

UNION BANK OF THE PHILIPPINES PETITIONER, VS. ASB DEVELOPMENT CORPORATION, RESPONDENT.

G.R. No. 172895. July 30, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a Petition for Review seeking to set aside the Decision[1] dated 31 May 2005 and Resolution dated 31 May 2006 of the Court of Appeals in CA-G.R. SP No. 85780 which sustained the Resolution dated 6 July 2004 of the Securities and Exchange Commission (SEC) En Banc in SEC-EB Case No. 12-03-08 which, in turn, affirmed the Resolution dated 11 December 2003 of the SEC Hearing Panel in SEC Case No. 05-00-6609.

I

FACTS

The factual and procedural antecedents of this case are as follows:

The Indenture Contracts

On 29 May 1989, respondent ASB Development Corporation (ASBDC), a domestic corporation organized and existing under Philippine laws, executed a Mortgage Trust Indenture (MTI) and, thereafter, supplemental indentures, in favor of Rizal Commercial Banking Corporation (RCBC), as trustee for the following creditor banks: RCBC itself, petitioner Union Bank of the Philippines (UBP) and United Coconut Planters Bank (UCPB). Under said MTI and supplemental indentures, the creditor banks granted respondent ASBDC a loan in the total amount of P1.198 billion, P122 million of which was extended by petitioner UBP. As security for the loan, respondent ASBDC mortgaged to RCBC real properties covered by Transfer Certificates of Title (TCTs) No. 9836, No. 9837, and No. 9838. Petitioner UBP has an aliquot share of 10.32% in said mortgages as security for its loan to respondent ASBDC.

The Petition for Rehabilitation

On 2 May 2000, respondent ASBDC, together with ASB Holdings Inc., ASB Realty Corporation, ASB Land Inc., ASB Finance Inc., Makati Hope Christian School Inc., Bel-Air Holdings Corporation, Winchester Trading Inc., VYL Development Corporation, and Neighborhood Holdings Inc. (collectively referred to as the ASB Group of Companies), as affiliated companies commonly owned by Mr. Luke C. Roxas, filed with the SEC Securities and Investigations Clearing Department (SICD) a Petition for Rehabilitation with Prayer for Suspension of Actions and Proceedings. To take cognizance of the said Petition, the SEC Hearing Panel was formed composed of three hearing officers from SICD.

Petitioner UBP, Metropolitan Bank and Trust Company (Metrobank), RCBC, Philippine National Bank (PNB), Prudential Bank, UCPB and Equitable-PCI Bank opposed the petition for rehabilitation of the ASB Group of Companies.

On 4 May 2000, the SEC Hearing Panel set for hearing on 22 May 2000 the prayer of the ASB Group of

Companies for suspension of payment and the creation of a management committee and/or the appointment of a rehabilitation receiver. For the time being, the SEC Hearing Panel issued a sixty-day suspension order against all actions for claims against the ASB Group of Companies pending or still to be filed before any court, office, board, body and/or tribunal.

The SEC Hearing Panel then appointed Atty. Monico V. Jacob as Interim Receiver and ordered the latter to post a bond in the amount of P200,000.00 within ten days from notice. Atty. Jacob refused the appointment, leading to the appointment instead of Fortunato B. Cruz. The SEC Hearing Panel enjoined the ASB Group of Companies from disposing of their properties in any manner whatsoever except in the ordinary course of business and from making payments of its liabilities outstanding as of the date of the filing of its petition for rehabilitation.

The SEC Hearing Panel subsequently issued various Orders extending the suspension order it initially issued on 4 May 2000 until 29 April 2001.

On 10 October 2000, the SEC Hearing Panel issued an Order giving due course to the Petition for Rehabilitation.

The SEC Hearing Panel approved on 26 April 2001 the Rehabilitation Plan of the ASB Group of Companies. On the same day, the SEC Hearing Panel appointed Interim Receiver Fortunato B. Cruz as Rehabilitation Receiver of the ASB Group of Companies.

