

**METROPOLITAN BANK & TRUST COMPANY, PETITIONER, VS.
ASB HOLDINGS, INC., ASB REALTY CORPORATION, ASB
DEVELOPMENT CORPORATION, ASB LAND, INC., ASB FINANCE, INC.,
MAKATI HOPE CHRIST...**

G.R. NO. 166197. February 27, 2007

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

For our resolution is the instant Petition for Review on Certiorari[1] assailing the Decision dated August 16, 2004[2] of the Court of Appeals in CA-G.R. SP No. 77260 and its Resolution dated December 1, 2004.

The facts borne by the records are:

The Metropolitan Bank and Trust Company, petitioner, is a creditor bank of respondent corporations, collectively known as the ASB Group of Companies, owner and developer of condominium and real estate projects. Specifically, the loans extended by petitioner bank to respondents ASB Realty Corporation and ASB Development Corporation amounted to P523.5 million and P1.073 billion, respectively. These loans were secured by real estate mortgages.

On May 2, 2000, the ASB Group of Companies filed with the Securities and Exchange Commission (SEC) a Petition For Rehabilitation With Prayer For Suspension Of Actions And Proceedings Against Petitioners,[3] pursuant to Presidential Decree (P.D.) No. 902-A, as amended, docketed as SEC Case No. 05-00-6609. The pertinent portions of the petition allege:

- The total assets of petitioner ASB Group of Companies, together with petitioner ASB Allied Companies, amount to Nineteen Billion Four Hundred Ten Million Pesos (P19,410,000,000.00).
- The Projects were financed with loans or borrowings from bank and individual creditors which resulted in petitioner Group of Companies having a total liability in the amount of Twelve Billion Seven Hundred Million Pesos (P12,700,000,000.00).
- On account of the sudden non-renewal and/or the massive withdrawal by creditors of their loans to petitioner ASB Holdings, Inc., coupled with the recent developments in the country, like, among others, (i) the glut in the real estate market; (ii) the severe drop in the sale of real properties; (iii) the depreciation of the peso vis-a-vis the dollar; and (iv) the decreased investor confidence in the economy, petitioner Group of Companies was unable to complete and sell some of its projects on schedule and, hence, was unable to service its obligations as they fell due.
- Petitioner Group of Companies possesses sufficient property to cover its obligations. However, petitioner Group of Companies foresees its inability to pay its obligations within a period of one (1) year.
- Because of the inability of the Group of Companies to pay its obligations as they respectively fall due, its secured and non-secured creditors pressed for payments of due and maturing obligations and threatened to

initiate separate actions against it, which will adversely affect its operations and shatter its hope in rehabilitating itself for the benefit of its investors and creditors and the general public.

- There is a clear, present and imminent danger that the creditors of petitioner Group of Companies will institute extrajudicial and judicial foreclosure proceedings and file court actions unless restrained by this Honorable Commission.

- The institution of extrajudicial and judicial foreclosure proceedings and the filing of court actions against petitioner Group of Companies will necessarily result in the paralization of its business operation and its assets being lost, dissipated or wasted.

- There is, therefore, a need for the suspension of payment of all claims against petitioner Group of Companies, in the separate and combined capacities of its member companies, while it is working for its rehabilitation.

- Petitioner Group of Companies has at least seven hundred twelve (712) creditors, three hundred seventeen (317) contractors/suppliers and four hundred ninety-two (492) condominium unit buyers, who will certainly be prejudiced by the disruption of the operations of petitioner ASB Group of Companies which seeks to protect the interest of the parties from any precipitate action of any person who may only have his individual interest in mind.

- The business of petitioner ASB Group of Companies is feasible and profitable. Petitioner Group of Companies will eventually be able to pay all its obligations given some changes in its management, organization, policies, strategies, operations, or finances.

