

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE SECURITIES AND EXCHANGE COMMISSION, PETITIONER, VS. HON. CESAR O. UNTALAN AND PET PLANS, INC., RESPONDENTS.

Ponente: GARCIA-FERNANDEZ, J.

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GARCIA-FERNANDEZ, J.:

This is a petition for certiorari under Rule 65 of the Rules of Court filed by the Securities and Exchange Commission (SEC) on behalf of the Republic of Philippines (Republic), seeking to annul and set aside the resolutions dated February 22, 2011[1] and December 9, 2011,[2] issued by public respondent Judge Cesar O. Untalan of the Regional Trial Court (RTC) of Makati City, Branch 149 in S.P. Proc. No. M-6289 entitled In the Matter of the Petition for Corporate Rehabilitation with Prayer for Suspension of Payments, PET Plans, Inc., petitioner. The February 22, 2011 resolution modified the approved rehabilitation plan of respondent PET Plans, Inc. (PET Plans), while the December 9, 2011 resolution denied SEC's motion for reconsideration and ordered the termination of the PET Plans' rehabilitation.

PET Plans filed a petition for rehabilitation with the RTC of Makati City on June 22, 2006. Finding the petition sufficient in form and substance, the RTC issued a stay order and appointed Professor Danilo Concepcion as rehabilitation receiver.

On March 12, 2007, PET Plans submitted its modified rehabilitation plan.[3] Under its modified rehabilitation plan, 1) PET Plans shall continue its pre-need business and apply for a dealer's license with the SEC to develop and sell new pre-need products; 2) The existing plans will also be modified or novated to reflect a new and reasonable face value called the net plan value (NPV), which will be converted into a single new type of plan called the enhanced value plan (EVP); 3) The three (3) existing trust funds for each plans (educational, pension and life) will be unified into a single trust fund to realize better profits and to save on the administrative costs; 4) The unified trust fund will be called the enhanced value fund (EVF) and will be further enhanced by (i) the earnings and growth of the assets of and investments of the unified trust fund, ranging from 8% to 12% per annum, and (ii) PET Plan's annual contributions of 15% of its net income after tax generated from the continuance of its pre-need business for a period of ten (10) years from the approval of the modified rehabilitation plan. An EVP planholder can immediately avail of his new plan or allow it to grow over time and avail for a much higher amount and, thus, reap the enhanced value of its new plan.[4]

The modified rehabilitation plan was approved by respondent judge on April 30, 2007.[5] Thus:

WHEREFORE, premises considered, this Court hereby APPROVES the Modified Rehabilitation Plan dated March 12, 2007 of [PET Plans] subject to the following terms and conditions:

- For the Board of Directors, Stockholders and Officers of Petitioner:
- The stockholders with deposits for future stocks subscription shall not be paid or reimbursed under any circumstances whatsoever during the rehabilitation that begun at the filing of this petition.

- They are hereby ordered to dispose and sell all these subsidiaries not later than December 31, 2009, listed in page 19 of the audited financial statements issued by Laya Managhaya & Co for year ending December 31, 2004 and 2004;

- They are prohibited to make any transfer of funds or assets of whatever kind or nature from one subsidiary to another or from one affiliate to another related entity during the rehabilitation period that started from the filing of this petition.

- They are hereby ordered to arrange for the recovery of whatever amount receivables from these subsidiaries not later than December 31, 2008 as stated under the footnotes of the financial statements submitted by external auditor Laya Managhaya & Co. appearing in page 19 thereof.

- They are prohibited to declare any kind of dividend, whatsoever, during the period of rehabilitation that started from date of filing of this petition. They are further prohibited to increase any of their salaries fringe benefits or emoluments during the rehabilitation period. Moreover, they are hereby ordered to adopt personnel streamlining, as proposed by Dean Eduardo delos Angeles, to effected (sic) within three months from receipt of this resolution.

- They shall remit to [PET Plans] whatever they may receive as honorarium, director's fee and/or compensation for their attendance with any board or body, whereby they represent the interest of petitioner from date of filling of this petition until the rehabilitation period has been terminated particularly from the subsidiaries stated in page 19 of the auditor's report.

- They are hereby ordered to comply and execute faithfully the approved Modified Rehabilitation Plan dated March 12, 2007 including but not limited to the herein below terms and conditions:

- For the rehabilitation receiver:

He shall have the following powers and authority, in addition to what the Interim Rules on Corporate Rehabilitation has provided:

i. He shall exercise supervision over the Chief Finance Officer of [PET Plans]. Said Chief Finance Officer shall report directly to the rehabilitation receiver.

ii. He shall give clearance to all major transactions to be entered into by by petitioner and all the Trust Funds. Initially this Court hereby sets as the minimum amount as major transaction in the sum of P30,000.00.

iii. He shall see to it that the plan holders shall be given priority in cash releases.

