] and V-48193[10] of the Registry of Deeds of Valenzuela City, of two parcels of land under the name of Nikon Plaza, Inc. and EYCO Properties, Inc., respectively. Also attached, per herein respondent Danilo L. Concepcion (Concepcion, for brevity), without denial from the petitioner, is a parcel of land covered by TCT No. V-49678 of the same registry allegedly held by the Yutingcos in trust for Nikon Industrial Corporation.[11]

On October 22, 1997, Union Bank moved, on jurisdictional ground, for the dismissal of SEC Case No. 09-97-5764. On the same date, EYCO submitted its rehabilitation plan.

In January 1998, the SEC Hearing Panel appointed the regular members of the newly created ManCom for EYCO.

Meanwhile, Union Bank, without awaiting for the SEC's ruling on its motion to dismiss SEC Case No. 09-97-5764, filed with the CA a petition for *certiorari* to nullify what it tagged as the precipitate September 19, 1997 SEC suspension order[12] and its creation of the ManCom. In the same petition, docketed as *CA-G.R. SP No. 45774*, Union Bank alleged that the jurisdiction over the basic petition for declaration of suspension of payment pertains to the RTC under Act No. 1956, as amended, or the *Insolvency Law*.

On December 22, 1997, in *CA-G.R. SP No. 45774*, the CA rendered judgment declaring Union Bank guilty of forum shopping and accordingly dismissed its petition for *certiorari*. This Court, in its Decision[13] dated May 19, 1998 in *G.R. No. 131729*, in

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[8] *Id*. at 147.

[9] *Id*. at 149 *et seq*.

[10] *Id*. at 152 *et seq*.

[11] Respondent's Memorandum, pp. 13-14; *Id*. at 588-589.

[12] *Supra* note 6.

[13] *Supra* note 3.

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turn affirmed that of the CA, but proceeded further to declare the SEC as possessed of jurisdiction over EYCO's petition for suspension of payments filed pursuant to Section 5(d) of Presidential Decree (P.D.) No. 902-A, but not insofar as the Yutingcos' petition was concerned. With respect to the Yutingcos, the Court held that the SEC's jurisdiction on matters of suspension of payments is confined only to those initiated by corporate entities, as the aforecited section does not allow an individual to file, or join in, the corresponding petition. In line with the rule on misjoinder of parties, the Court directed the SEC to drop the individual petitioners from the petition for suspension of payment.

Conformably with this Court's Decision aforementioned, the Makati RTC issued, in Civil Case No. 97-2184, an *Order*[14] dated August 17, 1998 thereunder indefinitely suspending the proceedings in that collection suit until further orders. The *fallo* of the RTC's order reads:

> WHEREFORE, . . . the complaint filed by the plaintiff [Union Bank] against defendant-corporation [EYCO 4] . . . is hereby INDEFINITELY SUSPENDED **until further Orders** from this Court in view of the existing petition for Suspension of Payment before the [SEC]. On the other hand, the defendant's motion to dismiss complaint against the individual-defendants, namely: Spouses Eulogio and Bee Kuan Yutingco, is hereby DENIED for lack of merit.
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> Consequently, in order to give defendant-Spouses [Yutingcos] ample time to prepare for whatever defense they may raise, they are hereby given a new fifteen (15) days period from receipt of this Order within which to file their answer to the complaint against them.
>
> SO ORDERED. (Words in brackets and emphasis supplied.)

In a related development, the SEC Hearing Panel, over the objection of the consortium of EYCO's creditor banks, approved, on December 18, 1998, the rehabilitation plan prepared by the Strategies and Alliance Corporation for EYCO. The consortium lost no time in appealing to the SEC *en banc* the Hearing Panel's

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[14] *Rollo*, pp. 171 *et seq*.

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approval order and prayed for the liquidation and dissolution of EYCO, the appellate recourse docketed as SEC AC No. 649.

