SUPREME COURT
THIRD DIVISION

JESUS SY, JAIME SY, ESTATE OF JOSE SY, ESTATE OF VICENTE SY, HEIR OF MARCIANO SY represented by JUSTINA VDA. DE SY and WILLIE SY,
***Petitioners*,**

-versus-

G.R. No. 94285
August 31, 1999

THE COURT OF APPEALS, INTESTATE ESTATE OF SY YONG HU, SEC. HEARING OFFICER FELIPE TONGCO, SECURITIES AND EXCHANGE COMMISSION,
***Respondents*.**
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SY YONG HU & SONS, JOHN TAN, BACOLOD CANVAS AND UPHOLSTERY SUPPLY CO., AND NEGROS ISUZU SALES,
***Petitioners*,**

-versus-

G.R. No. 100313
August 31, 1999

HONORABLE COURT OF APPEALS (11th Division), INTESTATE ESTATE OF THE LATE SY YONG HU, JOSE FALSIS, JR., AND HON. BETHEL KATALBAS-MOSCARDON, RTC OF NEGROS OCCIDENTAL, Branch 51,

Respondents.

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D E C I S I O N

PURISIMA, *J.*:

At bar are two Consolidated Petitions for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, docketed as G.R. Nos. 94285 and G.R. No. 100313, respectively, seeking to reinstate the Resolution of the Court of Appeals in CA - G R. SP No. 17070 and its Decision in CA-G.R. SP No. 24189.

In G.R. No. 94285, the petitioners assail the Resolution[1] dated June 27, 1990 of the Court of Appeals granting the Motion for Reconsideration interposed by the petitioners (now the private respondents) of its Decision,[2] promulgated on January 15, 1990, which affirmed the Order[3] issued on January 16, 1989 by the Securities and Exchange Commission (SEC) en banc and the Order[4] of SEC Hearing Officer Felipe Tongco, dated October 5, 1988.

The facts that matter are as follows:

Sy Yong Hu & Sons is a partnership of Sy Yong Hu and his sons, Jose Sy, Jayme Sy, Marciano Sy, Willie Sy, Vicente Sy, and Jesus Sy,

registered with the SEC on March 29, 1962, with Jose Sy as managing partner. The partners and their respective shares are reflected in the Amended Articles of Partnership[5] as follows:

NAMES	AMOUNT CONTRIBUTED
SY YONG HU	P31,000.00
JOSE S. SY	205,000.00
JAYME S. SY	112,000.00
MARCIANO S. SY	143,000.00
WILLIE S. SY	85,000.00
VICENTE SY	85,000.00
JESUS SY	88,000.00

Partners Sy Yong Hu, Jose Sy, Vicente Sy, and Marciano Sy died on May 18, 1978, August 12, 1978, December 30, 1979 and August 7, 1987, respectively.[6] At present, the partnership has valuable assets such as tracts of lands planted to sugar cane and commercial lots in the business district of Bacolod City.

Sometime in September, 1977, during the lifetime of all the partners, Keng Sian brought an action,[7] docketed as Civil Case No. 13388 before the then Court of First Instance of Negros Occidental, against the partnership as well as against the individual partners for accounting of all the properties allegedly owned in common by Sy Yong Hu and the plaintiff (Keng Sian), and for the delivery or reconveyance of her one-half (1/2) share in said properties and in the fruits thereof. Keng Sian averred that she was the common law wife of partner Sy Yong Hu, that Sy Yong Hu, together with his children,[8] who were partners in the partnership, connived to deprive her of her share in the properties acquired during her cohabitation with Sy Yong Hu, by diverting such properties to the partnership.[9]

In their answer dated November 3, 1977, the defendants, including Sy Yong Hu himself, countered that Keng Sian is only a house helper of Sy Yong Hu and his wife, subject properties "are exclusively owned by defendant partnership, and plaintiff has absolutely no right to or interest therein."[10]

On September 20, 1978, during the pendency of said civil case, Marciano Sy filed a petition for declaratory relief against partners Vicente Sy, Jesus Sy and Jayme Sy, docketed as SEC Case No. 1648, praying that he be appointed managing partner of the partnership, to replace Jose Sy who died on August 12, 1978 Answering the petition, Vicente Sy, Jesus Sy and Jaime Sy, who claim to represent the majority interest in the partnership, sought the dissolution of the partnership and the appointment of Vicente Sy as managing partner. In due time, Hearing Officer Emmanuel Sison came out with a Decision[11] (Sison Decision) dismissing the petition, dissolving the partnership and naming Jesus Sy, in lieu of Vicente Sy who had died earlier, as the managing partner in charge of winding the affairs of the partnership.

The Sison decision was affirmed in toto by the SEC en banc in a Decision[12] (Abello decision) dated June 8, 1982, disposing thus:

> "WHEREFORE, the Commission en banc affirms the dispositive portion of the decision of the Hearing Officer, but clarifies that: (1) the partnership was dissolved by express will of the majority and not ipso facto because of the death of any partner in view of the stipulation of Articles of Partnership and the provisions of the New Civil Code particularly Art. 1837 [2] and Art. 1841. (2) The Managing Partner designated by tie majority, namely Jesus Sy, vice Vicente Sy (deceased) shall only act as a manager in liquidation and he shall submit to the Hearing Officer an accounting and a project of partition, within 90 days from receipt of this decision. (3) The petitioner is also required within the same period to submit his counter-project of partition, from date of receipt of the Managing Partner's project of partition. (4) The case is remanded to the Hearing officer for evaluation and approval of the accounting and project of partition."