Related Cases

In the course of the foregoing proceedings before the SEC Hearing Panel, the following cases arose:

Petitioner UBP and PNB assailed the 4 May 2000 Suspension Order of the SEC Hearing Panel before the Court of Appeals in a Petition for Certiorari Ad Cautelam, docketed as CA-G.R. SP No. 66649, wherein they prayed inter alia that the said Order be set aside. The Court of Appeals later dismissed CA-G.R. SP No. 66649 in its 31 January 2002 Resolution, and denied the Motion for Reconsideration of petitioner UBP and PNB in its 4 June 2002 Resolution. Petitioner UBP and PNB went to this Court via a Petition for Review on Certiorari, docketed as G.R. No. 153830, challenging the Resolutions dated 31 January 2002 and 4 June 2002 of the Court of Appeals in CA-G.R. SP No. 66649, but their petition was dismissed by this Court in a 16 September 2002 Resolution. Entry of Judgment was made in G.R. No. 153830 on 28 February 2003.

Petitioner UBP would also join a consortium of creditor banks which filed a Petition for Review on Certiorari with Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction before the SEC En Banc seeking to annul the 10 October 2000 Order of the SEC Hearing Panel giving due course to the Petition for Rehabilitation of the ASB Group of Companies. Said consortium subsequently filed a Supplemental Petition with the SEC En Banc praying for the enjoinder of the implementation of the 27 October 2000 Order of the SEC Hearing Panel which granted yet again the motion of the ASB Group of Companies for extension of the 4 May 2000 Suspension Order. The SEC En Banc dismissed this Petition in its 11 November 2003 Resolution. Petitioner UBP, however, no longer participated when the PNB and Equitable- PCI Bank assailed the 11 November 2003 Resolution of the SEC En Banc before the Court of Appeals in CA-G.R. SP No. 82800.

- The Extrajudicial Foreclosure and Sale

In the meantime, two months after the SEC Hearing Panel approved the Rehabilitation Plan for the ASB Group of Companies and during the pendency of CA-G.R. SP No. 66649 before the Court of Appeals, petitioner UBP, citing the failure of respondent ASBDC to pay its indebtedness, filed on 27 July 2001 with the Office of the Clerk of Court of the Regional Trial Court (RTC) of Mandaluyong City, a Notice of Extrajudicial Sale of Properties under Act No. 3135, as amended, over its 10.32% participation in the mortgage of real properties covered by

TCTs No. 9836, No. 9837, and No. 9838 securing the loans of respondent ASBDC under the MTI and supplemental indentures.

On 24 August 2001, Notary Public Jimmy D. Lacebal auctioned the mortgaged properties of respondent ASBDC, during which petitioner UBP submitted the highest bid in the amount of P178,635,330.48. Atty. Lacebal issued a Certificate of Sale over the said properties in favor of petitioner UBP. Vice Executive Judge Japar D. Dimaampao of the Mandaluyong City RTC approved the Certificate of Sale.

Petitioner UBP then filed a request with the Register of Deeds of Mandaluyong City for registration of the Certificate of Sale on TCTs No. 9836, No. 9837 and No. 9838. On 28 August 2001, the Register of Deeds requested RCBC (the trustee for petitioner UBP and the other creditor-mortgagee banks under the MTI and supplemental indentures) to present the owner's duplicate copies of said certificates of title for the purpose of annotating the Certificate of Sale on the same. RCBC, however, failed to act on said request.

In a letter dated 5 December 2001, petitioner UBP requested the Register of Deeds of Mandaluyong City to just effect the registration and annotation of the Certificate of Sale on the original copies of TCTs No. 9836, No. 9837 and No. 9838 which were on file with the Registry of Deeds.

The Register of Deeds, in a reply-letter dated 8 December 2002, denied the request of petitioner UBP to merely annotate the Certificate of Sale on the original copies of TCTs No. 9836, No. 9837 and No. 9838 since such annotation partakes of the nature of a voluntary dealing on registered land wherein the production of the owner's duplicate copies of the certificates of title is necessary.

On 22 January 2002, petitioner UBP filed a Motion for Reconsideration with the Register of Deeds of Mandaluyong City. However, the Register of Deeds maintained its original stand and denied the motion on 4 February 2002.

Petitioner UBP thus filed on 7 February 2002 a Consulta with the Land Registration Authority (LRA) soliciting a resolution reversing the denial of its request for annotation of the Certificate of Sale on the original copies of TCTs No. 9836, No. 9837 and No. 9838.

