Republic of the Philippines
SECURITIES AND EXCHANGE COMMISSION
SEC Bldg. EDSA, Greenhills, Mandaluyong City

Perfecto Pondo, *et al.*,

Appellants,

versus

Federation of Rural Workers Organization, Inc., represented by Epifania Tan, *et al.*,

Appellees.

x----------x

SEC En Banc Case
No. 05-07-98
For: Setting Aside SEC-IEO Order Lifting the Order of Revocation

DECISION

For consideration is the appeal, from SEC-IEO Order No. 07-03-010 dated 05 March 2007 Lifting the Order of Revocation of the Certificate of Registration of the Federation of Rural Workers' Organizations Inc.("FRWO") dated March 5, 2007 , filed with the Iloilo Extension Office of the Commission ("SEC-IEO") on 4 April 2007. Appellants pray that an Order be issued affirming the Order of Revocation of FRWO dated 20 August 2003.

FACTS OF THE CASE

FRWO was duly constituted as a non-stock, non-profit organization and was registered with the Commission on 18 June 1990 under SEC Registration No. IO01169. It is a federation of seven (7) various People's Organizations ("PO's") operating in the Province of Antique, the incorporators representing the 7 PO's.[1] Its certificate of registration was revoked by virtue of SEC Order dated 20 August 2003 for failure to comply with the Commission's reportorial requirements. On 5 March 2007, SEC-IEO granted the Petition to Lift the Order of Revocation after compliance with the requirements.[2]

Appellants allege that when the three-year winding up period provided by law[3] was about to end, as members of the Board of Trustees ("BOT") of FRWO at that

---

[1] The present PO members of the association with their contributions are the following:KASAMMA-Malabor, BAFA-Amar,KASAMA-Nastor,KASAMMA-Importante; KASAMMA-Malacanang; KASAMA-Cadajug; BICACIA (Seventh Paragraph, Articles of Incorporation, FRWO).

[2] FWRO submitted its latest General Information Sheets (GIS) and financial statements and paid the corresponding penalty for the non-filing of reportorial requirements on March 2, 2005 under Official Receipt No. 5464794 (SEC-IEO Order, dated March 5, 2007).

[3] Corporation Code SEC. 122 -*Corporate liquidation.*-Every Every corporation whose charter expires by its own limitation or is annulled by forfeiture or otherwise, or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for three (3) years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and enabling it to settle and close its affairs, to dispose of and

RVK

time, they unanimously voted to call for a special general assembly of all the members of FRWO for the purpose of finally determining its corporate liquidation.[4]

Appellants further allege that each member of the PO's under FRWO was duly notified[5], and a majority (138 members out of 238 members) attended the assembly, which was held on 16 September 2006 at the principal place of business of FRWO, in Brgy. Malabor, Tibiao, Antique.[6] They resolved, among others: 1) That the corporation be changed into a cooperative; 2) That all assets of FRWO be liquidated and transferred to the cooperative, provided that the capital contribution of each member, as of year 2000, be tripled. As of 1 March 2007, a survey on the membership of the new cooperative showed that one hundred forty-four (144) individual members of the previous corporation have duly transferred their contributions from the FRWO to FFRWMPC.[7] During the assembly, they also "unanimously agreed to change the name of FRWO to Farmers Fisherfolks Rural Workers Multi-Purpose Cooperative ('FFRWMPC')." The office of the FWRO is now being used as the office of FFRWMPC.[8]

The general assembly was attended by the appellees herein, evidenced by their signatures in Annex "B" of the Memorandum on Appeal.[9]

Appellants stated that FWRO officially ceased operations on September 29, 2006 after the lapse of the three year period, from 29 September 2003.[10] They did not mention, nor show any proof, however, that FWRO has paid all its debts and liabilities as prescribed by Section 122 of the Corporation Code (the "Code")[11], before transferring all its assets to the cooperative, of which they are all incorporators.[12]

On 5 March 2007, as the "latest set" of BOT of FWRO, appellants filed with SEC-IEO a letter stating that "we are no longer interested in filing the proper Petition to Lift Order of Revocation as we have already ceased to operate as such." In the same letter, they mentioned that they are not authorizing "any member of the Board

---

convey its property and to distribute its assets, but not for the purpose of continuing the business for which it was established. xxx Except by decrease of capital stock and as otherwise allowed by this Code, **no corporation shall distribute any of its assets or property except upon lawful dissolution and after payment of all its debts and liabilities.** (emphasis supplied)

[4] *Liquidation*, as applied to a corporation, means the winding up of affairs of the corporation by reducing its assets in money, settling with creditors and debtors, and apportioning the amount of profit and loss (16 Fletcher, p. 658) cited in H. S. De Leon and H. M. De Leon, Jr. *The Corporation Code of the Philippines Annotated* 739 (9th ed., 2006).

[5] Memorandum on Appeal dated 23 March 2007, p.2; Annex "A" written notice dated September 11, 2006.

