

CHINA BANKING CORPORATION, PETITIONER, VS. ASB HOLDINGS, INC., ASB REALTY CORP., ASB DEVELOPMENT CORP. (FORMERLY TIFFANY TOWER REALTY CORP.), ASB LAND, INC., ASB FINANCE, INC., ...

G.R. No. 172192. December 23, 2008

Ponente: REYES, R.T., J.

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REYES, R.T., J.:

THE Constitutional proscription on impairment of contracts and preference of credits are at the core of this controversy involving the rehabilitation plan of ASB Development Corporation, a debtor of petitioner China Banking Corporation (China Bank).

Before Us is a petition for review on certiorari under Rule 45 of the Decision[1] of the Court of Appeals (CA) upholding the Securities and Exchange Commission (SEC) approval of respondents' corporate rehabilitation plan.

The Facts

In 1999, respondent ASB Development Corporation applied for and was granted a credit line by petitioner China Bank in the principal amount of P35,000,000.00. The loan was secured by a real estate mortgage constituted over two contiguous lots with a combined area of 1,332.5 square meters in Grace Park, Caloocan City. The said properties are covered by Transfer Certificate of Title (TCT) Nos. 2981096 and 298110 of the Register of Deeds of Caloocan City.

In 2000, respondent ASB Realty Corporation, an affiliate of ASB Development, obtained an omnibus credit line from petitioner China Bank in the amount of P265,000,000.00. The loan was secured by two real estate mortgages: (1) over two parcels of land situated at Salcedo, Legaspi Village, Makati City, covered by TCT Nos. 205136 and 206189; and (2) over a parcel of land located at Constellation Street, Bel-Air Village, Makati City, covered by TCT No. 201933.

Respondent corporations defaulted in the payment of the agreed loan amortizations, interest, and other charges. Demands to pay were left unheeded.

On May 2, 2000, ASB Development Corporation and its affiliates, including ASB Realty, ASB Holdings, ASB Land, ASB Finance, Makati Hope Christian School, Bel-Air Holdings, Winchester Trading, VYL Development, Gerick Holdings and Neighborhood Holdings, filed before the SEC a petition for rehabilitation with prayer for suspension of actions and proceedings, pursuant to Presidential Decree No. 902-A, as amended, docketed as SEC Case No. 05-00-6609. In its petition, respondent averred, inter alia, that:

6. 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).

7. 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).

8. 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-à-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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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:

- a. 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;
- b. Forming of strategic alliances with third party investors, including joint ventures and similar arrangements;
- c. Contributing specified properties from petitioner ASB Allied Companies;
- d. 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

e. Stabilizing the operations of petitioner Group of Companies, and preparing it to take advantage of future opportunities for growth and development.[2]

In filing the petition for rehabilitation, respondents contended that while they have sufficient capitalization, the company will be hard-pressed to service its obligations in favor of petitioner bank and its other creditors due to a glut in the real estate market, the depreciation of the currency and decreased investor confidence in the Philippine economy. Respondents then prayed that the SEC, after due hearing: (a) appoint an interim receiver; (b) suspend all actions against the ASB Group for a period of sixty days subject to extension; and (c) approve a rehabilitation plan for the ASB Group and appoint a rehabilitation receiver to monitor the implementation of the said rehabilitation plan.

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 60-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, respondent ASB Development Corporation submitted the rehabilitation plan for approval of the SEC. The plan, in part, provides:

x x x 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 of the employees, creditors, unit buyers, government, general public, and the economy.[3]

On April 26, 2001, the ASB rehabilitation plan was approved by the SEC.

Aggrieved, petitioner bank appealed the plan's approval to the SEC En Banc. According to petitioner, the SEC order compelling the bank to surrender its present collateral and accept certain properties located in Pasig City and Parañaque City as payment of the obligations due it violates the constitutional proscription against impairment of contracts. It was likewise argued that the value of the properties being offered by ASB via dacion en pago is insufficient to cover the amount of its outstanding loans; and that the preference conferred by law to the bank as a secured creditor has been rendered illusory.

On June 10, 2003, the SEC En Banc denied with finality petitioner bank's appeal. Undaunted, petitioner elevated the matter to the CA via petition for review under Rule 43 of the 1997 Rules of Civil Procedure.