On the basis of the above decision of the SEC en banc, Hearing Officer Sison approved a partial partition of certain partnership assets in an Order[13] dated December 2, 1986. Therefrom, respondents seasonably appealed.

In 1982, the children of Keng Sian with Sy Yong Hu, namely, John Keng Seng, Carlos Keng Seng, Tita Sy, Yolanda Sy and Lolita Sy, filed a petition, docketed as SEC Case No 2338, to revoke the certificate of registration of Sy Yong Hu & Sons, and to have its assets reverted to the estate of the late Sy Yong Hu. After hearings, the petition was dismissed by Hearing Officer Bernardo T. Espejo in an Order, dated January 11, 1984, which Order became final since no appeal was taken therefrom.[14]

After the dismissal of SEC Case No. 2338, the children of Keng Sian sought to intervene in SEC Case No. 1648 but their motion to so intervene was denied in an Order dated May 9, 1985. There was no appeal from said order.[15]

In the meantime, Branch 43 of the Regional Trial Court of Negros Occidental appointed one Felix Ferrer as a Special Administrator for the Intestate Estate of Sy Yong Hu in Civil Case No. 13388. Then, on August 30, 1985, Alex Ferrer moved to intervene in the proceedings in SEC Case No. 1648, for the partition and distribution of the partnership assets, on behalf of the respondent Intestate Estate.[16]

It appears that sometime in December, 1985, Special Administrator Ferrer filed an Amended Complaint on behalf of respondent Intestate Estate in Civil Case No. 13388, wherein he joined Keng Sian as plaintiff and thereby withdrew as defendant in the case. Special Administrator Ferrer adopted the theory of Keng Sian that the assets of the partnership belong to Keng Sian and Sy Yong Hu (now represented by the Estate of Sy Yong Huj in co-ownership, which assets were wrongfully diverted in favor of the defendants.[17]

The motion to intervene in SEC Case No. 1648, filed by Special Administrator Alex Ferrer on behalf of the respondent Estate, was denied in the order issued on May 9, 1986 by Hearing Officer Sison. With the denial of the motion for reconsideration, private respondent Intestate Estate of Sy Yong Hu appealed to the Commission en banc.

In its decision (Sulit decision) on the aforesaid appeal from the Order dated May 9, 1986, and the Order dated December 2, 1986, the SEC en banc[18] ruled:

> "WHEREFORE, in the interest of Justice and equity, substantive rights of due process being paramount over the rules of procedure, and in order to avoid multiplicity of suits; the order of the hearing officer below dated May 9, 1986 denying the motion to intervene in SEC Case No. 1648 of appellant herein as well as the order dated December 2, 1986[19] denying the motion for reconsideration are hereby reversed and the motion to intervene given due course. The instant case is hereby remanded to the hearing officer below for further proceeding on the aspect of partition and/or distribution of partnership assets. The urgent motion for the issuance-of a restraining order is likewise hereby remanded to the hearing officer below for appropriate action."[20]

The said decision of the SEC en banc reiterated that the Abello decision of June 8, 1982, which upheld the order of dissolution of the partnership, had long become. final and executory. No further appeal was taken from the Sulit Decision.

During the continuation of the proceedings in SEC Case No. 1648, now presided over by Hearing Officer Felipe S. Tongco who had substituted Hearing-Officer Sison, the propriety of placing the Partnership under receivership was taken up. The parties brought to the attention of the Hearing Officer the fact of existence of Civil Case No. 903 (formerly Civil Case No. 13388) pending before the Regional Trial Court of Negros Occidental. They also agreed that during the pendency of the aforesaid court case, there will be no disposition of the partnership assets.[21] On October 5, 1988, Hearing Officer Tongco came out with an Order[22] (Tongco Order) incorporating the above submissions of the parties and placing[23] the partnership under a receivership committee, explaining that "it is the most equitable fair and just manner to preserve the assets of the partnership during the pendency of the civil case in the Regional Trial Court of Bacolod City."

On October 22, 1988, a joint Notice of Appeal to the SEC en banc was filed by herein petitioners Jayme Sy, Jesus Sy, Estate of Jose Sy, Estate of Vicente Sy, Heirs of Marciano Sy (represented by Justina Vda. de Sy), and Willie Sy, against the Intervenor (now private respondent). In an order (Lopez Order) dated January 16, 1989, the SEC en banc[24] affirmed the Tongco Order.

With the denial of their Motion for Reconsideration,[25] petitioners filed a special civil action for certiorari with the Court of Appeals.

On January 15, 1990, the Court of Appeals granted the petition and set aside the Tongco and Lopez Orders, and remanded the case for further execution of the 1982 Abello and 1988 Sulit Decisions, ordering the partition and distribution of the partnership properties.[26]

Private respondent seasonably interposed a motion for reconsideration of such decision of the Court of Appeals.

