

**KEI MARIE AND BIANCA ANGELICA, ALL SURNAMED ABRERA,
MINORS AND REPRESENTED BY THEIR PARENT EVELYN C. ABRERA;
ASTRID NOELLE S. ALMEDA, MINOR, REPRESENTED BY HIS PARENT
MA. ROMINA...**

G.R. No. 171681. September 11, 2009

Ponente: PERALTA, J.

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PERALTA, J.:

This is a petition for certiorari and prohibition alleging that respondent Judge Romeo F. Barza of the Regional Trial Court (RTC) of Makati City, Branch 61, committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Orders dated September 13, 2005 and December 16, 2005 in Special Proceedings (Sp. Proc.) No. M-6144. The Order dated September 13, 2005 found the petition for corporate rehabilitation of the College Assurance Plan Philippines, Inc. (CAP) to be sufficient in form and substance and stayed the enforcement of all claims against CAP. While the Order dated December 16, 2005 gave due course to CAP's petition for corporate rehabilitation.

The facts are as follows:

CAP was incorporated on February 14, 1980 for the purpose of engaging in the sale of pre-need educational plans. Initially, it sold open-ended educational plans which guaranteed the payment of tuition and other standard school fees to the planholder irrespective of the cost at the time of availment. Later, it engaged in the sale of fixed value plans which guaranteed the payment of a predetermined amount to the planholder. In 1982, CAP was among the country's top 2000 corporations. It started sending its scholars to college in 1984 and saw its first batch of graduates in 1988. However, it subsequently suffered financial difficulties.[1]

On April 28, 2005, six petitioners herein,[2] together with other CAP planholders, filed an action with the RTC of Makati City for Specific Performance and/or Annulment of Contract due to Fraud, Return and Disgorgement of Illegal Profits, Damages with Application for Receiver and/or Management Committee against CAP, its Directors and Officers, and the Fil-Estate Group of Companies. The case, docketed as Securities and Exchange Commission (SEC) Case. No. 05-365,[3] was assigned to respondent Judge Romeo Barza of the RTC of Makati City, Branch 61.

Petitioners alleged that proceedings commenced in SEC Case No. 05-365, but the prayer for the appointment of a receiver and creation of a management committee was not acted upon by the RTC.

On September 8, 2005, CAP filed a Petition for Corporate Rehabilitation, docketed as Sp. Proc. No. M-6144, which was raffled to the RTC of Makati City, Branch 61, presided by respondent Judge Romeo F. Barza.

On September 13, 2005, Judge Barza issued an Order[4] in Sp. Proc. No. M-6144 staying the enforcement of all claims against CAP, thus:

Before this court is a Petition for Rehabilitation filed by COLLEGE ASSURANCE [PLAN] PHILIPPINES, INC. (CAP), a corporation with principal office address at CAP Building, Amorsolo Street, Legaspi Village, Makati City.

Finding the petition to be sufficient in form and substance, the enforcement of all claims, whether for money or otherwise, and whether such enforcement is by court action or otherwise, against COLLEGE ASSURANCE [PLAN] PHILIPPINES, INC., its guarantors and sureties not solidarily liable with it, is stayed.

As a consequence of the stay order, the COLLEGE ASSURANCE [PLAN] PHILIPPINES, INC. is prohibited from selling, encumbering, transferring, or disposing in any manner any of its properties except in the ordinary course of business. It is further prohibited from making any payment of its liabilities outstanding as of the date of the filing of this petition on September 8, 2005. Its suppliers of goods and services are likewise prohibited from withholding supply of goods and services in the ordinary course of business for as long as it makes payments for the services and goods supplied after the issuance of the stay order.

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All creditors and interested parties, including the Securities and Exchange Commission, are directed to file and serve on petitioner COLLEGE ASSURANCE [PLAN] PHILIPPINES, INC., a verified comment on or opposition to the petition with supporting affidavits and documents, not later than ten (10) days before the date of the initial hearing. Failure to do so will bar them from participating in the proceedings. Copies of the petition and its annexes may be secured from the court within such time as to enable them to file their comment on or opposition to the petition to prepare for its initial hearing.