On September 14, 1999, the SEC *en banc* issued in SEC AC No. 649 an order finding for the consortium, disposing as follows:

> WHEREFORE, . . . the appeal is, as it is hereby granted and the Order dated 18 December 1998 is set aside. The Petition to be Declared in State of Suspension of Payment is hereby disapproved and the SAC Plan terminated. Consequently, all committees, conservator/receivers created pursuant to said Order are dissolved. x x x
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> The Commission, likewise, orders the liquidation and dissolution of the [EYCO Group]. **The case is hereby remanded to the hearing panel below for that purpose**. x x x (Words in brackets and emphasis supplied.)

Another *en banc* order[15] of March 31, 2001 followed, with the SEC this time appointing respondent Concepcion to act, vice the dissolved Liquidation Committee, as EYCO Liquidator. Among Concepcion's first act as such liquidator was to file, on March 8, 2002, in Civil Case No. 97-2184, a *Motion to Intervene and To Admit Motion to Set Aside Order of Attachment*[16] (Motion to Intervene, for brevity). Three days later, Concepcion submitted before the SEC a Liquidation Plan[17] for the EYCO Group.

After due proceedings, the SEC approved, on April 11, 2002, the Concepcion-submitted Liquidation Plan.[18] Concepcion's motion to intervene, however, met a different fate. For, by Order[19] of August 8, 2002, the Makati RTC denied Concepcion's motion to intervene in Civil Case No. 97-2184 on the ground of lack of standing to intervene, his appointment as Liquidator being, according to the court, of doubtful validity. The order,

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[15] SEC Order dated May 31, 2001; *id*. at 229 *et seq*.

[16] *Id*. at 232 *et seq*.

[17] Annex "2" of Comment to Petition; *id*. at 425 *et seq*.

[18] *Id*. at 419 *et seq*.

[19] *Id*. at 237 *et seq*.

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in addition, granted Union Bank's earlier motion to declare EYCO in default, and set a date for the *ex-parte* reception of Union Bank's evidence.

Concepcion then moved for reconsideration questioning the basis of the denial of his motion to intervene. Questioned, too, was the default aspect of the order, Concepcion arguing in this regard that the collection proceedings were suspended "*until further Orders from this Court*"[20] and the RTC of Makati has yet to issue the suspension-lifting order. The Makati RTC denied the motion on December 16, 2002.

Earlier, however, Union Bank presented evidence *ex parte*, on the basis of which the Makati RTC rendered, on December 27, 2002, **partial judgment**[21] ordering EYCO to pay the bank ₱400 million plus interests and attorney's fees.

Via a petition for *certiorari* and prohibition before the CA, Concepcion challenged the RTC's partial judgment aforementioned and its earlier order denying the motion to intervene. His recourse was docketed as *CA-G.R. SP No. 75355*.

The appellate court eventually issued the herein assailed Decision[22] reversing the Makati RTC's impugned issuances and allowing Concepcion to intervene, thus:

> WHEREFORE, foregoing premises considered, the petition is **GRANTED**. The assailed orders and partial judgment are hereby **ANNULLED and SET ASIDE**. Public respondent [RTC Judge Oscar Pimentel, Branch 148, Makati City] is ordered to allow petitioner [Concepcion] to intervene in Civil Case No. 97-2184.
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> SO ORDERED.

Following the denial of its motion for reconsideration,[23] Union Bank has interposed this petition ascribing to the CA the following errors:

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[20] *Supra* note 13.

[21] *Rollo*, pp. 243 *et seq*.

[22] *Supra* note 1.

[23] *Supra* note 2.

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1. In ruling in favor of respondent Concepcion's right to intervene in Civil Case No. 97-2184 pending in the lower court despite his lack of legal interest in the matter in litigation.

2. In ruling in favor of respondent Concepcion's right to intervene in said Civil Case No. 97-2184 despite his lack of legal personality, his appointment by the SEC as liquidator of EYCO being null and void for lack of jurisdiction; and

3. In giving due course to respondent Concepcion's petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure despite its being the improper remedy.