Acting thereupon on June 27, 1990, the Court of Appeals issued its assailed Resolution, reversing its Decision of January 15, 1990, and remanding the case to the SEC for the formation receivership committee, as envisioned in the Tongco Order.

G. R. No. 100313 came about in view of the dismissal by the Court of Appeals[27] of the Petition for Certiorari with a Prayer for Preliminary Injunction, docketed as CA-G. R. SP No. 24189, seeking to annul and set aside the orders, dated January 24, 1991 and April 19, 1989, respectively, in Civil Case No 5326 before the Regional Trial Court of Bacolod City.

The antecedent facts are as follows:

Sometime in June of 1988, petitioner Sy Yong Hu & Sons through its Managing Partner, Jesus Sy, applied for a building permit to reconstruct its building called Sy Yong Hu & Sons Building, located in the central business district of Bacolod City, which had been destroyed by fire in the late 70's. On July 5, 1988, respondent City Engineer issued Building Permit No. 4936 for the reconstruction of the first two floors of the building. Soon thereafter, reconstruction work began. In January, 1989, upon completion of its reconstruction, the building was occupied by the herein petitioners, Bacolod and Upholstery Supply Company and Negros Isuzu Sales, which businesses are owned by successors-in-interest of the deceased partners Jose Sy and Vicente Sy. Petitioner John Tan, who is also an

occupant of the reconstructed building, is the brother-in-law of deceased partner Marciano Sy.[28]

From the records on hand, it can be gleaned that the Tongco Order[29] , dated October 5, 1988, in SEC Case No. 1648, had, among others, denied a similar petition of the intervenors therein (now private respondents) for a restraining order and/or injunction to enjoin the reconstruction of the same building. However, on October 10, 1988, respondent Intestate Estate sent a letter to the City Engineer claiming that Jesus Sy is not authorized to act for, petitioners Sy Yong Hu & Sons with respect to the reconstruction or renovation of the property of the partnership. This was followed by a letter dated November 11, 1988, requesting the revocation of Building Permit No. 4936.

Respondent City Engineer inquired[30] later from Jesus Sy for an "authority to sign for and on behalf of Sy Yong Hu & Sons" to justify the latter's signature in the application for the building permit, informing him that absent any proof of his authority, he would not be issued an occupancy permit.[31] On December 27, 1988, respondent. Intestate Estate reiterated its objection to the authority of Jesus Sy to apply for a building permit and pointing out that in view of the creation of a receivership committee, Jesus Sy no longer had any authority to act for the partnership.[32]

In reply, Jesus Sy informed the City Engineer that the Tongco Order had been elevated to the SEC en banc, making him still the authorized manager of the partnership. He then requested that an occupancy permit be issued as Sy Yong Hu & Sons had complied with the requirements of the City Engineer's Office and the National Building Code.[33]

Unable to convince the respondent City Engineer to revoke subject building permit, respondent Intestate Estate brought a "Petition for Mandamus with prayer for a Writ of Preliminary Injunction, " docketed as Civil Case No. 5326 before the Regional Trial Court of Bacolod City and entitled "Intestate Estate of the Late Sy Yong Hu vs. Engineer Jose P. Falsis, Jr."[34] The Complaint concluded with the following prayer:

"WHEREFORE PREMISES CONSIDERED it is respectfully prayed of the Honorable Court that:

1. A writ of Preliminary Injunction be issued to the respondent, after preliminary hearing is had, compelling his office to padlock the premises occupied, without the requisite Certificate of Occupancy; to stop all construction activities, and barricade the same premises so that the unwary public will not be subject to undue hazards due to lack of requisite safety precaution;

2. The Respondent be ordered to enforce without exemption every requisite provision of the Building Code as so mandated by it."[35]

Petitioners Sy Yong Hu & Sons, the owners of the building sought to be padlocked were not impleaded as party to the petition dated February 22, 1989. Neither were the lessees-occupants thereon so impleaded. Thus, they were not notified of the hearing scheduled for April 5, 1989, on which date the Petition was heard. Subsequently, however, the Regional Trial Court issued an-order dated April 19, 1989 for the issuance of a Writ of Preliminary Mandatory Injunction ordering the City Engineer to padlock the building.[36]

On May 9, 1989, upon learning of the issuance of the Writ of Preliminary Injunction, dated May-4, 1989, petitioners immediately filed the: (1) Motion for Intervention; (2) Answer in Intervention; and (3) Motion to set aside order of mandatory injunction. In its ;order dated June 22, 1989, the Motion for Intervention was granted by the lower court through Acting Presiding Judge Porfirio A. Parian.

On August 3, 1989, respondent Intestate Estate presented a Motion to cite Engineer Jose Falsis, Jr. in contempt of court for failure to implement the injunctive relief.