X X X X

Mr. Mamerto A. Marcelo, Jr., CPA, with address at 1407 Cityland Condominium 10 Tower 2, Ayala Avenue, cor. H.V. Dela Costa St., Salcedo Village, Makati City is appointed Interim Rehabilitation Receiver of COLLEGE ASSURANCE [PLAN] PHILIPPINES, INC. He may discharge his duties and functions as such after taking his oath to perform his powers, duties and functions faithfully and posting a bond in the amount of P100,000.00 to guarantee the faithful discharge of his duties and obedience to the orders of the court.

Petitioner COLLEGE ASSURANCE [PLAN] PHILIPPINES, INC. is directed to immediately serve a copy of this Order to Mr. Mamerto A. Marcelo, Jr., who is directed to manifest his acceptance or non-acceptance of his appointment not later than ten (10) days from receipt of this Order.

SO ORDERED.

On October 17, 2005, ten planholders, who are also petitioners in this case,[5] filed an Opposition to the Rehabilitation and Motion to Exclude Planholders from Stay Order and Terminate Proceeding on the ground that planholders are not creditors as they have a trust relationship with the pre-need company.

On December 16, 2005, Judge Barza issued an Order[6] in Sp. Proc. No. M-6144 giving due course to the petition for rehabilitation, thus:

For determination is the issue of whether or not the petition for corporate rehabilitation of College Assurance [Plan] Philippines, Inc. (CAP) should be given due course.

The petition alleges that CAP is a domestic corporation engaged in the business of selling pre-need educational plans. It was incorporated in 1980 with an initial authorized capital of P10,000,000.00. Within two years of starting business, it was among the country's top 2000 corporations, and by 2004, it had climbed in ranking to 146[th] place with a 21% share of the pre-need market. CAP has had 110,000 scholars enrolled; 84,490 scholars graduated; 780,000 planholders; 174,720 planholders being served; and has paid over P11.3 billion in tuition fees. However, it was brought to financial difficulties by reason of the policy of deregulation adopted

by the Department of Education which resulted in the unbridled increase in tuition fees over the years; the effect of the Asian financial crisis on CAP's trust fund investments; the onerous application by the Securities and Exchange Commission (SEC) of the Pre-Need Uniform Chart Accounts (PNUCA) beginning in 2002; and the refusal of the SEC to renew CAP's dealership license after its expiration in September 2004 and the cancellation of its permit to sell in August 2004. It is unable to service its debts as they fall due and its assets are insufficient to cover its liabilities, owing in great part to a bloated yet theoretical trust fund deficit and capital deficiency reflected in its financial statements under the SEC's Pre-Need Rules, which it has asked the SEC to re-audit in light of the essential nature of pre-need plans as investment contracts rather than insurance contracts.

In support of its petition, CAP has submitted an eight-year Business Development Plan under which it proposes to build up its equity and liquidity to meet projected cash requirements and eliminate any equity impairment, and to build up the asset base and liquidity of its trust fund to cover its trust variance and meet its maturing obligations.

Pursuant to this court's Stay Order of September 13, 2005, several pleadings were filed with the Court by interested parties, including the Securities and Exchange Commission (SEC), by way of comment on the verified Petition dated August 23, 2005.

During the summary hearing on November 23, 2005, representatives from the SEC admitted that "actuarial reserve liabilities" are not actual and present liabilities of the petitioner.

The Court has carefully evaluated the Petition and the comments filed by the various parties relative thereto, and hereby resolves to give due course to the petition. Even as the Court notes the substantial questions posed by the SEC and some creditors on the solvency of the corporation, it finds the interests of the planholder/investing public as an overriding consideration which cannot be summarily or injudiciously dismissed without a thorough evaluation by the Rehabilitation Receiver of the corporation's chances of being restored to a successful operation and solvency if given the opportunity and considering particularly the adverse results to the planholders of a liquidation scenario as against its proposed rehabilitation under which they may possibly recover 100% of their contributions.

