BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. SHEMBERG BIOTECH CORPORATION AND BENSON DAKAY, RESPONDENTS.

G.R. No. 162291. August 11, 2010

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

Before the Court is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, of the Decision[1] dated September 24, 2003 and Resolution[2] dated February 3, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 69461. The CA had dismissed the petition assailing the October 12, 2001 and December 26, 2001 Orders[3] of the Regional Trial Court (RTC) of Cebu City, Branch 11, in Civil Case No. CEB-26481-SRC.

The proceedings antecedent to this case are as follows:

Respondent Shemberg Biotech Corporation (SBC), a domestic corporation which manufactures carrageenan from seaweeds, filed a petition[4] for the approval of its rehabilitation plan and appointment of a rehabilitation receiver before the RTC. The RTC issued a stay order,[5] and petitioner Bank of the Philippine Islands (BPI) filed its opposition[6] to SBC's petition.

After initial hearings, the RTC issued the assailed October 12, 2001 Order[7] which gave due course to SBC's petition; referred the rehabilitation plan to the Rehabilitation Receiver for evaluation; ordered the Rehabilitation Receiver to submit his recommendation; recalled the appointment of the first Rehabilitation Receiver; and appointed Atty. Pio Y. Go as new Rehabilitation Receiver. The RTC found that SBC complied with the conditions necessary to give due course to its petition for rehabilitation. The RTC was also satisfied of the merit of SBC's petition and noted that SBC's business appears viable since it has a market for its product. A sufficient breathing spell, according to the RTC, may help SBC settle its debts. The RTC further said that it will reflect on the issue raised by SBC's creditors that the rehabilitation plan is not feasible, upon submission by the Rehabilitation Receiver of his recommendation.

BPI filed a motion for reconsideration[8] which the RTC denied in its Order[9] dated December 26, 2001.

Consequently, BPI filed a petition for certiorari, prohibition and mandamus[10] before the CA.

In its assailed decision, the CA dismissed the petition. The CA ruled that the RTC's Decision[11] dated April 22, 2002 in Civil Case No. CEB-26481-SRC, which approved with modification SBC's rehabilitation plan, rendered the petition moot. The CA also ruled that the issues raised against the rehabilitation plan should be raised in BPI's appeal from the said RTC Decision. The CA found that the RTC did not commit an error or grave abuse of discretion in issuing the October 12, 2001 and December 26, 2001 Orders.

On February 3, 2004, BPI's motion for reconsideration was denied by the CA. Hence, BPI filed the present petition.

BPI laments that the CA focused its discussion on the procedural matters, i.e., on the propriety of the petition for certiorari, rather than on the substantial and jurisdictional issues raised.[12]

BPI also contends that the rehabilitation plan does not require "infusion of new capital from its guarantors and sureties"[13] and that forcing creditors to transform their debt to equity amounts to taking private property without just compensation and due process of law.[14] BPI further contends that the RTC exercised its rehabilitation power "whimsically, arbitrarily and despotically by eliminating penalties and reducing interests amounting to millions." Such exercise of power, BPI contends, also amounts to taking of property without just compensation and due process of law that could not be justified under the police power. BPI adds that the Interim Rules of Corporate Recovery is unconstitutional insofar as it alters or modifies and expands the existing law on rehabilitation contrary to the principle that rules of procedure cannot modify or affect substantive rights.[15]

BPI prays that the Interim Rules of Procedure on Corporate Rehabilitation[16] be declared unconstitutional; that the order approving the rehabilitation plan be declared unconstitutional and void; and that the petition for rehabilitation be ordered dismissed and terminated.[17]

We find the petition bereft of merit.

We will address BPI's contentions seriatim.

First, BPI is mistaken in asserting that the CA focused on procedural matters because the CA actually ruled that the RTC did not commit grave abuse of discretion in issuing the October 12, 2001 and December 26, 2001 Orders. Before the CA, BPI raised questions about the viability of the rehabilitation plan. BPI said that SBC supports its rehabilitation plan with a shift to low-grade carrageenan to offset a lower volume of purchase by Colgate-Palmolive. BPI questions this plan and doubts how it can help SBC's recovery considering that it will result in a lower profit margin.[18] We also note that the other matters raised by BPI, i.e., new capital infusion and debt-to-equity conversion, are matters directly concerning the merit of the rehabilitation plan. The RTC, however, has yet to fully consider the rehabilitation plan at the time it issued the October 12, 2001 Order. It did not approve any rehabilitation plan in the assailed orders. As stated by the RTC, it will reflect on the issue of viability of the rehabilitation plan upon submission by the Rehabilitation Receiver of his recommendation. BPI and its counsels readily imputed grave abuse of discretion on the part of the RTC when such imputation had no basis at all.