On August 15, 1989, petitioners submitted an "Amended Answer in Intervention". Reacting thereto, respondent Intestate Estate filed a "Motion to Strike or Expunge from the Record" the Amended Answer in Intervention.[37]

On January 25, 1990, petitioner Sy Yong Hu & Sons again wrote the respondent City Engineer to reiterate its request for the immediate issuance of a certificate of occupancy, alleging that the Court of Appeals in its Decision of January 15, 1990 in CA-G.R. No. 17070 had reversed the SEC decision which approved the appointment of a receivership committee. However, the City Engineer refused to issue the Occupancy Permit without the conformity of the respondent Intestate Estate and one John Keng Seng who claims to be an illegitimate son of the Late Sy Yong Hu.[38]

In an order issued on January 24, 1991 upon an "Ex Parte Motion to Have All Pending Incidents Resolved" filed by respondent Intestate Estate, Judge Bethel Katalbas-Moscardon issued an order modifying the Writ of Preliminary Mandatory Injunction, and directing the respondent City Engineer to:

> "Immediately order stoppage of any work affecting the construction of the said building under Lot 259-A-2 located at Gonzaga Street adjacent to the present Banco de Oro Building, BACOLOD City, to cancel or cause to be cancelled the Building Permit it had issued; to order the discontinuance of the occupancy or use of said building or structure or portion thereof found to be occupied or used, the same being contrary and violative of the provisions of the Code; and to desist from issuing any certificate of Occupancy until the merits of this case can finally be resolved by this Court.
>
> "Again, it is emphasized that the issue involved is solely question of law and the Court cannot see any logical reason that the intervenors should be allowed to intervene as earlier granted in the Order of the then Presiding Judge Porfirio A. Parian, of June 22, 1989. Much less for said intervenors to move for presentation of additional parties, only on the argument of Intervenors that any restraining order to be issued by this Court upon the respondent would prejudice their present occupancy which is self serving, whimsical and in fact immoral. It is axiomatic that the means would not justify the end nor the end justify the means. Assuming damage to the present occupants will occur and assuming further that they are

> entitled, the same should be ventilated in a different action against the lessor or landlord, and the present petition cannot be the proper forum, otherwise, while it maybe argued that there is a multiplicity of suit which actually is groundless, on the other hand, there will be only confusion of the issues to be resolved by the Court. Well valid enough is to reiterate that the present petition is not the proper forum for the intervenors to shop for whatever relief.
>
> "In view of the above, the Order allowing the intervenors in this case is likewise hereby withdrawn for the purposes above discussed. Consequently, the Motion to present additional parties is deemed denied, and the Motion to Strike Or Expunge From The Records the Amended Answer In Intervention is deemed granted as in fact the same become moot and academic with the elimination of the Intervenors in this case."[39]

Pursuant to the above Order of January 24, 1991, respondent City Engineer served a notice upon petitioners revoking Building Permit No. 4936, ordering the stoppage of all construction work on the building, and commanding discontinuance of the occupancy thereof.

On February 15, 1991, the aggrieved petitioners filed a Petition for Certiorari with Prayer for Preliminary Injunction with the Court of Appeals, docketed as CA-G. R. SP No. 24189.

On February 27, 1991, the Court of Appeals issued a Temporary Restraining Order enjoining the respondent Judge from implementing the questioned orders dated January 24, 1991 and April 1 9, 1989.[40]

After the respondents had sent in their answer, petitioners filed a Reply with a prayer for the issuance of a writ of mandamus directing the respondent City Engineer to reissue the building permit previously issued in favor of petitioner Sy Yong Hu & Sons, and to issue a certificate of occupancy on the basis of the admission by respondent City Engineer that petitioner had complied with the provisions of the National Building Code.[41]

On May 31, 1991, the Court of Appeals rendered its questioned decision denying the petition.[42]

From the Resolution of the Court of Appeals granting the. motion for reconsideration in CA-G. R. SP No. 17070 and the Decision in CA-G. R. SP No. 24189, petitioners have come to this Court for relief.

In G. R. No. 94285, petitioners contend by way of assignment of errors,[43] that:

I

RESPONDENT COURT OF APPEALS ERRED IN REVERSING ITS MAIN DECISION IN CA-G. R. No. 17070, WHICH DECISION HAD REMANDED TO THE SEC THE CASE FOR THE PROPER IMPLEMENTATION OF THE 1982 ABELLO AND 1988 SULIT DECISIONS WHICH IN TURN ORDERED THE DISTRIBUTION AND PARTITION OF THE PARTNERSHIP PROPERTIES.

II

RESPONDENT COURT OF APPEALS ERRED IN REINSTATING THE TONGCO ORDER, WHICH HAD SUSPENDED THE DISSOLUTION OF THE PARTNERSHIP AND THE DISTRIBUTION OF ITS ASSETS, AND IN PLACING THE PARTNERSHIP PROPERTIES UNDER RECEIVERSHIP PENDING THE RESOLUTION OF CIVIL CASE NO. 903 (13388), ON A GROUND NOT MADE THE BASIS OF THE SEC RESOLUTION UNDER REVIEW, I. E., THE DISPOSITION BY A PARTNER OF SMALL PROPERTIES ALREADY ADJUDICATED TO HIM BY A FINAL SEC ORDER DATED DECEMBER 2, 1986 AND MADE LONG BEFORE THE AGREEMENT OF JUNE 28, 1988 OF THE PETITIONERS NOT TO DISPOSE OF THE PARTNERSHIP ASSETS.