CA Disposition

On October 28, 2005, the CA dismissed the bank's petition for lack of merit. In ruling against petitioner bank, the appellate court opined:

The assailed rehabilitation plan does not violate the principle of mutuality of contracts. In fact, the provisions of said plan recognize the secured creditors' right to refuse or reject the dacion en pago arrangements proposed therein. To illustrate, the rehabilitation plan pertinently states:

"x x x 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 of the employees, creditors, unit buyers, government, general public and the economy."

Inasmuch as the proposed dacion en pago can proceed only upon agreement of all the parties concerned, there is no basis for petitioner's assertion that its freedom to contract is unduly curtailed and that it is being compelled to accept certain properties as settlement for respondents' obligations.

On the other hand, We find no cogent reason to disturb or reverse the findings of the lower tribunals regarding the valuation of respondents' assets and viability of the rehabilitation plan. As the SEC en banc observed:

"x x x the selling values and net realizable values of the properties are not much higher than the appraisals conducted by Cuervo Appraiser, Inc. in 1997 and 2000. In addition, the valuations given to the unfinished projects proposed to be dacioned to secured creditors are based on the selling price of appellees [respondents] on similar projects for which deeds of absolute sale have been consummated." (Resolution dated June 10, 2003)

It is a basic principle of law that courts will not interfere in matters which are addressed to the sound discretion or judgment of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies (*Olague vs. Domingo*, 359 SCRA 78). Given their special knowledge and expertise over matters falling under their jurisdiction, they are in a better position to pass judgment thereon and their findings of fact in that regard are generally accorded respect, if not finality, by the courts (*Palele vs. Court of Appeals*, 362 SCRA 141).

At any rate, petitioner's concerns about the viability of the rehabilitation plan should be laid to rest by the fact that less than two years after its approval by the SEC hearing panel, 54% of respondents' obligations to creditor banks had already been paid. This only shows that the continued implementation of the rehabilitation plan may well lead to petitioner's full recovery of its claims against respondents.

All told, We find that the SEC correctly upheld the order of the hearing panel approving the ASB Group's rehabilitation plan.[4]

Issues

Petitioner has resorted to the present review on certiorari, raising twin issues:

I.

WHETHER OR NOT THE ASB REHABILITATION PLAN VIOLATES THE PRINCIPLES OF MUTUALITY OF CONTRACTS, CURTAILS A PARTY'S FREEDOM TO CONTRACT;

II.

WHETHER OR NOT THE ASB REHABILITATION PLAN PRESENTS A TRUE, ACCURATE, AND INDEPENDENTLY VERIFIED PICTURE OF RESPONDENTS-DEBTORS' RESPECTIVE FINANCIAL CONDITIONS.

Our Ruling

This is not the first time that the matter of the rehabilitation plan of respondent ASB Development Corporation has reached the Court's corridors. This Court, in two separate occasions, has already placed the said plan under the crucible.

In *Metropolitan Bank & Trust Company v. ASB Holdings, Inc.*,^[5] the Court was confronted with triple questions:

- The rehabilitation plan 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.
- 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.
- 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.^[6]

In resolving the questions in favor of the distressed corporation, the Court held then:

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*, 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 x

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.

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.

At any rate, the SEC En Banc found that the SEC Hearing Panel "acted within its legal authority in resolving this case. Neither it over stepped its lawful authority nor acted whimsically in approving the Rehabilitation Plan. Hence, it cannot be faulted of grave abuse of discretion." 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.

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." [7]

In a related case, *Bank of the Philippine Islands v. Securities and Exchange Commission*, [8] the Court En Banc would be more emphatic in holding that:

The petition must be denied.

The very same issues confronted the Court in the case of *Metropolitan Bank & Trust Company v. ASB Holdings, et al.* In this case, Metropolitan Bank & Trust Company (MBTC) refused to enter into a dacion en pago arrangement contained in ASB's proposed Rehabilitation Plan. MBTC argued, among others, that the forced transfer of properties and the diminution of its right to enforce its lien on the mortgaged properties violate its constitutional right against impairment of contracts and right to due process. The Court ruled that there is no impairment of contracts because the approval of the Rehabilitation Plan and the appointment of a rehabilitation receiver merely suspends the action for claims against the ASB Group, and MBTC may still enforce its preference when the assets of the ASB Group will be liquidated. But if the rehabilitation is found to be no longer feasible, then the claims against the distressed corporation would have to be settled eventually and the secured creditors shall enjoy preference over the unsecured ones. Moreover, the Court stated that there is no compulsion to enter into a dacion en pago agreement, nor to waive the interests, penalties and related charges, since these are merely proposals to creditors such as MBTC, such that in the event the secured creditors refuse the dacion, the Rehabilitation Plan proposes to settle the obligations to secured creditors with mortgaged properties at selling prices.