We **DENY**.

As the Court distinctly notes, the petitioner does not assail the CA's judgment insofar as it nullified the RTC's partial judgment or its default order. As thus couched, the petition particularly sets its sight on that part of the appellate court's ruling allowing respondent Concepcion to intervene in Civil Case No. 97-2184. Of the three errors assigned, the more critical relates to the challenged validity of the respondent's appointment by the SEC as liquidator of the EYCO Group, his right to intervene predicated as it is on his being such liquidator.

It is the petitioner's posture, following the Makati RTC's line, that the respondent's appointment as liquidator of EYCO was invalid for lack of jurisdiction on the part of SEC to preside, in first place, over EYCO's liquidation and dissolution. Pressing on, the petitioner states that EYCO is already insolvent and insolvency proceedings fall under the jurisdiction of regular courts under the *Insolvency Law* (Act No. 1956, as amended) in relation to the pertinent provision of R.A. No. 8799, otherwise known as the *Securities Regulation Code.*

We are not persuaded.

As it were, the underlying petition[24] EYCO filed with and over which the SEC assumed jurisdiction was one for declaration of suspension of payment, appointment of a rehabilitation receiver/ committee, approval of rehabilitation plan with alternative prayer

[24] *Supra* note 5.

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for liquidation and dissolution. That the SEC, along the way, ordained EYCO's liquidation and dissolution did not, without more, strip the SEC of jurisdiction over the liquidation process. Albeit jurisdiction over a petition to declare a corporation in a state of insolvency strictly lies with regular courts, the SEC possessed, during the period material, ample power under P.D. No. 902-A,[25] as amended, to declare a corporation insolvent as an incident of and in continuation of its already acquired jurisdiction over the petition to be declared in the state of suspension of payments in the two instances provided in Section 5(d) thereof.[26] Said Section 5(d)[27] vests the SEC with exclusive and original jurisdiction over petitions for suspension of payments which may either be: (a) a simple petition for suspension of payments based on the provisions of the Insolvency Law, *i.e.*, the petitioning corporation has sufficient assets to cover all its debts, but foresees the impossibility of meeting the obligations as they fall due, or (b) a similar petition filed by an insolvent corporation accompanied by a prayer for the creation of a management committee and/or rehabilitation receiver based on the provisions of P.D. No. 902-A, as amended by P.D. No. 1758.[28]

In the case at bench, EYCO's petition for suspension of payment was, at bottom, a mix of both situations adverted to

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[25] Reorganization of the SEC.

[26] *Ching v. LBP*, G.R. No. 73123, September 2, 1991, 201 SCRA 190.

[27] SEC. 5. In addition to the regulatory and adjudicatory functions of the [SEC] over corporations . . . under existing laws . . . decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:

x x x x x x x x x

d) Petitions of corporations, partnerships or associations to be declared in the state of suspension of payments in cases where . . . [it] possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due or in cases where . . . [it] has no sufficient assets to cover its liabilities, but is under the management of the Rehabilitation Receiver or Management Committee created pursuant to this Decree.

[28] Villanueva, *Commercial Law Review*, 2004 ed., p. 1243, citing *Ching v. LBP, supra*.

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above. For, while EYCO, in the said petition, alleged being solvent but illiquid, it nonetheless pleaded for the constitution of a rehabilitation receiver/committee, with an alternative prayer for liquidation, if warranted. Clearly then, the SEC has, from the start, jurisdiction over EYCO's petition for suspension of payment, such jurisdiction, following *Ching*,[29] continuing for purposes of liquidation after it (SEC) declared EYCO insolvent. The SEC appeared to be aware of the continuity angle as it even ordered the remand to the SEC Hearing Panel of SEC Case No. 09-97-5764 for purposes of liquidating and dissolving the EYCO Group.