- With the support of this Honorable Commission, petitioner Group of Companies is confident that it will be able to embark on a sound and viable rehabilitation plan, with a built-in debt repayment schedule through the optimal use of their present facilities, assets and resources. Although a proposed rehabilitation plan is attached to this petition, a detailed and comprehensive rehabilitation proposal will be presented for the approval of this Honorable Commission, with the foregoing salient features:

- Servicing and eventual full repayment of all debts and liabilities, focusing on debt restructure and possible liquidation through dacion en pago, transfer and assignment, or outright sale of assets, in order to lighten the debt burden of petitioner Group of Companies;

- Forming of strategic alliances with third party investors, including joint ventures and similar arrangements;

- Contributing specified properties from petitioner ASB Allied Companies;

- Streamlining the operations of petitioner ASB Group of Companies, and the effective management of its revenues and funds towards the strengthening of its financial and business positions; and

- Stabilizing the operations of petitioner Group of Companies, and preparing it to take advantage of future opportunities for growth and development.

On May 4, 2000, the Hearing Panel of the SEC Securities Investigation and Clearing Department, finding the petition for rehabilitation sufficient in form and substance, issued a sixty-day Suspension Order (a) suspending all actions for claims against the ASB Group of Companies pending or still to be filed with any court, office, board, body, or tribunal; (b) enjoining the ASB Group of Companies from disposing of their properties in any manner, except in the ordinary course of business, and from paying their liabilities outstanding as of the date of the filing of the petition; and (c) appointing Atty. Monico V. Jacob as interim receiver of the ASB Group of Companies.

On May 22, 2000, the SEC Hearing Panel issued an Order appointing Mr. Fortunato Cruz as interim receiver of the ASB Group of Companies, replacing Atty. Monico Jacob.

On August 18, 2000, the ASB Group of Companies submitted to the SEC for its approval a Rehabilitation

Plan,[4] thus:

Metropolitan Bank and Trust Co.

Principal Amount - Principal (amount) plus any interest due and unpaid as of April 30, 2000, less any prepaid interest, without any penalties and charges.

Form of Agreement - Dacion en Pago Agreement

Purpose - To retire existing loans.

Tenor - Immediate Dacion en Pago of related properties, subject to the approval of the Securities and Exchange Commission (SEC).

Effective Date - September 1, 2000, subject to the approval of the SEC.

Dacion En Pago Arrangement - ASB will dacion the bank's equity in St. Francis Square and apply the excess dacion value on its BSA Twin Tower loan. Further, Makati Hope, Buendia cor. Malugay, 21 Annapolis (which is expected to be released by PNB) and # 28 & 23 Eisenhower St., will be dacioned to Metrobank, the excess of which will also be applied to Metrobank's exposure on BSA Twin Towers. In return, State Condominium will be freed up and placed in the ASB creditors' asset pool. Further, Metrobank shall also undertake the completion of BSA Twin Towers.

Outstanding Loan Balance After Dacion En Pago - None[5]

Petitioner bank, in its Comment/Opposition to the Rehabilitation Plan,[6] objected to the above Plan, specifically the arrangement concerning the mode of payment by respondents ASB Realty Corporation and ASB Development Corporation of their loan obligations.

Petitioner bank claimed that the above arrangement "is not acceptable" because: (1) it does not agree with the valuation of the properties offered for dacion; (2) the waiver of interests, penalties and charges after April 30, 2000 is not feasible considering that the bank continues to incur costs on the funds owed by ASB Realty Corporation and ASB Development Corporation; and (3) since the proposed dacion is not acceptable to the bank, there is no basis to release the properties which serve as collateral for the loans. Petitioner thus prayed that the Rehabilitation Plan be disapproved.

On April 26, 2001, the SEC Hearing Panel, finding petitioner bank's objections unreasonable, issued an Order[7] approving the Rehabilitation Plan and appointing Mr. Fortunato Cruz as rehabilitation receiver, thus:

PREMISES CONSIDERED, the objections to the rehabilitation plan raised by the creditors are hereby considered unreasonable.

Accordingly, the Rehabilitation Plan submitted by petitioners is hereby APPROVED, except those pertaining to Mr. Roxas' advances, and the ASB-Malayan Towers. Finally, Interim Receiver Mr. Fortunato Cruz is appointed as Rehabilitation Receiver.

SO ORDERED.

On July 10, 2001, petitioner bank filed with the SEC En Banc a Petition for Certiorari,[8] docketed as EB-725, alleging that the SEC Hearing Panel, in approving the Rehabilitation Plan, committed grave abuse of discretion amounting to lack or excess of jurisdiction; and praying for the issuance of a temporary restraining order and/or a writ of preliminary injunction to enjoin its implementation. Subsequently, the ASB Group of Companies filed their Opposition[9] to the petition, to which petitioner bank filed its Reply.[10]

In a Resolution[11] dated April 15, 2003, the SEC En Banc denied petitioner bank's Petition for Certiorari and affirmed the SEC Hearing Panel's Order of April 26, 2001.