On 3 September 2003, respondent ASBDC filed before the SEC Hearing Panel a Motion and a Supplement dated 15 September 2003 praying for the nullification of the extrajudicial sale of its properties conducted on 24 August 2001. The SEC Hearing Panel issued a Resolution dated 11 December 2003 granting said Motion of respondent ASBDC, to wit:

WHEREFORE, premises considered, petitioners' Motion dated 3 September 2003 is GRANTED. Accordingly, all proceedings pertaining to and in connection with the extrajudicial sale caused by Union Bank of the Philippines involving properties covered by TCTs Nos. 9836, 9837 and 9838 issued by the Registry of Deeds of Mandaluyong City are hereby ANNULLED and SET ASIDE.[2]

Petitioner UBP filed with the SEC En Banc a Petition for Review on Certiorari assailing the afore-quoted Resolution of the SEC Hearing Panel, which was docketed as SEC-EB Case No. 12-03-08. Petitioner UBP contended that the annulment of the extrajudicial sale was contrary to law, arguing that:

- Article 1308 of the Civil Code of the Philippines on mutuality of contracts provides "The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them."

In signing the MTI and its Supplemental, ASBDC had agreed and bound itself to comply with all the provisions of the contract.

- ASBDC violated the proscription against unilateral cancellation of contracts under Article 1159 of the Civil

Code;

- Respondent SEC Hearing Panel amended or expanded the rule making powers in suspending all actions and claims against ASBDC immediately after the petition for rehabilitation is filed;
- Contravened the constitutional proscription against impairment of contracts;
- Deprived Union Bank of its substantial right over its property without due process of law;
- Unilaterally revoked and/or nullified the right of a secured creditor like Union Bank with existing contractual rights;
- Amended and/or modified existing and valid contracts between the parties, without their consent.

On 6 July 2004, the SEC En Banc issued a Resolution denying the Petition, thus

WHEREFORE, the Petition for Review on Certiorari assailing the Resolution dated 11 December 2003 issued by Respondent Hearing Panel is hereby DENIED for lack of merit.[3]

In so doing, the SEC En Banc held that the SEC Hearing Panel acted in accordance with Section 6(c) of Presidential Decree No. 902-A[4] as amended, which granted to the SEC the following power:

c)

To appoint one or more receivers of the property, real and personal, which is the subject of the action pending before the Commission in accordance with the pertinent provisions of the Rules of Court in such other cases whenever necessary in order to preserve the rights of the parties- litigants and/or protect the interest of the investing public and creditors: x x x Provided, finally, That upon appointment of a management committee, rehabilitation receiver, board or body, pursuant to the 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 accordingly. (Emphasis supplied.)

CA-G.R. SP No. 85780

Petitioner UBP then sought recourse with the Court of Appeals via a Petition for Review, docketed as CA-G.R. SP No. 85780, seeking the reversal of the 6 July 2004 Resolution of the SEC En Banc. It argued that respondent ASBDC should not have filed a Petition for Rehabilitation as the latter itself admitted in the same petition that it possessed sufficient properties to cover its obligations, but only that it foresaw its inability to pay its obligations within a period of one year.

On 31 May 2005, the Court of Appeals rendered the assailed Decision dismissing the Petition for Review, the dispositive of which reads:

WHEREFORE, premises considered, the PETITION FOR REVIEW is hereby DISMISSED. Accordingly, the Securities and Exchange Commission En Banc's Resolution dated July 6, 2004 and the Securities and Exchange Commission's Hearing Panel's Resolution dated December 11, 2003 are hereby affirmed in toto.[5]

The Court of Appeals cited the Rules of Procedure on Corporate Recovery which provides for two distinct remedies for a financially distressed corporation, namely: (1) suspension of payments under Section 3-1, Rule III; and (2) rehabilitation proceedings under Section 4-1, Rule IV . These provisions read:

SECTION 3-1. Suspension of Payments. - Any debtor which possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due may petition the Commission that it be declared in the state of suspension of payments.

x x x x

SECTION 4-1. Who may petition. - A debtor which is insolvent because its assets are not sufficient to cover its liabilities, or which is technically insolvent under Section 3-12 of these Rules, but which may still be rescued or revived through the institution of some changes in its management, organization, policies, strategies operations or finances, may petition the Commission to be placed under rehabilitation.