If the SEC contextually retained jurisdiction over the liquidation of EYCO, is it not but logical then that it has competence to appoint the respondent — or any qualified individual for that matter — as liquidator?

And lest it be overlooked, the Court had, in *G.R. No. 131729*, already rejected the petitioner's thesis about the SEC's purported lack of jurisdiction over EYCO's suspension of payment case owing to its supervening insolvency. Therein, the Court stated:

> We are of course aware of the argument [of] . . . petitioner [Union Bank] that the petition of [EYCO] should be entirely dismissed and taken out of the SEC's jurisdiction on account of the alleged insolvency of [the latter]. In this regard, petitioner theorizes that [EYCO has] already become insolvent when [the composite corporations] allegedly disposed of a substantial portion of their properties . . . hence suspension of payments with the SEC is not the proper remedy.
>
> Such argument does not persuade us. Petitioner's allegations of . . . **[EYCO's]** . . . **supposed insolvency** . . . **are hardly of any consequence to the assumption of jurisdiction by the SEC** over the nature or subject matter of the petition for suspension of payments. Aside from the fact that these allegations are evidentiary in nature . . ., we have likewise consistently ruled that what determines the nature of an action, as well as which court or body has jurisdiction over it, are the allegations of the complaint, or a petition as in this

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[29] *Supra* note 26.

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case, and the character of the relief sought. **That the merits of the case after due proceedings are later found to veer away from the claims asserted by EYCO in its petition, as when it is shown later that it is actually insolvent and may not be entitled to suspension of payments, does not divest the SEC at all of its jurisdiction already acquired as its inception** . . . (Words in brackets and emphasis added.)

The Court is certainly aware of the transfer, effected by R.A. No. 8799, to the RTC of the SEC's jurisdiction defined under Section 5(d) of P.D. No. 902-A.[30] Such transfer, however, did not, as the petitioner and the RTC posit, divest the SEC of its jurisdiction over SEC Case No. 09-97-5764, given that it had already issued, as early as **September 19, 1998,** the suspension order after it found the petition for suspension filed on **September 16, 1998** to be sufficient in form and substance. Subsection 5.2 of R.A. No. 8799 prescribing the jurisdiction transfer and the rules on transition provides as follows:

5.2. The [Securities and Exchange] Commission's jurisdiction over all cases enumerated under Section 5 of [P.D.] No. 902-A is hereby transferred to the appropriate [RTC]: Provided that the Supreme Court . . . may designate the [RTC] branches that shall exercise jurisdiction over these cases. x x x The Commission shall **retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed**. (Words in bracket and emphasis added.)

EYCO's petition for suspension for payment was, for all intents and purposes, still pending with the SEC as of June 30, 2000. Accordingly, the SEC's jurisdiction thereon, by the express terms of R.A. No. 8999, still subsists *"until [the suspension of payment case and its incidents are] finally disposed."* In the words of the CA:

As held by this Court . . . Section 5.2 of RA 8799 specifically provided that the SEC shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of June 30, 2000 until finally disposed. The records are clear that the suspension of payment was

[30] *Supra* note 27.

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filed on September 7, 1998. As such, the petition is still pending with the SEC as of the cut-off date set in the rules. x x x[31]

When the law speaks of *"until finally disposed,"* the reference should include the final disposition of the liquidation and dissolution processes since it is within the power of the SEC by law,[32] or as incident of or in continuation of its already acquired jurisdiction over the petition for suspension of payment,[33] to order the dissolution/liquidation of a corporation and accordingly appoint a liquidator. In fine, the continuing exercise of jurisdiction by the SEC over the liquidation and dissolution of the EYCO Group is warranted. Once jurisdiction attaches, the court cannot be ousted from the case by any subsequent events, such as a new legislation placing such proceedings under the jurisdiction of another body. The only recognized exceptions to the rule, which find no sway in the present case, arise when the statute expressly so provides or when the statute is clearly intended to apply to actions pending before its enactment.[34]

Given the above perspective, the Court is at a loss to understand petitioner's challenge against the right of the respondent to intervene in Civil Case No. 97-2184, on the postulate that the latter lacks legal interest in the matter in litigation.