In G.R. No. 100313, Petitioners assign as errors, that:[44]

I

THE HONORABLE COURT OF APPEALS (ELEVENTH DIVISION) ERRED IN HOLDING THAT RESPONDENT JUDGE DID NOT ACT WITHOUT JURISDICTION AND WITH GRAVE ABUSE OF JURISDICTION IN ISSUING THE WRIT OF PRELIMINARY MANDATORY INJUNCTION.

II

THE HONORABLE COURT OF APPEALS (ELEVENTH DIVISION) ERRED IN HOLDING THAT THE RESPONDENT JUDGE DID NOT ACT WITHOUT JURISDICTION AND WITH GRAVE ABUSE OF DISCRETION IN DISALLOWING THE INTERVENTION OF PETITIONERS IN CIVIL CASE NO. 5326.

III

THE LOWER COURT ACTED WITH GRAVE ABUSE OF DISCRETION IN ISSUING AND ORDERING THE IMPLEMENTATION OF THE WRIT OF PRELIMINARY MANDATORY INJUNCTION DESPITE THE ABSENCE OR LACK OF AN INJUNCTION BOND.[45]

On the two (2) issues raised in G.R. No. 94285, the Court rules for respondents.

Petitioners fault the Court of Appeals for affirming the 1989 Decision of the SEC which approved the appointment of a receivership committee as ordered by Hearing Officer Felipe Tongco. They theorize that the 1988 Tongco Decision varied the 1982 Abello Decision affirming the dissolution of the partnership, contrary to the final and executory tenor of the said judgment. To buttress their theory, petitioners offer the 1988 Sulit Decision which, among others, expressly confirmed the finality of the Abello Decision.

On the same premise, petitioners aver that when Hearing Officer Tongco took over from Hearing Officer Sison, he was left with no course of action as far as the proceedings in the SEC Case were concerned other than to continue with the partition and distribution of the partnership assets. Thus, the Order placing the partnership

under a receivership committee was erroneous and tainted with excess of jurisdiction.

The contentions are untenable. Petitioners fail to recognize the basic distinctions underlying the principles of dissolution, winding up and partition or distribution. The dissolution of a partnership is the change in the relation of the parties caused by any partner ceasing to be associated in the carrying on, as might be distinguished from the winding up, of its business. Upon its dissolution, the partnership continues and its legal personality is retained until the complete winding up of its business culminating in its termination.[46]

The dissolution of the partnership did not mean that the juridical entity was immediately terminated and that the distribution of the assets to its partners should perfunctorily follow. On the contrary, the dissolution simply effected a change in the relationship among the partners. The partnership, although dissolved, continues to exist until its termination, at which time the winding up of its affairs should have been completed and the net partnership assets are partitioned and distributed to the partners.[47]

The error, therefore, ascribed to the Court of Appeals is devoid of any sustainable basis. The Abello Decision though, indeed, final and executory, did not pose any obstacle to the Hearing Officer to issue orders not inconsistent therewith. From the time a dissolution is ordered the actual termination of the partnership, the SEC retained jurisdiction to adjudicate all incidents relative thereto. Thus, the disputed order placing the partnership under a receivership committee cannot be said to have varied the final order of dissolution. Neither did it suspend the dissolution of the partnership. If at all, it only suspended the partition and distribution of the partnership assets pending disposition of Civil Case No. 903 on the basis of the agreement by the parties and under the circumstances of the case. It bears stressing that, like the appointment of a manager in charge of the winding: up of the affairs of the partnership, said appointment of a receiver during the pendency of the dissolution is interlocutory in nature, well within the jurisdiction of the SEC.

Furthermore, having agreed with the respondents not to dispose of the partnership assets, petitioners effectively consented to the

suspension of the winding up or, more specifically, the partition and distribution of subject assets. Petitioners are now estopped from questioning the order of the Hearing Officer issued in accordance with the said agreement.[48]

Petitioners also assail the propriety of the receivership theorizing that there was no necessity therefor, and that such remedy should be granted only in extreme cases, with respondent being duty-bound to adduce evidence of the grave and irremediable loss or damage which it would suffer if the same was not granted. It is further theorized that, at any rate, the rights of respondent Intestate Estate are adequately protected since notices of *lis pendens* of the aforesaid civil case have been annotated on the real properties of the partnership.[49]

To bolster petitioners' contention, they maintain that they are the majority partners of the partnership Sy Yong Hu & Sons controlling Ninety Six per cent (96%) of its equity. As such, they have the greatest interest in preserving the partnership properties for themselves,[50] and therefore, keeping the said properties in their possession will not bring about any feared damage or dissipation of such properties, petitioner's stressed.

Sec. (6) of Presidential Decree No. 902-A, as amended, reads:

> "SECTION 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:
>
> x x x
>
> "(c) To appoint one or more receivers of the property, real or personal, which is the subject of the action pending before the commission in accordance with the pertinent provisions of the Rules of Court, and in such other cases, whenever necessary in order to preserve the rights of parties-litigants and/or protect the interest of the investing public and creditors;"

The findings of the Court of Appeals accord with existing rules and jurisprudence on receivership. Conformably, it stated that:[51]

"From a reexamination of the issues and the evidences involved, We find merit in respondent's motion for reconsideration.