Second, even as we say that the imputation against the RTC has no basis, we are also in agreement that the CA has sufficient basis to rule that this case is already moot. An issue is said to have become moot when it ceases to present a justiciable controversy so that a declaration on the issue would be of no practical use or value.[19] In this case, a ruling on the propriety of the RTC's directive in its October 12, 2001 Order that the Rehabilitation Receiver submit his recommendation would have no more practical value since the recommendation was already submitted. Similarly, a ruling on the propriety of the RTC's statement that it will reflect on the issue of viability of the rehabilitation plan upon receipt of the receiver's recommendation would also have no more practical value since the RTC had already considered the recommendation in rendering its Decision dated April 22, 2002 in Civil Case No. CEB-26481-SRC.

Third, BPI's contention that forcing debt-to-equity conversion is constitutionally infirm is way out of order as the RTC did not approve debt-to-equity conversion in its October 12, 2001 and December 26, 2001 Orders. Nor did the CA approve debt-to-equity conversion in the assailed decision and resolution. In fact, the RTC did not even order conversion of debt-to-equity in its decision approving with modification SBC's rehabilitation plan.[20]

Fourth, BPI's contention that the RTC exercised its rehabilitation power arbitrarily and BPI's prayer that the order

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approving the rehabilitation plan be declared unconstitutional are improper attempts to appeal again the RTC Decision dated April 22, 2002. We will see no end to litigations if we grant BPI's wish. Said RTC decision was affirmed by the CA in BPI's appeal docketed as CA-G.R. CV No. 75781.[21] In G.R. No. 175359, we denied BPI's petition for review of the decision and resolution of the CA in CA-G.R. CV No. 75781.[22] Our denial of BPI's petition in G.R. No. 175359 has become final and entry of judgment has been made. BPI has even admitted that the rehabilitation plan is already being implemented.[23]

Fifth, on the question of the constitutionality of the Interim Rules of Procedure on Corporate Rehabilitation, BPI failed in its burden of clearly and unequivocally proving its assertion. Its failure to so prove defeats the challenge.[24] We even note that BPI itself opposes its own stand by invoking Section 27,[25] Rule 4 of the Interim Rules to support its prayer that the rehabilitation proceedings be declared terminated.[26] BPI also impliedly invoked the Interim Rules before the CA in seeking a modified rehabilitation plan considering that SBC's petition for approval of its rehabilitation plan had been filed under the Interim Rules.

In addition, the challenge on the constitutionality of the Interim Rules is a new and belated theory that we should not even entertain. It was not raised before the CA. Well settled is the rule that issues not previously ventilated cannot be raised for the first time on appeal.[27] Relatedly, the constitutional question was not raised at the earliest opportunity. The rule is that when issues of constitutionality are raised, the Court can exercise its power of judicial review only if the following requisites are present: (1) the existence of an actual and appropriate case; (2) a personal and substantial interest of the party raising the constitutional question; (3) the exercise of judicial review is pleaded at the earliest possible opportunity; and (4) the constitutional question is the lis mota of the case.[28] In Umali v. Guingona, Jr.,[29] the constitutionality of the creation of the Presidential Commission on Anti-Graft and Corruption was raised in the motion for reconsideration of the RTC's decision. This Court did not entertain the constitutional issue because it was belatedly raised at the RTC.