Any of the creditors or stockholders of the debtor may file the petition on its behalf.

The Court of Appeals explained that a debtor or petitioning corporation may have sufficient assets to pay for all of its obligations but foresees the impossibility of paying them when they respectively fall due, necessitating a suspension of payments for at least one year. Despite such declaration of solvency, the petitioning corporation may still be found to be subsequently unable to pay its obligations for a period longer than one year and be considered by the SEC as technically insolvent under Sections 3-12[6] and 3-13[7] of Rule III of the Rules of Procedure on Corporate Recovery. Section 3-13 provides, inter alia, that if during the pendency of the proceedings, the petitioner has become or is shown to be insolvent, whether actually or technically, the SEC may, instead of terminating the proceedings for suspension of payments, treat the petition as one for rehabilitation of the debtor.

Hence, the Rules of Procedure on Corporate Recovery does not preclude a solvent corporation or debtor from filing a petition for rehabilitation instead of just a petition for suspension of payments because such temporary inability to pay its obligations out of its assets may extend beyond the period of one year, or a solvent corporation may become actually insolvent in the interim. The requirements and procedures in a petition for suspension of payments and petition for rehabilitation are indeed entirely different and distinct from one another; nonetheless, the petitioning corporation which seeks temporary relief and assistance in the payment of its obligations falling due, but may still have sufficient assets to cover the same, may already file at the first instance a petition for rehabilitation under Rule IV. Given the foregoing, the Court of Appeals found that the Petition for Rehabilitation of the ASB Group of Companies, which includes respondent ASBDC, is warranted under the circumstances.

The Court of Appeals further clarified that under either of the two remedies available, suspension of payments or rehabilitation, a suspension order against all claims, proceedings or actions against the petitioning corporation is available as immediate relief to the distressed corporation pursuant to Sections 3-4[8] and 3-8[9] of Rule III and Section 4-4[10] of Rule IV. During the pendency of either proceeding, a management committee may be created upon agreement of the parties or upon showing that there is imminent danger of dissipation, loss, wastage or destruction of the debtor's assets or those in its legal possession, or paralysis of its business operations, in accordance with Section 5-1.[11]

In its Decision of 31 May 2005, the Court of Appeals also affirmed the validity of the 4 May 2000 Order of the SEC Hearing Panel suspending all claims already pending or still to be filed against the ASB Group of Companies. While said Suspension Order was interlocutory, it could no longer be assailed since the propriety of its issuance had already been passed upon several times. Petitioner UBP and other creditor banks had already challenged the Suspension Order when they filed with the SEC Hearing Panel their Comment/Opposition[12] to the Petition for Rehabilitation. The said Comment/Opposition was denied by the SEC Hearing Panel in its 10 October 2002 Order, which in effect upheld the validity of the Suspension Order. The consortium of creditor banks, including petitioner UBP, then filed a Petition for Certiorari with the SEC En Banc, which was likewise dismissed by the SEC En Banc in its 11 November 2003 Resolution. Of the creditor banks belonging to the consortium, only the PNB and Equitable-PCI Bank persisted in questioning the 11 November 2003 Resolution of the SEC En Banc before the Court of Appeals in CA-G.R. SP No. 82800; thus, the 11 November 2003 Resolution of the SEC En Banc upholding the validity of the 4 May 2000 Suspension Order is already final and executory

insofar as petitioner UBP is concerned.

The Court of Appeals added that petitioner UBP, together with PNB, also assailed the 4 May 2000 Suspension Order of the SEC Hearing Panel before the Court of Appeals in CA-G.R. SP No. 66649. When the Court of Appeals dismissed CA-G.R. SP No. 66649 in its Resolutions dated 31 January 2002^[13] and 4 June 2002, petitioner UBP and PNB filed a Petition for Review on Certiorari with this Court, docketed as G.R. No. 153830. This Court likewise dismissed G.R. No. 153830 in a 16 September 2002 Resolution, and Entry of Judgment was made in G.R. No. 153830 on 28 February 2003. Therefore, the 4 May 2000 Suspension Order by the SEC Hearing Panel can no longer be questioned by petitioner UBP.