[6] *Id.*, p. 2.

[7] *Id.*, p. 3.

[8] *Id.*, p. 8.

[9] *Id.*, p. 3, Annex "B."

[10] *Id.*, p. 3.

[11] Batas Pambansa Blg. 68, effective May 1, 1980

[12] Memorandum for the Appellees filed December 13, 2007, "Annex G1."

of Directors or employee of ANIAD Foundation, Inc. or any other person, to transact business" with SEC-IEO relative to the lifting of the Order of Revocation.[13]

On the other hand, Appellees allege that FWRO has accumulated properties, and it has creditors: 1) ANIAD Foundation, in the amount of Two Million Ninety Nine Thousand Three Hundred Fifty (Php 2,099,350.00), and 2) AFCCUI (PO LIFE) in the amount of Two Million Seven Hundred Seventy Nine Thousand One Hundred Sixty-Six Pesos and 65/100 (Php 2,779,166.65). FRWO has fully paid its loan from the AFCCUI (PO LIFE), but it has a remaining balance of Php 799,740.00 as of December 31, 2006 with the ANIAD,[14] the same foundation which the appellants barred from transacting business with SEC-IEO, in its letter filed dated March 5, 2007.

Appellees allege that from the time of its incorporation, FWRO never suffered any business reverses, thus, there is no valid ground for dissolution. But due to negligence or deliberate intent of the appellants who were then the members of the BOT and officers of FWRO, its registration was revoked by the Commission for failure to comply with reportorial requirements. They did not attempt to lift the Order of Revocation, instead, during the special general assembly on 16 September 2006, appellants were able to convince some of the individuals who attended the meeting to change the name of FRWO to FFRWMPC and to transfer the assets of the former to the latter. However, appellees showed proof that on 24 August 2006, even before the special general assembly on 16 September 2006, appellants have already formed and incorporated FFRWMPC.[15]

Moreover, appellees pointed out that the notice of meeting was addressed to the individual members of the seven PO's and not to the respective management of each of the seven PO's. Accordingly, the seven PO's have juridical personalities separate and distinct from their individual members.

Appellees allege that appellants did not notify the creditors of FWRO of the transfer of its properties to FFRWMPC, hence, such transfer was in fraud of FWRO's creditors. It also deprived the seven PO's of their rights over the assets of FWRO, being its original members-beneficiaries, having priority in the distribution of assets.

Recognizing the effect of the scheme undertaken by the appellants, appellees, comprising the management of the seven PO's of FWRO reorganized themselves to revive the status of FWRO as a corporation *de jure* and caused the Lifting of the Order of Revocation of FWRO's Certificate of Registration. A day after the lifting of said Order, on 6 March 2007, FWRO immediately sent a letter of demand to Perfecto Pondo, Chair of the Board of Trustees of FFRWMPC and one of the appellants herein, to return the assets as well as the operation of the rice trading and milling business of FWRO.

---

[13] *Id.*, p. 4, Annex "C."
[14] Memorandum for the Appellees filed December 13, 2007, p. 3.
[15] *Id.*, pp. 4-5, Annex "F" Certificate of Registration, Cooperative Development Authority.

Appellees disclosed that on 4 June 2007 appellants filed an Injunction Case with the Regional Trial Court, Branch 64, Bugasong, Antique docketed as Civil Case No. 023-64 seeking to restrain them from performing the functions as Board of Trustees of FWRO. In turn, the appellees also filed a case before the Regional Trial Court, Branch 64, at Bugasong, Antique docketed as Civil Case No. 0164, against FFRWMPC and the appellants for the recovery of all the assets of FWRO which were transferred to FFRWMPC.[16]

We cannot rule on intra-corporate issues that were raised by the parties, as prescribed by Section 5.2 of Republic Act 8799,[17] accordingly, focus will be on the issues within the Commission's jurisdiction.

ISSUES

1) Are appellants real parties in interest to SEC-IEO Order No. 07-03-010 dated 05 March 2007, Lifting the Order of Revocation of the Certificate of Registration of FRWO?

2) Did SEC-IEO err in lifting the Order of Revocation of the Certificate of Registration of FWRO?

1) Section 2.2 of the 2006 Rules of Procedure of the Commission states: "All actions filed with the Commission must be pursued and defended in the name of the real party in interest." A "real party in interest" has been defined as follows:

> The real party-in-interest is the party who stands to be benefited or injured by the judgment or the party entitled to the avails of the suit. "Interest," within the meaning of the rule, means material interest, an interest in the issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. Cases construing the real party-in-interest provision can be more easily understood if it is borne in mind that the true meaning of real party-in-interest may be summarized as follows: **An action shall be prosecuted in the name of the party who,**

---

[16] Both cases were pending before the Regional Trial Court, Branch 64 as of date of Memorandum for Appellees, p.6.