Petitioner bank then filed with the Court of Appeals a Petition for Review.[12] On August 16, 2004, the appellate court rendered its Decision[13] denying due course to the petition, thus:

WHEREFORE, finding the instant petition not impressed with merit, the same is DENIED DUE COURSE. No pronouncement as to costs.

SO ORDERED.

Petitioner bank's Motion for Reconsideration was likewise denied in a Resolution dated December 1, 2004.[14]

Hence, this petition for review on certiorari.

In the meantime, or on June 1, 2006, Cameron Granville 3 Asset Management, Inc. (Cameron Granville) filed a Motion For Intervention[15] alleging that in September of 2003, petitioner bank assigned the loans and mortgages of ASB Realty Corporation and ASB Development Corporation to Asset Recovery Corporation (ARC). However, pursuant to its Service Agreement with ARC, petitioner continued to pursue its action before the Court of Appeals in CA-G.R. SP No. 77260 and before this Court in the instant case. On March 31, 2006, ARC in turn assigned the loans and mortgages of the said two respondent corporations to herein intervenor, Cameron Granville.

In a Resolution dated June 5, 2006,[16] the Court granted the motion for intervention. Accordingly, on August 28, 2006, the intervenor filed its Petition For Intervention[17] and manifested therein that it adopts as its own petitioner bank's petition and all its other pleadings. Thereafter, respondent ASB Group of Companies filed their Comment.[18]

Now to the resolution of the instant petition.

Petitioner bank contends that the Court of Appeals erred:

- In not nullifying the SEC Resolution dated April 15, 2003 approving the Rehabilitation Plan. Such approval illegally compels petitioner bank to accept, through a dacion en pago arrangement, the mortgaged properties based on ASB Group of Companies' transfer values and to release part of the collateral. This forced transfer of properties and diminution of the bank's right to enforce its lien on the mortgaged properties violate its constitutional right against impairment of contracts and right to due process.
- In not finding that the Rehabilitation Plan compels petitioner bank to waive the interests, penalties and other charges that accrued after the SEC issued its Stay Order. Again, this is in violation of the constitutional mandate on non-impairment of contracts and due process.
- In not finding that only respondent ASB Holdings, Inc. suffered financial distress as stated in the Rehabilitation Plan and, as such, the coercive reach of the SEC's Stay Order under P.D. 902-A can extend only to the enforcement of claims against this distressed corporation. It cannot suspend the claims and actions against its affiliate corporations.

In their Comment, respondent corporations comprising the ASB Group of Companies prayed for the dismissal of the instant petition for being unmeritorious.

The first two (2) assigned errors lack merit. We shall discuss them jointly as they are closely interrelated.

We are not convinced that the approval of the Rehabilitation Plan impairs petitioner bank's lien over the mortgaged properties. Section 6 [c] of P.D. No. 902-A provides that "upon appointment of a management committee, rehabilitation receiver, board or body, pursuant to this Decree, all actions for claims against

corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body shall be suspended."

By that statutory provision, it is clear that the approval of the Rehabilitation Plan and the appointment of a rehabilitation receiver merely suspend the actions for claims against respondent corporations. Petitioner bank's preferred status over the unsecured creditors relative to the mortgage liens is retained, but the enforcement of such preference is suspended. The loan agreements between the parties have not been set aside and petitioner bank may still enforce its preference when the assets of ASB Group of Companies will be liquidated. Considering that the provisions of the loan agreements are merely suspended, there is no impairment of contracts, specifically its lien in the mortgaged properties.

As we stressed in *Rizal Commercial Banking Corporation v. Intermediate Appellate Court*,^[19] such suspension "shall not prejudice or render ineffective the status of a secured creditor as compared to a totally unsecured creditor," for what P.D. No. 902-A merely provides is that all actions for claims against the distressed corporation, partnership or association shall be suspended. This arrangement provided by law is intended to give the receiver a chance to rehabilitate the corporation if there should still be a possibility for doing so, without being unnecessarily disturbed by the creditors' actions against the distressed corporation. However, in the event that rehabilitation is no longer feasible and the claims against the distressed corporation would eventually have to be settled, the secured creditors, like petitioner bank, shall enjoy preference over the unsecured creditors.