On the basis of the allegations of the petition and the Business Development Plan, and in order that it may be well-guided in its final disposition of the petition, the Court finds merit in the Petition sufficient to warrant its referral to the Rehabilitation Receiver for study and evaluation.

WHEREFORE, the Court resolves to GIVE DUE COURSE to the petition and to REFER the same, together with its Annexes and the comments on the Petition, to the court-appointed Rehabilitation Receiver who is directed to evaluate the rehabilitation plan and submit his recommendation within thirty (30) days from receipt hereof.

Petitioners alleged that the Stay Order dated September 13, 2005 and the Order dated December 16, 2005 had been cited for the non-resolution of pending matters in SEC Case. No. 05-365 for Specific Performance and/or Annulment of Contract due to Fraud, Return and Disgorgement of Illegal Profits and Damages.

Petitioners averred that the proceedings in Sp. Proc. Case No. M-6144 were summary and non-adversarial in nature, and the filing of a petition for relief or a motion to dismiss or for reconsideration was prohibited. Having no speedy and adequate remedy in the ordinary course of law, they filed this petition.

The pertinent issues raised are as follows:

- WHETHER THE STAY ORDER AND THE ORDER GRANTING THE PETITION FOR REHABILITATION WAS ISSUED WITHOUT OR IN EXCESS OF JURISDICTION, CONSIDERING THAT THE TUITION FEE PAYMENTS DUE PLANHOLDERS' BENEFICIARIES ARE FROM TRUST

FUND ASSETS NOT INCLUDED IN REHABILITATION PROCEEDINGS, IT BEING PROPERTY NOT BELONGING TO THE DEBTOR.

- WHETHER THE STAY ORDER AND ORDER GRANTING THE PETITION FOR REHABILITATION WAS ISSUED WITHOUT OR IN EXCESS OF JURISDICTION CONSIDERING THAT ALL THE REMAINING ASSETS OF THE CORPORATION IS TRACEABLE FROM FUNDS COLLECTED FROM PLANHOLDERS; HENCE, SUBJECT TO TRUST FOR THE BENEFIT OF THE PLANHOLDERS' BENEFICIARIES.

- WHETHER THE ORDER APPOINTING A REHABILITATION RECEIVER WAS ISSUED IN EXCESS OF JURISDICTION CONSIDERING THAT A PREVIOUS INTRACORPORATE DISPUTE WITH PRAYER FOR [THE] IMMEDIATE APPOINTMENT FOR RECEIVER WAS FILED AHEAD OF THE REHABILITATION PROCEEDINGS.

- WHETHER THE PUBLIC RESPONDENT'S ORDER DATED DECEMBER 16, 2005 WAS ISSUED IN EXCESS OF JURISDICTION BY NOT ACCORDING DUE RESPECT TO THE FINDINGS OF A SPECIALIZED ADMINISTRATIVE AGENCY.[7]

At the outset, it must be pointed out that the special civil action for certiorari under Rule 65 of the Rules of Court[8] is a remedy designed only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction.[9] In this case, it is undisputed that the RTC has jurisdiction over the petition for rehabilitation under Section 2, Rule 3 of the Interim Rules of Procedure on Corporate Rehabilitation (2000).[10]

The main issue is whether or not respondent Judge committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Order dated September 13, 2005 staying enforcement of all claims against CAP and the Order dated December 16, 2005 giving due course to CAP's petition for rehabilitation.

Petitioners allege that the relationship between a planholder and a pre-need corporation was one of trust and not a debtor-creditor relationship. They avered that in 2002, the Securities and Exchange Commission (SEC) implemented the New Pre-Need Rules, which mandated a pre-need company to set up a trust fund for the benefit of the beneficiary and in compliance with the agreement; hence, they contend that an express trust relationship exists between the policyholder as trustor, the pre-need firm as trustee, and the beneficiary as cestui que trust. Petitioners add that Section 1.9 of the Pre-Need Rules defines "trust fund" as a fund set up from the planholders' payments, separate and distinct from the paid-up capital of a registered Pre-Need Company, established with a trustee under a trust agreement approved by the Commission, to pay for the benefits as provided in the Pre-Need Plan.