- For all the trustees bank.

They are hereby prohibited to release, encumber, enter into a contract of whatever kind or nature affecting the trust funds, without prior clearance from the rehabilitation receiver during the rehabilitation period. It is understood that the rehabilitation period has started from the time of the filing of the complaint.

They are also hereby required to submit to this court within thirty (30) days from receipt of this detailed report of the nature of assets, funds, investments, instruments, comprising the trust funds indicating the date and cost of the acquisition and other details that an evaluator of an investment fund needs.

- Schedule of payments for plan holders. This court adopts the outline of payments described from page 8 to page 24 of the Modified Rehabilitation plan dated March 12, 2007, except that those lapsed plans are given six (6) months from receipt of the order or knowledge of this approved plan, whichever comes first. Moreover, the computation of the Net Plan Value (NPV) shall include the proceeds of the sale of those subsidiaries stated in number 1(b) and fees in number 1(f) hereof.

Such owners of lapsed plans are hereby ordered to communicate immediately with the receiver or with [PET Plans].

- For the employees – they shall be paid in accordance with the terms and conditions of the CBA from the remaining available funds without affecting the amount scheduled to be paid to no. 4 hereof.

- For secured and unsecured creditors shall be paid in accordance with the modified rehabilitation plan.

It is understood that this approval of the modified Rehabilitation Plan is only good for two (2) years, hence a review of the compliance of all the terms and conditions of the plan and of this approval shall be made not later than March 30, 2009, unless there is a good reason for the early withdrawal of this approval.

SO ORDERED.[6]

In November 2007, PET Plans converted its existing plans into an EVP and established the enhanced value fund (EVF), owned by the planholders and managed by the Bank of the Philippine Islands (BPI). It also complied with the other terms and conditions provided by the RTC for the approval of the plans, except its commitment to contribute 15% of its net income after tax from its pre-need business to the EVF. [7]

On October 4, 2010, PET Plans filed an omnibus motion[8] to revive and amend the modified rehabilitation plan, and to exit from rehabilitation. PET Plans alleged that it failed to contribute 15% of its net income after tax to the EVF because it was unable to generate any new sales or income from the pre-need business for lack of necessary license from the SEC; that PET Plans ventured into non pre-need business like insurance, but its income was marginal over the past three (3) years; and that it was restricted from pursuing and developing new business or venturing into other line of business because it is under rehabilitation. Thus, PET Plans sought the amendment and revision of the second key provision of its modified rehabilitation plan and proposed to make an outright asset contribution to the EVF in the amount P2,000,000.00 in cash, and real properties in La Residencia Subdivision, Silang, Cavite with a cumulative market value of P3,496,500.00) or a total of P5,496,500.00; and prayed that it be allowed to exit from rehabilitation upon payment of its contribution so it can pursue other lines of business.

In his comment on the motion, the rehabilitation receiver confirmed PET Plans' compliance with the terms and conditions of the modified rehabilitation plan and its allegation that it was unable to generate income from its pre-need business due to lack of license from the SEC and to the deteriorating market conditions since 2007. He considered the amendment and revision of the second key provision of PET Plans' Rehabilitation Plan and the proposal for an outright contribution of cash and real properties of P5,496,500.00 more favorable and advantageous to the planholders considering that the proposed amount is double the company's projected income contribution and its effect on the EVP is immediate.

The SEC opposed the motion asserting that PET Plan's desired substitute contribution of cash and real properties amounting to P5,496,500.00 and the subsequent exit from rehabilitation are material modifications of an approved rehabilitation plan which the Rules on Rehabilitation does not allow; that the modification and alteration allowed by the rules is limited to the means by which the desired targets or goals may be met or achieved, and does not cover modification or alteration of the goal or target as prayed for by PET Plans; that PET Plans' failure to achieve the desired targets or goals of the rehabilitation plan warrants the termination of the rehabilitation proceedings and would pave the way for its liquidation. SEC prayed for the denial of PET Plans' omnibus motion to amend the rehabilitation plan, and requested a review of the same, including its financial statement. It also prayed for liquidation of PET Plans to ensure the return of the P76,000,000.00 loan from EVF or the return of the corporate assets for liquidation to its planholders.[9]

The rehabilitation receiver filed a clarification and manifestation stating that PET Plans had no P76,000,000.00

loan obligation to EVF and stressed that the modified rehabilitation plan had only two (2) key main provisions.[10]

On February 22, 2011, respondent judge issued a resolution granting PET Plans' prayer for the modification of its approved rehabilitation plan and held that a modification of an approved rehabilitation plan is necessary to achieve the desired targets or goals set forth therein and is allowed by the Rules of Procedure on Corporate Rehabilitation; that the substitute undertaking appears more immediate and realizable, and will significantly augment the EVF, which is the underlying target and goal of the rehabilitation of PET Plans. However, respondent judge denied the motions to exit rehabilitation proceedings and to exit pre-need business. Thus:

WHEREFORE, the Omnibus Motion is partially granted.