Finally, the Court of Appeals noted that when petitioner UBP filed its petition for extrajudicial foreclosure on 27 July 2001 and caused the holding of the public auction of the mortgaged properties of respondent ASBDC on 21 August 2001, the SEC Hearing Panel had already issued its Order dated 4 May 2000 suspending all actions for claims against respondent ASBDC, whether pending or still to be filed. In fact, on such dates, the SEC Hearing Panel had already approved the Rehabilitation Plan of the ASB Group of Companies in an Order dated 26 April 2001. The appointment of a Rehabilitation Receiver effectively suspended actions for claims against respondent ASBDC.^[14]

On 24 June 2005, petitioner UBP filed a Motion for Reconsideration of the foregoing Decision. On 31 May 2006, the Court of Appeals issued the assailed Resolution denying the Motion for Reconsideration.

G.R. No. 172895

Petitioner UBP filed the instant Petition for Review on Certiorari, setting forth the following assignment of errors for the Court's consideration:

- With all due respect, the Court of Appeals erred in law when it applied the Rules of Procedure on Corporate Recovery and allowed respondent's application for rehabilitation despite the existence of fatal jurisdictional defects. The Court of Appeals decided a matter not in accord with law and existing jurisprudence.
- The Court of Appeals erred in ruling that the May 4, 2000 Suspension Order is valid and could no longer be questioned it being a mere interlocutory order which cannot become final and executory.
- The Court of Appeals erred in ruling that petitioner bank has no power on its own to foreclose the mortgaged property.^[15]

II

RULING

SEC Jurisdiction Over the Petition for Rehabilitation

Petitioner UBP alleges that the Petition for Rehabilitation with Prayer for Suspension of Actions and Proceedings of respondent ASBDC before the SEC suffers from fatal and jurisdictional defects. Respondent ASBDC cannot file a Petition for Rehabilitation when respondent ASBDC itself alleged in its Petition for Rehabilitation that it possessed sufficient property to cover its obligations. By admitting that it is a solvent corporation, respondent ASBDC cannot file a Petition for Rehabilitation.

Petitioner UBP also argues that respondent ASBDC cannot invoke Sections 3-12^[16] and 3-13, ^[17] Rule III of the Rules of Procedure on Corporate Recovery since the situation contemplated therein is the pendency of a petition for suspension of payments and the supervision of technical insolvency,^[18] in which event, the petition for suspension of payments may be dismissed or the petitioning corporation may opt for rehabilitation under Rule IV of the same Rules. They do not apply to the circumstance in which the petitioning corporation erroneously

files a petition for rehabilitation even when it has enough assets to cover its liabilities, but would eventually suffer from technical insolvency in the course of the proceedings, finally justifying its rehabilitation. The defect of the petition in the latter case is jurisdictional and precludes the SEC from hearing the petition, and cannot be cured by the subsequent technical insolvency of the petitioning corporation. Petitioner UBP, thus, claims that respondent ASBDC should have filed the "proper petition" with the SEC at the first instance.

Anyhow, petitioner UBP asserts that respondent ASBDC was not able to prove that it was technically insolvent at the time it filed its Petition for Rehabilitation, or that it became so in the course of the hearing by the SEC Hearing Panel of its Petition.

Rule III of the Rules of Procedure on Corporate Recovery deals specifically with Petitions for Suspension of Payments, while Rule IV covers Petitions for Rehabilitation.

The title and the contents of the initiatory pleading of respondent ASBDC before the Court of Appeals clearly establish that it is a Petition for Rehabilitation, with a prayer for the suspension of actions and proceedings to supplement the same. The suspension of actions and proceedings for any claims against respondent ASBDC is merely meant to afford respondent ASBDC the opportunity to preserve its assets for later distribution pursuant to its approved rehabilitation plan.

Being a Petition for Rehabilitation, the Petition of respondent ASBDC must comply with the jurisdictional requirements under Rule IV of the Rules of Procedure on Corporate Recovery. Section 4-1[19] of the said Rules provides that any of the following: (1) an actually insolvent debtor; (b) a technically insolvent debtor; or (3) a creditor or stockholder of the debtor, can file a petition for rehabilitation.