"This Court notes with special attention the order dated June 28, 1988 issued by Hearing Officer Felipe S. Tongco in SEC Case No. 1648 (Annex to Manifestation, June 16, 1990) wherein all the parties agreed on the following:

> '1. That there is a pending case in court wherein the plaintiffs are claiming in their complaint that all the assets of the partnership belong to Sy Yong Hu;
>
> '2. That the parties likewise agreed that during the pendency of the court case, there will be no disposition of the partnership assets and further hearing is suspended.'

"As observed by the SEC Commission (sic) in its Order dated January 16,1989:

> 'Ordinarily, appellants' contention would be correct, except that the en banc order of April 29th appears to have been overtaken, and accordingly, rendered inappropriate, by subsequent developments in SEC Case No. 1648, particularly the entry in that proceedings, as of April 29, 1988, of an intervenor who claims a superior and exclusive ownership right to all the partnership assets and property. This claim of superior ownership right is presently pending adjudication before the Regional Trial Court of Negros Occidental, And precisely because if this supervening development, it would appear that the parties in SEC Case No. 1648 agreed among themselves, as of June 28, 1988, that during the pendency of the Negros Occidental case just mentioned, there should be no disposition of partnership assets or property, and further, that the proceedings in SEC Case No. 1648 should be suspended in the meantime' (p. 2, Order; p. 12, Rollo)

> "As alleged by the respondents and as shown by the records there is now pending civil case entitled "Keng Sian and Intestate of Sy Yong Hu vs. Jayme Sy, Jesus Sy, Marciano Sy, Willy Sy, Intestate of Jose Sy, Intestate of Vicente Sy, Sy Yong Hu & co and Sy Yong Hu & Sons' denominated as Civil Case No. 903 before Branch 50 of the Regional Trial Court of Bacolod City.
>
> "Moreover, a review of the records reveal that certain properties in question have already been sold as of 1987, as evidenced by deeds of absolute sale executed by Jesus in favor of Reynaldo Navarro (p. 331, Rollo), among others.
>
> "To ensure that no further disposition shall be made of the questioned assets and in view of the pending civil case in the lower court, there is a compelling necessity to place all these properties and assets under the management of a receivership committee. The receivership committee, which will provide active participation, through a designated representative, on the part of all interested parties, can best protect the properties involved and assure fairness and equity for all."

Receivership, which is admittedly a harsh remedy, should be extreme caution.[52] Sound bases therefor must appear on record, and there should be a clear showing of its necessity.[53] The need for a receivership in the case under consideration can be gleaned from the aforecited disquisition by the Court of Appeals finding that the properties of the partnership were in danger of being damaged or lost on account of certain acts of the appointed manager in liquidation.

The dispositions of certain properties by the said manager, on the basis of an order of partial partition, dated December 2, 1986, by Hearing Officer Sison, which was not yet final and executory, indicated that the feared irreparable injury to the properties. of the partnership might happen again. So also, the failure of the manager in liquidation to submit to the SEC an accounting of all the partnership assets as required in its order of April 29, 1988, justified the SEC in placing the subject assets under receivership.

Moreover, it has been held by this Court that an order placing the partnership under receivership so as to wind up its affairs in an

orderly manner and to protect the interest of the plaintiff (herein private respondent) was not tainted with grave abuse of discretion.[54] The allegation that respondents' rights are adequately protected by the notices of *lis pendens* in Civil Case 903 is inaccurate. As pointed out in their Comment to the Petition, the private respondents claim that the partnership assets include the income and fruits thereof. Therefore, protection of such rights and preservation or the properties involved are best left to a receivership committee in which the opposing parties are represented.

What is more, as held in Go Tecson vs. Macaraig:[55]

> "The power to appoint a receiver pendente lite is discretionary with the judge of the court of first instance; and once the discretion is exercised, the appellate court will not interfere, except in a clear case of abuse thereof, or an extra limitation of jurisdiction."

Here, no clear abuse of discretion in the appointment of a receiver in the case under consideration can be discerned.

With respect to G.R. No. 100313.[56]

Petitioners argue in this case that the failure of the private respondents to implead them in Civil Case No. 5326 constituted a violation of due process. It is their submission that the ex parte grant of said petition by the trial court worked to their prejudice as they were deprived of an opportunity to be heard on the allegations of the petition concerning subject property and assets. The recall of the order granting their Motion to Intervene was done without the observance of due process and consequently without jurisdiction on the part of the lower court.

Commenting on the Petition, private respondents maintain that the only issue in the present case is whether or not there was a violation of the Building Code. They contend that after due and proper hearing before the lower court, it was fully established that the provisions of the said Code had been violated, warranting issuance of the Writ of Preliminary Injunction dated April 19, 1989. They further asseverate that the petitioners, who are the owner and lessees in the building

under controversy, have nothing to do with the case for mandamus since it is directed against the respondent building official to perform a specific duty mandated by the provisions of the Building Code.

In his Comment, the respondent City Engineer, relying on the validity of the order of the trial court to padlock the building, denied any impropriety in his compliance with the said order.

After a careful examination of the records on hand, the Court finds merit in the petition.