Accordingly, the Modified Rehabilitation Plan, as approved in the Resolution dated April 30, 2007, is hereby REVIVED and modified to provide that [PET Plans] shall contribute the amount of P2,000,000.00 cash and to transfer real property with market value of P3,496,500.00.00 or the total amount of P5,496,500.00 to the Enhanced Value Fund as of this approval, in lieu of the projected 15% net income after tax generated from the continuance of its pre-need business.

The [PET Plans] is hereby directed to inform this Court of its compliance within thirty (30) days of (sic) its accomplishment.

The Rehabilitation Receiver is directed to render his report on [PET Plans'] compliance within thirty (30) days.

As to the motion to exit rehabilitation and to terminate rehabilitation proceedings, the same are denied for being premature and without basis.

The motion to exit pre-need business is likewise denied for non-observance of due process.

SO ORDERED.[11]

The SEC filed a motion for reconsideration,[12] insisting that the modification of the modified rehabilitation plan is not allowed, and PET Plans cannot be excused from its obligation of contributing 15% of its annual income after tax from its pre-need and non pre-need business and that the intended infusion of P5,496,500.00 worth of cash and real properties should be made on top of the mandated 15% annual contribution; that assuming that a modification of the rehabilitation plan is allowed, PET Plans must disclose the complete list of planholders including the computation of their shares in the enhanced value plan and in the intended infusion, to safeguard the interest of the plan holders.

Respondent judge denied the motion for reconsideration on December 9, 2011.[13] He also ordered the release and exit of PET Plans from the rehabilitation on ground that PET Plans already complied with its undertaking to contribute P5,496,500.00 worth of cash and real properties. Thus:

WHEREFORE, the motion for reconsideration filed by the Securities and Exchange Commission is hereby denied.

Finally, the reports of the rehabilitation receiver have manifested that [PET Plans] could not comply with the 15% net income contribution; but instead made a front payment of P5,496,500.00 to the EVF in order that [PET Plans] may now exit from rehabilitation proceedings; and considering the fact that petitioner may not be able to secure approval for a pre-need business, this Court is constrained to order the release and exit of petitioner from the court rehabilitation proceedings.

SO ORDERED.[14]

Hence, this petition for certiorari by SEC. PET Plans moved to dismiss the petition on the ground that the assailed

resolutions have become final and executory. It contends that the assailed resolutions allowing the modification of, and its exit from, rehabilitation is a final order and thus, appealable to this Court via Rule 43 pursuant to Section 2, Rule 8 of the Rules of Procedure on Corporate Rehabilitation; that the Republic's failure to interpose a timely appeal had rendered the assailed resolutions final and executory.[15]

It is clear that an order approving or disapproving a rehabilitation plan can only be reviewed by a petition for review to this Court under Rule 43[16] of the Revised Rules of Court, as amended. But as correctly pointed out by the Republic, the assailed resolutions of public respondent were issued after the approval of rehabilitation. Section 1 of Rule 8 of the Rules of Procedure on Corporate Rehabilitation, which was in effect at the time of the issuance of the assailed resolutions, is instructive that [a]n order issued after the approval of the rehabilitation plan can be reviewed only through a special civil action for certiorari under Rule 65.[17] Hence, PET Plans cannot seek the dismissal of the petition on ground that petitioner availed of an improper remedy, and that the resolutions had attained finality.

The procedural issue having been resolved, this Court will now resolve the merits of the petition.

The Republic ascribes grave abuse of discretion on the part of respondent judge in allowing the modification of PET Plan's rehabilitation plan, and in granting the request to exit from rehabilitation. It asserts that an approved rehabilitation plan is immutable and the Rules of Procedure on Corporate Rehabilitation does not permit its modification except those which refer to the means by which the target or goal established in the plan may be attained; that the very objective of the plan would be easily defeated by the periodic amendment to the prejudice of the corporation's creditors and other stakeholders. PET Plans, on the other hand, asserts that the 15% contribution from its net income after tax was but a means to achieve the goal to enhance the EVF, hence, the amendment of the approved rehabilitation plan to make a substitute contribution of cash and real properties to the EVF is allowed.