Although respondent ASBDC admitted in its Petition that it had sufficient assets to cover its liabilities, it also alleged that it had foreseen its inability to pay its obligations within a period of one year. This is the very definition of technical insolvency: the inability of the petitioning corporation to pay, although temporarily, for a period longer than one year from the filing of the petition.[20]

As a technically insolvent corporation, respondent ASBDC can seek recourse from the SEC through a Petition for Rehabilitation.

The reference to Section 3-12 of the Rules of Procedure on Corporate Recovery should be limited only to the definition of technical insolvency provided therein. Section 3-13 and the rest of Rule III of the Rules of Procedure on Corporate Recovery governing Petitions for Suspension of Payments actually have no relevance in the instant Petition.

Neither can the Court sustain the allegation of petitioner UBP that respondent ASBDC failed to prove that it was technically insolvent. Whether respondent ASBDC is indeed technically insolvent is a question of fact. This Court has held that for a question to be one of law, it must involve no examination of the probative value of the evidence presented by the litigants or any of them. There is a question of law in a given case when the doubt or difference arises as to what the law is pertaining to a certain state of facts, and there is a question of fact when the doubt arises as to the truth or the falsity of alleged facts.[21] The determination of technical insolvency of respondent ASBDC is a question of fact since it will require a review of sufficiency and weight of evidence presented by the parties.

The resolution of a question of fact is normally beyond the authority of this Court, as this Court is not a trier of facts. Moreover, the SEC Hearing Panel found that respondent ASBDC was technically insolvent; the SEC En Banc and the Court of Appeals sustained such factual finding; and we likewise find no reason to disturb the same. The factual findings of quasi-judicial agencies, which have acquired expertise due to their jurisdiction being

confined to special matters, are generally accorded great respect and even finality, absent any showing that they disregarded evidence or misapprehended evidence to such an extent as to compel a contrary conclusion if such evidence had been properly appreciated.[22]

More importantly, on 27 February 2007, this Court promulgated its Decision in *Metropolitan Bank & Trust Company v. ASB Holdings, Inc.* [23] Metropolitan Bank & Trust Company (MBTC) was one of the creditor-mortgagee banks of the ASBDC. MBTC challenged the validity of the Petition for Rehabilitation of the ASB Group of Companies approved by the SEC Hearing Panel on 26 April 2001. We already upheld in said case the validity of the Rehabilitation Plan. We also denied with finality on 6 June 2007 the Motion for Reconsideration of MBTC. The Rehabilitation Plan, like the 4 May 2000 Suspension Order, resulted from the very same proceedings held herein by the SEC Hearing Panel pursuant to the Petition for Rehabilitation filed by the ASB Group of Companies. As we have already settled the validity of the Rehabilitation Plan, the jurisdictional issues on the Petition for Rehabilitation should also be considered laid to rest. Intrinsic to this Court's affirmation of the validity of the Rehabilitation Plan is its recognition of the jurisdiction acquired by the SEC Hearing Panel over the Petition for Rehabilitation of the ASB Group of Companies.

Validity of the Suspension Order

Petitioner UBP argues that the 4 May 2000 Suspension Order of the SEC Hearing Panel is void; consequently, the 6 July 2004 Order of the SEC Hearing Panel nullifying the extrajudicial sale of the mortgaged properties of respondent ASBDC held on 24 August 2001 for being in violation of its 4 May 2000 Suspension Order, is likewise void.

As pointed out by the Court of Appeals, the issue of the validity of the 4 May 2000 Suspension Order was already resolved with finality by no less than this Court in its Resolution dated 16 September 2002 in G.R. No. 153830. As previously stated, petitioner UBP, together with PNB, had already assailed the 4 May 2000 Suspension Order of the SEC Hearing Panel before the Court of Appeals in a Petition for Certiorari Ad Cautelam docketed as CA-G.R. SP No. 66649. When the Court of Appeals dismissed the said Petition in its 31 January 2002 Resolution, and denied the Motion for Reconsideration in its 4 June 2002 Resolution, petitioner UBP and the PNB jointly filed a Petition for Review on Certiorari with this Court, docketed as 153830, which was denied in a 16 September 2002 Resolution.

However, petitioner UBP refuses to be bound by this Court's ruling in G.R. No. 153830, contending that the 4 May 2000 Suspension Order of the SEC Hearing Panel was merely interlocutory and did not become final. Since the said Order never became final, the principle of *res judicata* is, therefore, not applicable.