In opposing the petition, respondent intestate estate anchors its stance on the existence of violations of pertinent provisions of the aforesaid Code. As regards due process, however, a distinction must be made between matters of substance.[57] In essence, procedural due process "refers to the method or manner by which the law is enforced," while substantive due process "requires that the law itself, not merely the procedure by which the law would be enforced, is fair, reasonable, and just."[58] Although private respondent upholds the substantive aspect of due process, it, in the same breath, brushes aside its procedural aspect, which is just as important, if the constitutional injunction against deprivation of property without due process is to be observed.

Settled is the rule that the essence of due process is the opportunity to be heard. Thus, in Legarda vs. Court of Appeals et al.,[59] the Court held that as long as a party was given the opportunity to defend her interest in due course, he cannot be said to have been denied due process of law.

Contrary to these basic tenets, the trial court gave due course to the petition for mandamus, and granted the prayer for the issuance of a writ of preliminary injunction on May 4, 1989, notwithstanding the fact that the owner (herein petitioner Sy Yong Hu) of the building and its occupants[60] were not impleaded as parties in the case. Affirming the same, the Court of Appeals acknowledged that the lower court came out with the said order upon the testimony of the lone witness for the respondent, in the person of the City Engineer, whose testimony was not effectively traversed by the petitioners. This conclusion arrived at by the Court of Appeals is erroneous in the face

of the irrefutable fact that the herein petitioners were not made parties in the said case and, consequently, had absolutely no opportunity to cross examine the witness of private respondent and to present contradicting evidence.

To be sure, the petitioners are indispensable parties in Civil Case No. 5326, which sought to close subject building. Such being the case, no final determination of the claims thereover could be had.[61] That the petition for mandamus with a prayer for the issuance of a writ of preliminary mandatory injunction was only directed against the City Engineer is of no moment. No matter how private respondent justifies its failure to implead the petitioners, the alleged violation of the provisions of the Building Code relative to the reconstruction of the building in question, by petitioners, did not warrant an ex parte and summary resolution of the petition. The violation of a substantive law should not be confused with punishment of the violator for such violation. The former merely gives rise to a cause of action while the latter is its effect, after compliance with the requirements of due process.

The trial court failed to give petitioners their day in court to be heard before they were condemned for the alleged violation of certain provisions of the Building Code. Being the owner of the building in question and lessees thereon, petitioners possess property rights entitled to be protected by law. Their property rights cannot be arbitrarily interfered with without running afoul with the due process rule enshrined in the Bill of Rights.

For failure to observe due process, the herein respondent court acted without jurisdiction. As a result, petitioners cannot be bound by its orders. Generally accepted is the principle that no man shall be affected by any proceeding to which he is a stranger, and strangers to a case are not bound by judgment rendered by the court.[62]

In similar fashion, the respondent court acted with grave abuse of discretion when it disallowed the intervention of petitioners in Civil Case No. 5326. As it was, the issuance of the Writ of Preliminary Injunction directing the padlocking of the building was improper for non-conformity with the rudiments of due process.

Parenthetically, the trial court, in issuing the questioned order, ignored established principles relative to the issuance of a Writ of Preliminary Injunction. For the issuance of the writ of preliminary injunction to be proper, it must be shown that the invasion of the right sought to be protected is material and substantial, that the right of complainant is clear and unmistakable and that there is an urgent and paramount necessity for the writ to prevent serious damage.[63]

In light of the allegations supporting the prayer for the issuance of a writ of preliminary injunction, the Court is at a loss as to the basis of the respondent judge in issuing the same. What is clear is that complainant (now private respondent) therein, which happens to be a juridical person (Estate of Sy Yong Hu), made general allegations of hazard and serious damage to the public due to violations of various provisions of the Building Code, but without any showing of any grave damage or injury it was bound to suffer should the writ not issue.

Finally, the Court notes, with disapproval, what the respondent court did in ordering the ejectment of the lawful owner and the occupants of the building, and disposed of the case before him even before it was heard on the merits by the simple expedient of issuing the said writ of preliminary injunction. In Ortigas & Company Limited Partnership vs. Court of Appeals et al. this Court held that courts should avoid issuing a writ of preliminary injunction which in effect disposes of the main case without trial.[64]

Resolution of the third issue has become moot and academic in view of the Court's finding of grave abuse of discretion tainting the issuance of the Writ of Preliminary Injunction in question.

WHEREFORE, the Resolution of the Court of Appeals in CA-G.R. No. 17070 is **AFFIRMED** and its Decision in CA-G.R. No. 24189 **REVERSED**. No pronouncement as to costs.

SO ORDERED.

Melo, Vitug, Panganiban and Gonzaga-Reyes, *JJ.*, concur.