Intervention is a procedure by which a third person, not originally party to the suit, but claiming an interest in the subject matter, comes into the case, in order to protect his right or interpose his claim.[35] Its main purpose is to settle in one action

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[31] Page 4 of the assailed CA Resolution dated November 7, 2003; *rollo*, p. 60.

[32] Section 117 of the Corporation Code provides that a corporation organized under the provision of the Code may be dissolved voluntarily or involuntarily, whereas Section 121 of the same Code provides that the SEC may order the dissolution of a corporation.

[33] *Ching v. LBP, supra*.; *BF Homes, Inc. v. CA*, G.R. No. 76879, October 3, 1990, 190 SCRA 262.

[34] *People v. Cawaling*, G.R. No. 117970, July 28, 1998, 293 SCRA 267, citing cases.

[35] *Black's Law Dictionary*, 6th edition, p. 820.

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and by a single judgment all conflicting claims of or the whole controversy among the persons involved.[36] To warrant intervention under Rule 19, Section 1 of the Rules of Court,[37] two requisites must concur: (a) the movant has a legal interest in the matter in litigation, and (b) intervention must not unduly delay or prejudice the adjudication of the rights of the parties, nor should the claim of the intervenor be capable of being properly decided in a separate proceeding. The interest, which entitles one to intervene, must involve the matter in litigation and of such direct and immediate character[38] that the intervenor will either gain or lose by the direct legal operation and effect of the judgment.[39]

Just like the CA, the Court has no doubt about the respondent, as the duly-appointed liquidator of EYCO's remaining assets, having a legal interest in the matter litigated in Civil Case No. 97-2184. This is particularly true with respect to the parcels of land covered by the writ of attachment which, in the implementation of the SEC-approved Liquidation Plan for EYCO, had been conveyed to the respondent[40] in trust for the benefit of creditors, EYCO's stockholders and other persons in interest. At the very least, the respondent, as liquidator-trustee, is so situated as to be affected by the distribution or disposition of

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[36] *Natalia Realty, Inc. v. Court of Appeals*, G.R. No. 126462, November 12, 2002, 391 SCRA 370.

[37] SECTION. 1. *Who may Intervene.* — A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof, may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's right may be fully protected in a separate proceeding.

[38] *Batama Farmers' Cooperative Marketing Association, Inc. v. Rosal*, G.R. No. L-30526, November 29, 1971, 42 SCRA 408.

[39] *Mabayo Farms, Inc. v. Court of Appeals*, G.R. No. 140058, August 1, 2002, 386 SCRA 111, citing cases.

[40] Per Deed of Transfer dated Feb 11, 2003, Annex "CC" of the Petition; *rollo*, pp. 274 *et seq*.

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the attached properties which were under threat of being levied on execution and sold at public auction. Respondent would be unfaithful to his trust if he does take a *bona fide* effort to intervene in Civil Case No. 97-2184 to thwart the attempt of the petitioner to collect unpaid loans ahead of other legitimate creditors similarly situated. Under the *SEC Rules of Procedure on Corporate Recovery* pursuant to which the SEC appointed the respondent to liquidate the remaining assets of EYCO, the liquidator is empowered and duty bound to *"[R]epresent the debtor . . . in any case filed by or against the debtor in any tribunal"* and *"[B]ring any action on behalf of the debtor to collect, recover or preserve any of its assets, or to resist or defend against any claim."*[41]

Any suggestion that allowing intervention would unduly delay the final closure of the collection case cannot be accepted. Far from unnecessarily prolonging or complicating the case, the desired intervention, if allowed, would possibly enable the court in one single action and judgment to protect the collective interests of the creditors of the EYCO Group that are seriously threatened by the imminent exclusion of certain properties from the pool of assets that should legally, if not ideally, be equitably distributed among them. Disallowing intervention would pave the way for the petitioner to seize the proceedings before the Makati RTC to work entirely in its favor. Such course of action trifles with the entire liquidation process. And any decision rendered therein would unlikely be left undisturbed by other legitimate but unpaid creditors whose interest in the attached properties can hardly be disputed.