This Court sustains the resolutions of respondent judge.

The approved modified rehabilitation plan of PET Plans provides that:

Effectively, all the three (3) types of the present pre-need plans shall be converted into a single new type of plan which will be called the "Enhanced Value Plan" (EVP). The NPV of each pre-need plan shall be the face value of the new plan. The actual value of this new plan is enhanced by two (2) enhancers namely:

(a) The earnings and growth of the assets of and investments of the unified trust fund. Such earnings, as already mentioned range from 8% to 12% per annum, and

(b) The annual contributions to the unified trust fund by PET Plans in the amount of fifteen percent (15%) of its net income after tax generated from the continuance of its pre-need business for a period of ten (10) years from the approval of the modified rehabilitation plan.

The first enhancer makes the EVP different from the traditional fixed value plan where the excess in the actual value of the trust fund over the face value of the plans goes to the pre-need company and not to the planholders. In the EVP, all the earnings of the unified trust fund will go to the EVP planholders.

The second enhancer makes it different from the ordinary trust investment where the investor's return is limited to the growth of the investment fund. In the EVP, the growth of the unified trust fund is enhanced further by sharing in the earnings of the business of PET Plans.[18]

A reading of the above provisions of the approved rehabilitation plan supports the rehabilitation receiver's interpretation that the goal or target of the plan is the financial growth of the EVF, and that the 15% annual contribution from its net income after tax is only one of the enhancers or one of the means to augment the EVF.

The rules applicable to the instant case is A.M. No. 00-8-10-SC or the Rules of Procedure on Corporate Rehabilitation (2008). This rule was later amended by the Financial Rehabilitation Rules of Procedure which took effect on October 22, 2013.

Section 22, Rule 3[19] of the Rules of Procedure on Corporate Rehabilitation (2008) allows alteration or modification of an approved rehabilitation plan if necessary to desired target or goals set forth therein. This Court agrees with respondent judge and the rehabilitation receiver that the substitute contribution is more favorable to the planholders.

As explained by the rehabilitation receiver in his comment²⁰ on the SEC's motion for reconsideration:

3. The second provision of PET Plan's rehabilitation Plan requires PET Plans to contribute for the next ten (10) years fifteen percent (15%) of its income after tax to the Enhanced Value Fund (EVF). The purpose of this contribution is to enhance the financial growth of the EVF.
4. PET Plans now proposes to make an outright cash and asset contribution to the EVF in the total amount of Five Million Four Hundred Ninety-Six Thousand Five Hundred Pesos (Php5,496,500.00) in lieu of contributing a portion of its net income over a ten (10) year period.
5. The reason for this proposal is because PET Plans, due to reasons beyond its control, was unable generate any net income from its business operations for the past three (3) years, or since the approval of the Rehabilitation Plan in 2007. Thus, its commitment to contribute a portion of its net income to the EVF and enhance its financial growth has remained unfulfilled.
6. According to PET Plans, it expects to become profitable only in the fourth quarter of 2012. For the periods 2012 to 2016, PET Plans expects a net income after tax of around Sixteen Million Pesos (Php16,000,000.00). If the approved Rehabilitation Plan was to be followed, that means, that from 2012 to 2016, the EVF will expect to get only Two Million Four Hundred Thousand Pesos (Php2,400,000.00) from PET Plans (Php16,000,000.00 x 15%).
7. The projected Php2,400,000.00 income contribution is not even guaranteed. As in any business endeavor, there are always inherent risks involved and there is no guarantee one will earn money.
8. An outright cash and asset contribution now clearly serves the purpose of the second key provision of the Rehabilitation Plan, which is the enhancement of the financial growth of the EVF. It is certainly better compared to waiting until 2016 for a miniscule income contribution that is not certain to happen.
9. This Honorable Court thus correctly approved the alteration and modification of the second key provision of PET Plans' Rehabilitation Plan since such alteration or modification is necessary to achieve the desired target or goal set forth in the rehabilitation plan.

The rehabilitation receiver is considered an officer of the court, and is primarily tasked to study the best way to rehabilitate the debtor and to ensure that the value of the debtor's property is reasonably maintained pending the determination of whether or not the debtor should be rehabilitated, as well implement the rehabilitation plan after its approval.^[21] Respondent judge cannot, therefore, be faulted for relying on the recommendation of the rehabilitation receiver, and for approving the modification of PET Plans' approved rehabilitation plan.

The fact that the substitute contribution was favorable to the planholders was bolstered by the record showing that the latter interposed no objection to the proposal by PET Plans and the approval of the proposal by the trial court.