[1] Penned by Associate Justice Conrado T. Limcaoco and concurred in by Associate Justices Arturo B. Buena and Jainal D. Rasul; Rollo, pp. 197-199.
[2] Ibid., pp. 177-185.
[3] Rosario N. Lopez, Chairman; Gonzalo T. Santos, Rodolfo L. Samarista and Jose C. Laureta, Associate Commissioners; Rollo, pp. 171-173.
[4] Ibid., pp. 311- 317.
[5] Rollo, pp. 48-54.
[6] Ibid., p. 14.
[7] Rollo, pp. 55-61.
[8] By the late Si Ho Ti, the alleged first wife of Sy Yong Hu; Rollo, p. 57.
[9] Rollo, p. 14.
[10] Ibid., p. 15.
[11] Annex D of Petition; Rollo, pp. 69-89.
[12] Docketed as SEC-AC No. 057; Annex E of Petition; Manuel G. Abello, Chairman, Rosario N. Lopez, Gonzalo T. Santos, Julio A. Sulit and Jesus Valdes, Associate Commissioners.; Rollo, pp. 90-96.
[13] Annex I of Petition; Rollo, pp. 159-160.
[14] Rollo, p. 16.
[15] Ibid.
[16] Rollo, p. 17.
[17] Ibid., p. 18.
[18] Julio A. Sulit, Jr., Chairman; Rosario N. Lopez, Jesus J. Valdes, Monico V. Jacob, and Gonzalo T. Santos (On Official Leave), Associate Commissioners; Rollo, pp. 151-158.
[19] This should have been the order of partial partition.
[20] Rollo, p. 157.
[21] On June 28, 1988 an order was issued containing the following stipulations of facts: 1) That there is a pending case in court wherein the plaintiffs are claiming in their complaint that all the assets of the partnership belong to Sy Hong Hu; 2) The parties agreed that during the pendency of the aforesaid court case, there will be no disposition of the partnership assets and further proceedings in this case is suspended; 3) The because the parties failed to agree on who should manage the partnership assets during the pendency of the court case, respondents insisting on the partners and/or their legal representatives while the intervenor insisting on a receivership committee, the parties upon motion, were granted a fifteen (15) days to submit their respective position papers/memorandum in support of there respective stand; 4) On the intervenor's urgent motion for a restraining order and/or injunction to enjoin the construction of a building on partnership lots (Lot No. 1596-B-3 and Lot No. 259-A-2), respondents upon motion, were granted fifteen (15) days to file opposition to the intervenor's urgent motion and intervenor was given ten (10) days from receipt of the opposition to file a reply thereto.
[22] Annex I; Rollo, pp. 311-17.

[23] Petitioners' motion for the appointment of a receiver or receivers filed on September 15, 1983 was adopted by the Intervenor Intestate Estate of Sy Yong Hu filed on June 27, 1988; Rollo, p. 311.
[24] Rosario N. Lopez, Chairman; Gonzalo T. Santos, Rodolfo L. Samarista and Jose C. Laureta, Associate Commissioners; Rollo, pp. 171-173.
[25] Order dated February 14, 1989; Rollo, p. 175.
[26] Petition, Rollo, 27.
[27] Penned by Associate Justice Bonifacio A. Cacdac, Jr. and concurred in by Associate Justices Nathanael P. De Pano, Jr. and Fortunato Vailoces; Rollo, pp. 49-57.
[28] Petition; Rollo, p. 8-9.
[29] Tongco Order, placing the partnership under a receivership committee.
[30] Letter dated November 27, 1988; Rollo, p. 9.
[31] Rollo, p. 9.
[32] Ibid.
[33] Ibid., p. 10.
[34] Petition dated February 22, 1989.
[35] Annex "J" of Petition, Rollo, pp. 131-137.
[36] The Writ of Preliminary Mandatory Injunction was issued on May 4, 1989; Rollo, pp. 11-12.
[37] Rollo, pp. 12-13.
[38] Rollo, pp. 13-14.
[39] Annex "T" of Petition, Rollo, pp. 173-177.
[40] Rollo, p. 16.
[41] Ibid., p. 17.
[42] Annex "A" of Petition; Rollo, pp. 48-57.
[43] Petition; Rollo, p. 31.
[44] Petition; Rollo, p. 20.
[45] This third assigned error was taken from the Supplement to the petition; Rollo, p. 318.
[46] Gregorio F. Ortega et al. vs. Court of Appeals, et al. 245 SCRA 529, 536; citing Articles 1828-1829 of the Civil Code.
[47] Comment of the Solicitor General; Rollo, 403.
[48] Rollo, p. 313.
[49] Petition; Rollo, p. 40.
[50] Ibid., p. 41.
[51] Court of Appeals Resolution; Rollo, pp. 197-199.
[52] Mendiola vs. Court of Appeals, et al.; 106 SCRA 130, 137.
[53] Ibid.
[54] Recentes et al., vs. Court of First Instance of Zamboanga del Norte, Branch 1, et al. 123 SCRA 778, 781.
[55] 88 Phil 604.
[56] On July 8, 1991, the Court issued a Temporary Restraining Order enjoining respondents from enforcing, implementing or giving effect to the writ of mandatory injunction dated May 4, 1989 or to the orders dated April 19, 1989 and January 24, 1991, respectively, of the Regional Trial Court, Branch 51, Bacolod City.

[57] Corona et al. vs. United Harbor Pilots Association of the Philippines et al.; 283 SCRA 31, 39.
[58] Ibid.
[59] 280 SCRA 642, 657.
[60] At present, petitioners John Tan and Bacolod Canvas & Upholstery Supply Co. have already vacated the building.
[61] Sec. 7, Rule 3, Revised Rules of Court.
[62] Matuguina Integrated Wood Products, Inc., vs. The Hon. Court of Appeals et al.; 263 SCRA 490, 505.
[63] Arcega et al. vs. Court of Appeals et al. 275 SCRA 176, 180.
[64] 162 SCRA 165, 169.