Likewise, there is no compulsion on the part of petitioner bank to accept a dacion en pago arrangement of the mortgaged properties based on ASB Group of Companies' transfer values and to condone interests and penalties. The Rehabilitation Plan itself, under item IV-A, explains the dacion en pago proposal, thus:

IV. THE REVISED REHABILITATION PLAN

A. The Total Approach

It is apparent that ASB's corporate indebtedness needs to be reduced as quickly as possible in order to prevent rapid deterioration in equity. x x x. In order to reduce debt quickly, we must do the following:

- Complete or sell on-going projects;
- Invite secured creditors to complete dacion en pago transactions, waiving all penalties; and
- Invite unsecured creditors to purchase real estate parcels and other assets and set-off the amount of their outstanding claim against the purchase price.

The assets included in the above program include all real estate assets.

In order to determine the feasibility of the above, representatives of our financial advisors met with or had discussions with most of the secured creditors. Preliminary discussions indicate support from the secured creditors towards the concepts of the program associated with them. The majority of these secured creditors appear to want to complete dacion en pago transactions based on MUTUALLY AGREED UPON TERMS. x x x. We continue to pursue discussions with secured creditors. Based on the program, secured creditors' claims amounting to PhP5.192 billion will be paid in full including interest up to April 30, 2000. Secured creditors have been asked to waive all penalties and other charges. This dacion en pago program is essential to eventually pay all creditors and rehabilitate the ASB Group of Companies. If the dacion en pago herein contemplated does not materialize for failure of the secured creditors to agree thereto, this rehabilitation plan contemplates to settle the obligations (without interest, penalties, and other related charges accruing after the date of the initial suspension order) to secured creditors with mortgaged properties at ASB selling prices for the general interest on the employees, creditors, unit buyers, government, general public and the economy.

x x x.[20] (Underscoring supplied)

Indeed, based on the above explanation in the Rehabilitation Plan, the dacion en pago program and the intent of respondent ASB Group of Companies to ask creditors to waive the interests, penalties and related charges are not compulsory in nature. They are merely proposals for the creditors to accept. In fact, as explained, there was already an initial discussion on these proposals and the majority of the secured creditors showed their desire to complete dacion en pago transactions, but they must be "based on MUTUALLY AGREED UPON TERMS." The SEC En Banc in its Resolution dated April 15, 2003, affirming the SEC Hearing Panel's Order of April 26, 2001 approving the Rehabilitation Plan, aptly declared:

x x x, petitioner asserts that the Rehabilitation Plan is not legally feasible because respondents cannot dictate the terms of dacion.

We do not agree. A cursory reading of the Rehabilitation Plan debunks this assertion. The Plan provides that dacion en pago transaction will be effected only if the secured creditors, like petitioner, agree thereto and under terms and conditions mutually agreeable to private respondents and the secured creditor concerned. The dacion en pago program is essential to eventually pay all creditors and rehabilitate private respondents. If the dacion en pago does not materialize in case secured creditors refuse to agree thereto, the Rehabilitation Plan contemplates to settle the obligations to secured creditors with mortgaged properties at selling prices. This is for the general interest of the employees, creditors, unit buyers, government, general public, and the economy.[21] (Underscoring supplied)

With respect to the third assigned error, we note that the same was not raised by petitioner bank in its Comment/Opposition to the Rehabilitation Plan filed with the SEC Hearing Panel. Such belated issue cannot be considered, especially because it involves a question of fact, the resolution of which is normally beyond the authority of this Court as it is not a trier of facts.[22]

At any rate, the SEC En Banc found that the SEC Hearing Panel "acted within its legal authority in resolving this case. Neither it overstepped its lawful authority nor acted whimsically in approving the Rehabilitation Plan. Hence, it cannot be faulted of grave abuse of discretion." [23] We find no reason to disturb such finding, it being a fundamental rule that factual findings of quasi-judicial agencies, like the SEC, which have acquired expertise as their jurisdiction is confined to special matters such as the subject of this case, are generally accorded great respect and even finality, absent any showing that they arbitrarily disregarded evidence or misapprehended evidence to such an extent as to compel a contrary conclusion if such evidence had been properly appreciated.[24]

Petitioner bank also argues that "ASB Group of Companies" is merely a generic name used to describe collectively various companies and as such, it is not a legal entity with juridical personality and cannot be a party to a suit. True, "ASB Group of Companies" is merely used in this case as a generic name, for brevity, to collectively describe the various companies/corporations that filed a Petition For Rehabilitation with the SEC. However, in their petition, all the respondent corporations are individually named as petitioners, not "ASB Group of Companies."