[17] Securities Regulation Code approved July 19, 2000. Sec. 5.2 transferred all cases enumerated under Section 5 of Presidential Decree No. 902-A to the Courts of general jurisdiction or the appropriate Regional Trial Court. They are as follows: (a) Devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partnership, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholder, partners, members of associations or organizations registered with the Commission; (b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity; and (c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations.

by the substantive law, has the right sought to be enforced. (emphasis supplied)[18]

Appellants alleged that they were the members of the Board of Trustees of FWRO ***before***, and at the time when the Commission revoked its registration on September 29, 2003. At the same time, while they have called for a special general assembly of all the members of FRWO for the purpose of finally determining its corporate liquidation, they have unequivocally admitted that they have transferred all the assets of FWRO to FFRWMPC. Appellants did not make a clear showing of how they complied with Section 122 of the Code, which prescribes the procedure for the liquidation of corporate assets after the dissolution of a corporation.[19] From their point of view, FWRO "finally and officially ceased its operation on 29 September 2006 after the lapse of the three year period, commencing on 29 September 2003."[20]

On the other hand, as of 2 March 2007,[21] before the appellants filed their Memorandum on Appeal on 4 April 2007, appellees FWRO and its representatives have filed FWRO's latest General Information Sheet ("GIS"), reflecting the names of the officers, who are appellees herein.[22] Thus, while appellants were the officers of FWRO at the time of revocation of its certificate of registration, they have ceased to be officers and members of FWRO, when they filed the instant appeal. Therefore, they ***cannot*** be considered as real parties in interest.

2) The SEC-IEO Order granting the Petition to Lift the Order of Revocation of FWRO's Certificate of Registration cited the reasons for finding the petition meritorious: 1) The officers and members were not aware of its obligation to submit reportorial requirements annually; 2) FWRO has no intention to violate the law and any rules and regulations of the Commission; 3) It commits to pay immediately any penalties due by reason of its failure to comply with the Commission's reportorial requirements; 4) FWRO shall henceforth submit reportorial requirements religiously; and 5) It intends to continue its registration with the Commission. Upon filing of the GIS and the Financial Statements and paying the corresponding penalty for non-filing of the reportorial requirements, the Order of Revocation dated 20 August 2003 which revoked the Certificate of Registration of FWRO was set aside

Generally, the effect of the reinstatement of the corporation is that it relates back to the date of dissolution [or revocation] as if the dissolution [or revocation]

---

[18] William Uy and Rodel Roxas, vs. Court Of Appeals, Hon. Robert Balao and National Housing Authority, G.R. No. 120465. September 9, 1999.
[19] SEC Opinion No. 9, Series of 2003, dated March 21, 2003, addressed to J.A. Osana and A. C. Tionko.
[20] Memorandum on Appeal, dated 23 March 2007 pp. 1&3.
[21] SEC Order No. 07-03-010 dated March 5, 2007, p. 2.
[22] Epifania Tan (Incorporator, Chair of the Board, & President), Pacita Tomolin [Incorporator, Member - Board of Trustees (BOT), Corporate Secretary], Gloria Sumande (Member,BOT), Lydia Arevalo (Member, BOT), Irenea Lim (Member, BOT, Chief Finance Officer-Treasurer), Rogelio Pelongco (Member, BOT, Auditor), Jimmy Barrientos (Member, BOT, Vice-Pres.),Margarita Espanola (Member, BOT) and Saturnino Arzaga (Member, BOT).

had never occurred.[23] FWRO can therefore continue the operation of its business for the benefit of its members, the PO's, and its creditor, ANIAD Foundation.

There is no question as to the timeliness of the Petition to Lift the Order of Revocation of FWRO, for failure to comply with the reportorial requirements. On November 5, 2009, SEC Circular No. 15 Series of 2009 further extended the period within which to file petitions to lift the revocation order, for failure to comply with reportorial requirements as in the case of FWRO. For those corporations registered between 1985-1991, the date of revocation order is August 20, 2003, the date of revocation is September 29, 2003 and the deadline to file petition to lift revocation is September 29, 2010. Inasmuch as FWRO has filed its petition to lift revocation order on March 5, 2007, and SEC-IEO granted the Lifting of Order of Revocation of the Certificate of Registration on the same date, SEC-IEO Order No. 07-03-010 dated 05 March 2007 was issued well within the prescriptive period.

WHEREFORE, premises considered, SEC-IEO Order No. 07-03-010 dated 05 March 2007 is **AFFIRMED** and the instant appeal is hereby **DENIED** for lack of merit.

SO ORDERED.

Mandaluyong City, 13 May 2010. *

FE B. BARIN
Chairperson

MA. JUANITA E. CUETO **
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner

*approved and signed on 03 June 2010
**on leave

[23] 16A Fletcher Cyc Corp. 1 § 8112.3., cited in SEC Opinion No. 06-06 January 31, 2006 addressed to Atty. Marilyn O. Ngo.