Petitioners assert that since a trust relationship exists between a planholder and a pre-need company, CAP may not avail itself of rehabilitation proceedings to stop payments from its trust assets to the beneficiaries.

Petitioners contend that respondent Judge "acted completely without jurisdiction in giving due course to the petition for rehabilitation, including planholders in the Stay Order and including trust assets in the rehabilitation proceedings notwithstanding the fact that there was a prior case filed by planholders for receivership and management committee and that the assets of debtors do not include the funds collected from planholders."

Petitioners' arguments do not persuade.

CAP is a domestic corporation engaged in the business of selling pre-need educational plans. Republic Act (R.A.) No. 8799, otherwise known as The Securities Regulation Code, defines "pre-need plans" as "contracts which provide for the performance of future services or the payment of future monetary considerations at the time of

actual need, for which planholders pay in cash or installment at stated prices, with or without interest or insurance coverage, and includes life, pension, education, interment, and other plans which the Commission may from time to time approve."

Section 16, Chapter IV of R.A. No. 8799 provides for the regulation of pre-need plans by SEC, thus:

SEC.16. Pre-Need Plans. -- No person shall sell or offer for sale to the public any pre-need plan except in accordance with rules and regulations which the Commission (SEC) shall prescribe. Such rules shall regulate the sale of pre-need plans by, among other things, requiring the registration of pre-need plans, licensing persons involved in the sale of pre-need plans, requiring disclosures to prospective planholders, prescribing advertising guidelines, providing for uniform accounting system, reports and recordkeeping with respect to such plans, imposing capital, bonding and other financial responsibility, and establishing trust funds for the payment of benefits under such plans.

The law governing corporate rehabilitation and suspension of actions for claims against corporations is Presidential Decree (P.D.) No. 902-A,[11] as amended. Section 5 of P.D. No. 902-A, as amended by P.D. No. 1758, enumerates the cases over which SEC has jurisdiction to hear and decide, which includes "[p]etitions of corporations, partnerships or associations to be declared in the state of suspension of payments in cases where the corporation, partnership or association possesses sufficient property to cover all its debts, but foresees the impossibility of meeting them when they respectively fall due or in cases where the corporation, partnership or association has no sufficient assets to cover its liabilities, but is under the management of a Rehabilitation Receiver or Management Committee." R.A. No. 8799, which took effect on August 8, 2000, transferred SEC's jurisdiction over all cases enumerated under Section 5 of P.D. No. 902-A, as amended, to the courts of general jurisdiction or the appropriate Regional Trial Court.

On November 21, 2000, this Court approved the Interim Rules of Procedure on Corporate Rehabilitation of 2000 (Interim Rules), which took effect on December 15, 2000. The Interim Rules apply to petitions for rehabilitation filed by corporations, partnerships, and associations pursuant to P.D. No. 902-A, as amended.

The Interim Rules governed the proceedings in Sp. Proc. No. M-6144. CAP filed the petition for corporate rehabilitation, because it is "unable to service its debts as they fall due and its assets are insufficient to cover its liabilities." [12] CAP filed the petition under Section 1, Rule 4 of the Interim Rules, which provides:

SECTION 1. Who May Petition.— Any debtor who foresees the impossibility of meeting its debts when they respectively fall due, or any creditor or creditors holding at least twenty-five percent (25%) of the debtor's total liabilities, may petition the proper Regional Trial Court to have the debtor placed under rehabilitation.[13]

Under the Interim Rules, "debtor" shall mean "any corporation, partnership, or association, whether supervised or regulated by the Securities and Exchange Commission or other government agencies, on whose behalf a petition for rehabilitation has been filed under these Rules." [14]

The Interim Rules does not distinguish whether a pre-need corporation like CAP cannot file a petition for rehabilitation before the RTC. Courts are not authorized to distinguish where the Interim Rules makes no distinction.[15]

Moreover, under the Interim Rules, "claim" shall include "all claims or demands of whatever nature or character against a debtor or its property, whether for money or otherwise." "Creditor" shall mean "any holder of a claim."

Hence, the claim of petitioners for payment of tuition fees from CAP is included in the definition of "claims" under the Interim Rules.