Rehabilitation proceedings in our jurisdiction, much like the bankruptcy laws of the United States, have equitable and rehabilitative purposes. On the one hand, they attempt to provide for the efficient and equitable distribution of an insolvent debtor's remaining assets to its creditors; and on the other, to provide debtors with a "fresh start" by relieving them of the weight of their outstanding debts and permitting them to reorganize their affairs. The rationale of P.D. No. 902-A, as amended, is to "effect a feasible and viable rehabilitation," by preserving a floundering business as going concern, because the assets of a business are often more valuable when so maintained than they would be when liquidated.

The Court reiterates that the SEC's approval of the Rehabilitation Plan did not impair BPI's right to contract. As correctly contended by private respondents, the non-impairment clause is a limit on the exercise of legislative power and not of judicial or quasi-judicial power. The SEC, through the hearing panel that heard the petition for approval of the Rehabilitation Plan, was acting as a quasi-judicial body and, thus, its order approving the plan cannot constitute an impairment of the right and the freedom to contract.

Besides, the mere fact that the Rehabilitation Plan proposes a dacion en pago approach does not render it defective on the ground of impairment of the right to contract. Dacion en pago is a special mode of payment where the debtor offers another thing to the creditor who accepts it as equivalent of payment of an outstanding debt. The undertaking really partakes in a sense of the nature of sale, that is, the creditor is really buying the thing or property of the debtor, the payment for which is to be charged against the debtor's debt. As such, the essential elements of a contract of sale, namely; consent, object certain, and cause or consideration must be present. Being a form of contract, the dacion en pago agreement cannot be perfected without the consent of the parties involved.

We find no element of compulsion in the dacion en pago provision of the Rehabilitation Plan. It was not the

only solution presented by the ASB to pay its creditors. In fact, it was stated in the Rehabilitation Plan that:

x x x If the dacion en pago herein contemplated does not materialize for failure of the secured creditors to agree thereto, the 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 of the employees, creditors, unit buyers, government, general public, and the economy.

Thus, if BPI does not find the dacion en pago modality acceptable, the ASB Group can propose to settle its debts at such amount as is equivalent to the selling price of the mortgaged properties. If BPI still refuses this option, it can assert its rights in the liquidation and distribution of the ASB Group's assets. It will not lose its status as a secured creditor, retaining its preference over unsecured creditors when the assets of the corporation are finally liquidated.[9]

We are inclined to rule in a similar fashion here.

In intruding into corporate affairs, the State must, at all times, promote a wider and more meaningful equitable distribution of wealth and protect investments and the public. To Our mind, the approval by the SEC of the rehabilitation plan of respondent corporations is a step towards that direction.

The terms of the rehabilitation plan unveil that secured creditors like petitioner bank may refuse or reject the dacion en pago arrangements stated in it. It cannot be implemented without petitioner's consent.

Further, the approval of the plan and the appointment of a receiver merely suspend actions and claims that may be raised against respondent bank. They do not, in any manner, obliterate petitioner's status as a preferred secured creditor.

Questions on the viability of the plan should likewise be laid to rest. As the CA aptly observed, majority of respondents' obligations to creditor banks had already been paid as early as two years upon the approval of the plan.

WHEREFORE, the petition is DENIED and the appealed Court of Appeals Decision AFFIRMED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Nachura, JJ., concur.

[1] Rollo, pp. 61-68. Penned by Associate Justice Edgardo P. Cruz, with Associate Justices Mario Guariña and Sesinando Villon, concurring.

[2] Id. at 116-118.

[3] Id. at 63.

[4] Id. at 66-67.

[5] G.R. No. 166197, February 27, 2007, 517 SCRA 1.

[6] Metropolitan Bank & Trust Company v. ASB Holdings, Inc., id. at 10-11.

[7] Id.

[8] G.R. No. 164641, December 20, 2007.

[9] Bank of the Philippine Islands v. Securities and Exchange Commission, id.

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