Moreover, the claim of the respondent over the attached properties could not possibly be better threshed out in a separate but subsequent proceedings given that he had already secured titles over them.

The third and last issue turns on the propriety of *certiorari* as a recourse to the denial of a motion for intervention. The correct remedy, according to the petitioner, is an appeal under

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[41] Sec. 6-4 (g) and (h).

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Rule 45 of the Rules of Court, an order denying intervention being final in character, not merely interlocutory. Petitioner thus faults the CA for allowing respondent Concepcion's petition for *certiorari* under Rule 65 of the Rules as a vehicle to impugn the denial of his motion for intervention. It stresses that the availability of appeal proscribes recourse to the special civil action of *certiorari*.

We are not convinced.

Petitioner's statement of the rule on the availability of the extraordinary writ of *certiorari* under the premises is impeccable. So too is its citation of supporting jurisprudence. Petitioner conveniently forgot, however, to include in its formulation settled exceptions to and qualifications of the rule, even as it glossed over another holding that intervention is merely accessory to the principal action and, as such, is an interlocutory proceeding dependent on the case between the original parties.[42]

It is true that *certiorar*i may not be resorted to when appeal is available as a remedy. However, it is also true that the Court has allowed the issuance of a writ of *certiorari* when appeal does not afford a speedy and adequate remedy in the ordinary course of law. As in the past, the Court has ruled that the availability of an appeal does not foreclose recourse to the ordinary remedies or *certiorari* or prohibition where appeal is not adequate, equally beneficial, expeditious and sufficient.[43] Stated a bit differently, *certiorari* may be availed of where an appeal would be slow, inadequate and insufficient. The determination as to what exactly constitutes plain, speedy and adequate remedy rests on judicial discretion and depends on the particular circumstances of each case.

In the case at bar, the CA did not commit any reversible error in allowing the petition for *certiorari* filed by the respondent.

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[42] *Big Country Ranch Corp. v. CA*, G.R. No. 102927, October 12, 1993, 227 SCRA 161, citing *Ordonez v. Gustilo*, G.R. No. 81835, December 20, 1990, 192 SCRA 469.

[43] *PNB v. Sayo, Jr.*, G.R. No. 129918, July 9, 1998, 292 SCRA 202.

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As it were, the respondent was able to convince the CA of the urgency of his cause and that an appeal from the denial of the motion for intervention would not constitute speedy and adequate remedy, thus necessitating the resort to the extraordinary remedy of *certiorari*. And in an instance justifying the invocation of the remedy of *certiorari*, it would appear too that the CA found the RTC to have exercised its judicial authority in an oppressive manner,[44] so much so that the CA stated the apt observation that: "*In the first place, it [RTC] should not have taken cognizance of the case when it was notified of the pending petition [for suspension of payments] before the SEC at the time the complaint was filed*."[45]

Certainly not lost on the Court is an obvious reality: the Makati RTC virtually interfered with and invalidated the appointment made by the SEC when it has no jurisdiction over the latter.

WHEREFORE, the instant petition is *DENIED* and the impugned Decision and Resolution of the Court of Appeals dated July 22, 2003 and November 7, 2003, respectively, are *AFFIRMED*.

Costs against the petitioner.

SO ORDERED.

Puno, C.J. (Chairperson), Sandoval-Gutierrez, Corona, and *Azcuna, JJ.,* concur.

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[44] *Chua v. CA*, G.R. No. 121438, October 23, 2000, 344 SCRA 136.

[45] Page 6 of the appealed CA Decision; *rollo*, p. 49.