This Court also notes that respondent judge even conducted a Chamber Conference before resolving the motion for reconsideration, and required the attendance of PET Plans' finance officer, the portfolio officer of the trust funds, the rehabilitation receiver and all the stakeholders in the said conference. He also directed PET Plans and

BPI to present the documents prayed for by SEC in its motion for reconsideration.[22] Unfortunately, SEC failed to appear despite notice.[23] Certainly, respondent judge cannot be charged with grave abuse of discretion for not requiring anew the submission of the document that had been presented by PET Plans in the conference.

Record shows that PET Plans already complied with its undertaking to contribute to the EVF and successfully implemented the rehabilitation plan, hence, the termination of the rehabilitation was proper. [24]

A writ of certiorari is an extraordinary prerogative writ that is never demandable as a matter of right. To warrant the issuance thereof, the abuse of discretion must have been so gross or grave, as when there was such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction; or the exercise of power was done in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility. The abuse must have been committed in a manner so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[25] Applying the above definition to the instant case, we find that there is no basis to ask this Court to hold the public respondent judge guilty of grave abuse of discretion.

In fine, it is settled that the finding of the court a quo is entitled to great weight and respect, and even accorded with finality. This especially obtains in corporate rehabilitation proceedings wherein certain commercial courts have been designated on account of their expertise and specialized knowledge on the subject matter, as in this case.[26]

WHEREFORE, the petition is DISMISSED. The resolutions dated February 22, 2011 and December 9, 2011, issued by public respondent Judge Cesar O. Untalan of the Regional Trial Court of Makati City, Branch 149 in S.P. Proc. No. M-6289 are AFFIRMED.

SO ORDERED.

Lampas Peralta, (Chairperson), and Acosta, JJ., concur.

[1] Rollo, pp. 56-60.

[2] Id. at 61-64.

[3] Id. at 180-207.

[4] See Modified Rehabilitation Plan id. At 169-179, see also Revised Recommendation of the Rehabilitation Receiver, id. 180-207.

[5] Id. at 208-218.

[6] Id. at 215-217.

[7] See Omnibus Motion, id. at 291-303.

[8] Id.

[9] Id. at 318-337.

[10] Id. at 338-341.

[11] Id, at 60.

[12] Id. at 386-3

[13] Supra note 2.

[14] Id. at 63-64.

[15] Id. at 1024-1087.

[16] SECTION 2. Review of Decision or Order on Rehabilitation Plan. — An order approving or disapproving a rehabilitation plan can only be reviewed through a petition for review to the Court of Appeals under Rule 43 of the Rules of Court within fifteen (15) days from notice of the decision or order. Rule 8. Rules of Procedure on Corporate Rehabilitation.

[17] SECTION 1. Motion for Reconsideration. — A party may file a motion for reconsideration of any order issued by the court prior to the approval of the rehabilitation plan. No relief can be extended to the party aggrieved by the court's order on the motion through a special civil action for certiorari under Rule 65 of the Rules of Court. Such order can only be elevated to the Court of Appeals as an assigned error in the petition for review of the decision or order approving or disapproving the rehabilitation plan.

An order issued after the approval of the rehabilitation plan can be reviewed only through a special civil action for certiorari under Rule 65 of the Rules of Court.

[18] See Modified Rehabilitation Plan, supra note 3, at 192.

[19] Section 22. Alteration or Modification of Rehabilitation Plan. — An approved rehabilitation plan may, upon motion, be altered or modified if, in the judgment of the court, such alteration or modification is necessary to achieve the desired targets or goals set forth therein.

[20] Rollo, p. 1094.

[21] Section 12, Rule 3, Rules of Procedure on Corporate Rehabilitation.

[22] Id. at 1099.

[23] Id. at 1120.

[24] SECTION 23. Termination of Proceedings. — The court shall, upon motion or upon recommendation of the rehabilitation receiver, terminate the proceeding in any of the following cases:

- (a) Dismissal of the petition;
- (b) Failure of the debtor to submit the rehabilitation plan;
- (c) Disapproval of the rehabilitation plan by the court;
- (d) Failure to achieve the desired targets or goals as set forth in the rehabilitation plan;
- (e) Failure of the debtor to perform its obligations under the plan;
- (f) Determination that the rehabilitation plan may no longer be implemented in accordance with its terms, conditions, restrictions or assumptions; or
- (g) Successful implementation of the rehabilitation plan.

[25] *Indoyon v. Court of Appeals*, G.R. No. 193706, March 12, 2013..

[26] *Bank of the Philippine Islands v. Sarabia Manor Hotel*, G.R. No. 175844, July 29, 2013.

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