What is to be determined at this point is whether or not claims arising from the pre-need contracts between

petitioners and CAP can be stayed under Section 6, Rule 4 of the Interim Rules or Section 6(c) of P.D. No. 902-A. Section 6, Rule 4 of the Interim Rules provides:

SEC. 6. Stay Order. -- If the court finds the petition to be sufficient in form and substance, it shall, not later than five (5) days from the filing of the petition, issue an Order: (a) appointing a Rehabilitation Receiver and fixing his bond; (b) staying enforcement of all claims, whether for money or otherwise, and whether such enforcement is by court action or otherwise, against the debtor, its guarantors and sureties not solidarily liable with the debtor; (c) prohibiting the debtor from selling, encumbering, transferring, or disposing in any manner any of its properties except in the ordinary course of business; (d) prohibiting the debtor from making any payment of its liabilities outstanding as of the date of filing of the petition; (e) prohibiting the debtor's suppliers of goods or services from withholding supply of goods and services in the ordinary course of business for as long as the debtor makes payments for the services and goods supplied after the issuance of the stay order; (f) directing the payment, in full, of all administrative expenses incurred after the issuance of the stay order; (g) fixing the initial hearing on the petition not earlier than forty-five (45) days but not later than sixty (60) days from the filing thereof; (h) directing the petitioner to publish the Order in a newspaper of general circulation in the Philippines once a week for two (2) consecutive weeks; (i) directing all creditors and all interested parties (including the Securities and Exchange Commission) to file and serve on the debtor a verified comment on or opposition to the petition, with supporting affidavits and documents, not later than ten (10) days before the date of the initial hearing and putting them on notice that their failure to do so will bar them from participating in the proceedings; and (j) directing the creditors and interested parties to secure from the court copies of the petition and its annexes within such time as to enable themselves to file their comment on or opposition to the petition and to prepare for the initial hearing of the petition.

The above provision does not provide that a claim arising from a pre-need contract is an exception to the power of the trial court to stay enforcement of all claims upon the finding that the petition for rehabilitation is sufficient in form and substance.

The foregoing provision echoes the provision in Section 6(c) of the governing law, P.D. No. 602-A, as amended by P.D. No. 1758, which mandates that "upon appointment of a management committee, rehabilitation receiver, board or body, x x x all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body shall be suspended accordingly."

In *Negros Navigation Co., Inc. v. Court of Appeals*,^[16] the Court held that "P.D. No. 902-A does not make any distinction as to what claims are covered by the suspension of actions for claims against corporations under rehabilitation x x x Thus, since the law does not make any exemptions or distinctions, neither should we."

The Interim Rules of Procedure on Corporate Rehabilitation of 2000 has been amended by the Rules of Procedure on Corporate Rehabilitation of 2009, which took effect on January 16, 2009. Under the 2009 Rules of Procedure, the power of the RTC to issue a Stay Order when it finds the petition for rehabilitation to be sufficient in form and substance is contained in Section 7, Rule 3,^[17] which likewise does not exempt claims arising from pre-need contracts from the Stay Order.

Petitioners contend that the relationship between a planholder and a pre-need corporation is one of trust and not a debtor-creditor relationship. However, such a relationship has not been properly established by petitioners. This Court is not a trier of facts and cannot rule in this petition on whether the relationship between CAP and the planholders is one of trust, absent a factual finding by the trial court. Nevertheless, even if the relationship is one of trust, there is no provision in the Interim Rules that a claim arising from a trust relationship is excluded from the Stay Order.

Negros Navigation Co., Inc. v. Court of Appeals^[18] explained the reason for suspending all pending claims

against a corporation under receivership, thus:

x x x x The stay order is effective on all creditors of the corporation without distinction, whether secured or unsecured. All assets of a corporation under rehabilitation receivership are held in trust for the equal benefit of all creditors to preclude one from obtaining an advantage or preference over another by the expedience of attachment, execution or otherwise. As between the creditors, the key phrase is equality in equity. Once the corporation threatened by bankruptcy is taken over by a receiver, all the creditors ought to stand on equal footing. Not one of them should be paid ahead of the others.