Sixth, we cannot grant BPI's prayer that the petition for rehabilitation be ordered dismissed and terminated. To dismiss the petition for rehabilitation would be to reverse improperly the final course of that petition: the petition was granted by the RTC; the RTC decision was affirmed with finality; and the rehabilitation plan is now being implemented. And while the Interim Rules[30] and the new Rules of Procedure on Corporate Rehabilitation[31] contain provisions on termination of the corporate rehabilitation proceedings, neither the RTC nor the CA ruled on this point. In fact, BPI did not ask the CA to terminate the rehabilitation proceedings.[32] Aside from being another new issue, its resolution involves factual matters such as: (1) whether there was failure to achieve the desired targets or goals as set forth in the rehabilitation plan; (2) whether there was failure of the debtor (SBC) to perform its obligations under the plan; (3) whether the rehabilitation plan may no longer be implemented in accordance with its terms, conditions, restrictions or assumptions; or (4) whether there was successful implementation of the rehabilitation plan. We are not at liberty to consider these factual matters for the first time. This Court is not a trier of facts and our role in a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure is limited to reviewing or reversing errors of law.[33] The Rule 45 petition itself must raise only questions of law.[34]

On another matter, we received a motion for substitution[35] by Investments 2234 Philippines Fund I (SPV-AMC), Inc. with prayer that it be substituted as new party-petitioner in this case. Subsequently, however, Investments 2234 informed us that the RTC has already substituted Investments 2234 for BPI in the rehabilitation proceedings. We see no need to further duplicate the action of the RTC.

WHEREFORE, the petition is DENIED for lack of merit. The assailed Decision dated September 24, 2003 and Resolution dated February 3, 2004 of the Court of Appeals in CA-G.R. SP No. 69461 are AFFIRMED.

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With costs against the petitioner.

SO ORDERED.

Carpio Morales, (Chairperson), Brion, Bersamin, and Abad,[*] JJ., concur.

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[*] Designated additional member per Special Order No. 843 dated May 17, 2010.

[1] Rollo, pp. 645-653. Penned by Associate Justice Conrado M. Vasquez, Jr., with Associate Justices Bienvenido L. Reyes and Arsenio J. Magpale concurring.

[2] Id. at 694-695.

[3] Id. at 580-581 & 603.

[4] Id. at 171-190.

[5] Id. at 376-377.

[6] Id. at 378-397.

[7] Id. at 580-581.

[8] Id. at 582-595.

[9] Id. at 603.

[10] Id. at 77-167.

[11] Id. at 918-931.

[12] Id. at 1119.

[13] Id. at 1142.

[14] Id. at 1146.

[15] Id. at 1126-1127.

[16] A.M. No. 00-8-10-SC which took effect on December 15, 2000.

[17] Rollo, pp. 1187-1188.

[18] Id. at 120-121.

[19] King v. Court of Appeals, G.R. No. 158195, December 16, 2005, 478 SCRA 275, 280.

[20] Rollo, pp. 930-931.

[21] Id. at 1760-1777.

[22] See rollo of G.R. No. 175359, p. 758.

[23] Rollo, p. 1117.

[24] Atitiw v. Zamora, G.R. No. 143374, September 30, 2005, 471 SCRA 329, 337.

[25] SEC. 27. Termination of Proceedings. - In case of the failure of the debtor to submit the rehabilitation plan,

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or the disapproval thereof by the court, or the failure of the rehabilitation of the debtor because of failure to achieve the desired targets or goals as set forth therein, or the failure of the said debtor to perform its obligations under the said plan, or a determination that the rehabilitation plan may no longer be implemented in accordance with its terms, conditions, restrictions, or assumptions, the court shall upon motion, motu proprio, or upon the recommendation of the Rehabilitation Receiver, terminate the proceedings. The proceedings shall also terminate upon the successful implementation of the rehabilitation plan.

[26] Rollo, pp. 1187-1188.

[27] Rasdas v. Estenor, G.R. No. 157605, December 13, 2005, 477 SCRA 538, 551.

[28] Philippine Constitution Association v. Enriquez, G.R. Nos. 113105, 113174, 113766, and 113888, August 19, 1994, 235 SCRA 506, 518-519.

[29] G.R. No. 131124, March 29, 1999, 305 SCRA 533, 542.

[30] Supra note 16.

[31] A.M. No. 00-8-10-SC, approved on December 2, 2008.

RULE 3, SEC. 23. Termination of Proceedings. - The court shall, upon motion or upon recommendation of the rehabilitation receiver, terminate the proceedings 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.

[32] Rollo, pp. 162-164.

[33] Quimpo, Sr. v. Abad Vda. de Beltran, G.R. No. 160956, February 13, 2008, 545 SCRA 174, 180-181.

[34] Rules of Court, Rule 45, Section 1.

[35] Rollo, pp. 1789-1792.

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