One last word. The purpose of rehabilitation proceedings is to enable the company to gain new lease on life and thereby allows creditors to be paid their claims from its earnings.[25] Rehabilitation contemplates a continuance of corporate life and activities in an effort to restore and reinstate the financially distressed corporation to its former position of successful operation and solvency.[26] This is in consonance with the State's objective to promote a wider and more meaningful equitable distribution of wealth to protect investments and the public.[27] The approval of the Rehabilitation Plan by the SEC Hearing Panel, affirmed by both the SEC En Banc and the Court of Appeals, is precisely in furtherance of the rationale behind P.D. No. 902-A, as amended, which is "to effect a feasible and viable rehabilitation"[28] of ailing corporations which affect the public welfare.

WHEREFORE, we DENY the instant petition for review on certiorari. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 77260 are AFFIRMED.

Costs against intervenor Cameron Granville.

SO ORDERED.

Puno, C.J., (Chairperson), Corona, and Garcia, JJ., concur.
Azcuna, J., on official leave.

[1] Filed under Rule 45 of the 1997 Rules of Civil Procedure, as amended.

[2] Penned by Associate Justice Mariano C. Del Castillo and concurred in by Associate Justice Edgardo P. Cruz and Associate Justice Magdangal M. De Leon.

[3] In their petition for rehabilitation, the corporations comprising the ASB Group of Companies alleged that their allied companies (ASB Holdings, Inc., ASB Land, Inc., ASB Finance, Inc., Makati Hope Christian School, Inc., Bel-Air Holdings Corporation, Winchester Trading, Inc., VYL Development Corporation, Gerick Holdings Corporation, and Neighborhood Holdings, Inc.) have joined in the said petition "because they executed mortgages and/or pledges over their real and personal properties to secure the obligations of petitioner ASB Group of Companies. Further, (they) agreed to contribute, to the extent allowed by law, some of their specified properties and assets to help rehabilitate petitioner ASB Group of Companies." Rollo, pp. 119-120.

[4] Rollo, pp. 470-547.

[5] Id., pp. 470, 523.

[6] Id., pp. 548-549.

[7] Id., pp. 573-577.

[8] Id., pp. 578-608.

[9] Id., pp. 609-624.

[10] Id., pp. 625-635.

[11] Id., pp. 636-642.

[12] Under Rule 43 of the 1997 Rules of Civil Procedure, as amended.

[13] Rollo, pp. 60-80.

[14] Id., pp. 643-644.

[15] Id., pp. 1181-1188.

[16] Id., pp. 1185-1186.

[17] Id., pp. 1253-1323.

[18] Id., pp. 1326-1350.

[19] G.R. No. 74851, December 9, 1999, 320 SCRA 279.

[20] Rollo, pp. 491-492.

[21] *Id.*, p. 639.

[22] *Batangas Laguna Tayabas Bus Company, Inc. v. Bitanga*, G.R. Nos. 137934 & 137936, August 10, 2001, 362 SCRA 635, citing *Palomado v. NLRC*, 257 SCRA 680 (1996).

[23] *Rollo*, p. 641.

[24] *Batangas Laguna Tayabas Bus Company, Inc. v. Bitanga*, *supra*.

[25] *Rubberworld (Phils.), Inc. v. NLRC*, G.R. No. 126773, April 14, 1999, 305 SCRA 721.

[26] *Ruby Industrial Corporation v. Court of Appeals*, G.R. Nos. 124185-87, January 20, 1998, 284 SCRA 445.

[27] P.D. 902-A, as amended, First "Whereas" clause.

[28] *Rizal Commercial Banking Corporation v. Intermediate Appellate Court*, G.R. No. 74851, September 14, 1992, 213 SCRA 830.

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