Petitioners also contend that the Rehabilitation Court may not appoint a rehabilitation receiver when a previous intra-corporate dispute (SEC Case No. 05-365) with prayer for the immediate appointment of a receiver has been filed ahead of the petition for rehabilitation.

The contention is without merit.

The case for specific performance and/or annulment of contract (SEC Case No. 05-365) and CAP's petition for rehabilitation (Sp. Proc. No. M 6144) are two different cases; hence, respondent Judge has the discretion to decide each case according to its merits. The case for specific performance and/or annulment of contract was filed pursuant to the Interim Rules of Procedure for Intra-Corporate Controversies, while CAP's petition for rehabilitation was filed under the Interim Rules of Procedure on Corporate Rehabilitation. Under Section 6, Rule 4 of the latter Interim Rules,[19] respondent Judge has the authority to appoint a rehabilitation receiver after finding the petition for rehabilitation to be sufficient in form and substance.

Absent any provision in the Interim Rules, as amended, or P.D. No. 902-A exempting claims arising from pre-need contracts from a court order staying enforcement of all claims against the debtor/pre-need company, the Court holds that respondent Judge did not commit grave abuse of discretion in enforcing the Stay Order against petitioners.

In addition, respondent Judge did not gravely abuse its discretion in giving due course to the petition for rehabilitation. In the Order dated December 16, 2005, the RTC considered the comments of the SEC and CAP's creditors before resolving the petition. It explained its decision, thus:

The Court has carefully evaluated the Petition and the comments filed by the various parties relative thereto, and hereby resolves to give due course to the petition. Even as the Court notes the substantial questions posed by the SEC and some creditors on the solvency of the corporation, it finds the interests of the planholder/investing public as an overriding consideration which cannot be summarily or injudiciously dismissed without a thorough evaluation by the Rehabilitation Receiver of the corporation's chances of being restored to a successful operation and solvency if given the opportunity and considering particularly the adverse results to the planholders of a liquidation scenario as against its proposed rehabilitation under which they may possibly recover 100% of their contributions.

On the basis of the allegations of the petition and the Business Development Plan, and in order that it may be well-guided in its final disposition of the petition, the Court finds merit in the Petition sufficient to warrant its referral to the Rehabilitation Receiver for study and evaluation.[20]

Grave abuse of discretion implies capricious and whimsical exercise of judgment amounting to lack of jurisdiction, or arbitrary and despotic exercise of power because of passion or personal hostility.[21] It must be as patent and gross as to amount to an evasion or refusal to perform a duty enjoined by law.[22] It is absent in this case.

Despite the Court's finding that respondent judge did not gravely abuse his discretion in issuing the Orders staying the enforcement of all claims against CAP and in giving due course to CAP's petition for rehabilitation,

petitioners are not precluded from seeking other remedies available to them with the lower court.

The other issues raised pertain to matters that were not discussed in the subject RTC Orders or are not pertinent to the main issue of whether or not respondent Judge gravely abused its discretion in including the claims of petitioners in the Stay Order; hence, they do not fall within the scope of this petition for certiorari.

WHEREFORE, the petition for certiorari is DISMISSED. No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Velasco, Jr., and Nachura, JJ., concur.

[*] Now an Associate Justice of the Court of Appeals.

[1] Comment, rollo, pp. 852-913

[2] Edna Valenzuela, Elsa S. Azurin, Theresa J. Azurin, Mabel B. Camus, Eden A. Payuyo and Remedios C. Fernando.

[3] Valenzuela, et al. v. Sobrepeña, Jr., et al.

[4] Rollo, pp. 336-337.

[5] Rosalina C. Arao, Florencion Bentulan, Yolanda Cernias, Juancito Dacanay, Richard Martin Esguerra, Manuela Gepullano, Nancy Hilario, Marilyn Lajo, Carmen Ramos, and Lydia Rosario.

[6] Rollo, pp. 341-342.

[7] Memorandum, rollo, pp. 1057-1058.

[8] Rule 65, Sec. 1. Petition for certiorari.— When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

[9] Land Bank of the Philippines v. Court of Appeals, 456 Phil. 755 (2003).

[10] Rule 3, Sec. 2. Venue. — Petitions for rehabilitation pursuant to these Rules shall be filed in the Regional Trial Court having jurisdiction over the territory where the debtor's principal office is located.

[11] P.D. No. 902-A is entitled Reorganization of the Securities and Exchange Commission with Additional Powers and Placing the Said Agency under the Administrative Supervision of the Office of the President.

[12] RTC Order dated December 16, 2005, rollo, pp. 341-342.

[13] (Emphasis supplied.)

[14] (Emphasis supplied.)

[15] Agpalo, Statutory Construction, Fifth Edition (2003), p. 198.

[16] G.R. Nos. 163156 & 166845, December 10, 2008.

[17] SEC. 7. Stay Order. -- If the court finds the petition to be sufficient in form and substance, it shall, not later than five (5) working days from the filing of the petition, issue an Order: (a) appointing a Rehabilitation Receiver and fixing his bond; (b) staying enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the debtor, its guarantors and persons not solidarily liable with the debtor; provided, that the stay order shall not cover claims against letters of credit and similar security arrangements issued by a third party to secure the payment of the debtor's obligations; provided, further, that the stay order shall not cover foreclosure by a creditor of property not belonging to a debtor under corporate rehabilitation; provided, however, that where the owner of such property sought to be foreclosed is also a guarantor or one who is not solidarily liable, said owner shall be entitled to the benefit of excussion as such guarantor; (c) prohibiting the debtor from selling, encumbering, transferring, or disposing in any manner any of its properties except in the ordinary course of business; (d) prohibiting the debtor from making any payment of its liabilities except as provided in items (e), (f) and (g) of this Section or when ordered by the court pursuant to Section 10 of Rule 3; (e) prohibiting the debtor's suppliers of goods or services from withholding supply of goods and services in the ordinary course of business for as long as the debtor makes payments for the services and goods supplied after the issuance of the stay order; (f) directing the payment in full of all administrative expenses incurred after the issuance of the stay order; (g) directing the payment of new loans or other forms of credit accommodations obtained for the rehabilitation of the debtor with prior court approval; (h) fixing the dates of the initial hearing on the petition not earlier than forty-five (45) days but not later than sixty (60) days from the filing thereof; (i) directing the petitioner to publish the Order in a newspaper of general circulation in the Philippines once a week for two (2) consecutive weeks; (j) directing the petitioner to furnish a copy of the petition and its annexes, as well as the stay order, to the creditors named in the petition and the appropriate regulatory agencies such as, but not limited to, the Securities and Exchange Commission, the Bangko Sentral ng Pilipinas, the Insurance Commission, the National Telecommunications Commission, the Housing and Land Use Regulatory Board and the Energy Regulatory Commission; (k) directing the petitioner that foreign creditors with no known addresses in the Philippines be individually given a copy of the stay order at their foreign addresses; (l) directing all creditors and all interested parties (including the regulatory agencies concerned) to file and serve on the debtor a verified comment on or opposition to the petition, with supporting affidavits and documents, not later than fifteen (15) days before the date of the first initial hearing and putting them on notice that their failure to do so will bar them from participating in the proceedings; and (m) directing the creditors and interested parties to secure from the court copies of the petition and its annexes within such time as to enable themselves to file their comment on or opposition to the petition and to prepare for the initial hearing of the petition.

The issuance of a stay order does not affect the right to commence actions or proceedings insofar as it is necessary to preserve a claim against the debtor.

[18] Supra note 16.

[19] SEC. 6. Stay Order. -- If the court finds the petition to be sufficient in form and substance, it shall, not later than five (5) working days from the filing of the petition, issue an Order: (a) appointing a Rehabilitation Receiver and fixing his bond; (b) staying enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the debtor, its guarantors and sureties not solidarily liable with the debtor; x x x .

[20] Rollo, p. 342. (Emphasis supplied.)

[21] *Batul v. Bayron*, 468 Phil. 131, 148 (2004).

[22] *Id.*

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