Res judicata is a rule that precludes parties from relitigating issues actually litigated and determined by a prior and final judgment. [24] Petitioner cites the Decision of this Court in *Montilla v. Court of Appeals*, [25] wherein we held that:

Quite elementary is that an order such as that rendered on December 5, 1972, being interlocutory, cannot become final and executory in the sense just described, and cannot bring the doctrine of *res adjudicata* into play at all. Indeed, the correctness of such an interlocutory order may subsequently be impugned on appeal by any party adversely affected thereby, regardless of whether or not he had presented a motion for the reconsideration thereof, if he has otherwise made of record his position thereon.

While conceding that petitioner UBP is not precluded from questioning the validity of the 4 May 2000 Suspension Order on the basis of *res judicata*, it is, however, barred from doing so by the principle of law of the case. When the validity of such interlocutory order has already been passed upon on appeal, the Decision of the Court on appeal becomes the law of the case between the same parties. Law of the case has been defined as "the opinion

delivered on a former appeal. More specifically, it means that whatever is once irrevocably established as the controlling legal rule of decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court." [26] Hence, that the 4 May 2000 Suspension Order is valid, as we already upheld in G.R. No. 153830, is the controlling legal rule of decision between petitioner UBP and respondent ASBDC in the Petition at bar. The same is true, whether the decision of this Court in G.R. No. 153830 was correct on general principles or not, and without a showing by petitioner UBP that the facts on which G.R. No. 153830 was predicated are no longer the same facts of the case presently before us.

Power of petitioner UBP to foreclose the mortgaged property

Finally, petitioner UBP claims that the Court of Appeals erred in ruling that petitioner UBP had no power to institute extrajudicial foreclosure of the mortgage on the properties of respondent ASBDC securing the MTI and supplemental indentures. Petitioner UBP claims that under Section 7.16 of Article VII of the MTI, it had the right to initiate foreclosure proceedings.

While it is true that said provision of the MTI confers on any Holder of Participation Certificates, i.e., any of the creditor-mortgagor banks, the right to initiate foreclosure proceedings, such right is the exception rather than the rule and is subject to specific conditions. As provided under Sections 7.04, 7.05, 7.06 and 7.12 of Article VII of the MTI, it is RCBC, as the designated Trustee of the creditor-mortgagor banks under the MTI, which is vested with the primary authority to extrajudicially foreclose the mortgaged properties. The Holders of Participation Certificates are given the right to foreclose the mortgaged property as against the primary authority of RCBC only if the conditions under Section 7.16 of Article VII of the MTI are met. Section 7.16 of the MTI provides:

Section 7.16. Any HOLDER OF PARTICIPATION CERTIFICATES shall have the right to institute any action or proceeding for the foreclosure of this INDENTURE, or for the appointment of a receiver, or for the exercise of any trust or power conferred upon the TRUSTEE or the prosecution of any remedy available to the TRUSTEE, under this INDENTURE, PROVIDED, however, that such HOLDER shall have previously given to the TRUSTEE written notice of the Event of Default on which the HOLDERS of not less than 51% of the total outstanding FACE AMOUNT of the PARTICIPATION CERTIFICATES shall have made WRITTEN REQUEST to the TRUSTEE and shall have given it a reasonable period of time either to proceed to exercise the powers conferred by this INDENTURE or to institute such action, suit or proceeding in its own name, it being understood and intended that no one or more HOLDERS of the PARTICIPATION CERTIFICATES shall have any right in any manner whatsoever to affect, disturb, or prejudice the lien of this INDENTURE by its or their action or to enforce any right hereunder except in the manner herein provided or to the extent allowed by law and that all proceedings may only be instituted and maintained and all trusts, powers or remedies of the TRUSTEE exercised by any HOLDER of PARTICIPATION CERTIFICATES availing to the provisions of this Section in the manner herein provided and for the pari-passu benefit of all the holders of the PARTICIPATION CERTIFICATES then outstanding. (Emphases supplied.)

Thus, as a general rule, the following circumstances must be present in order that the Holders of Participation Certificates may directly exercise the authority to foreclose mortgaged properties: (1) an event of default by respondent ASBDC occurs; (2) Holders of not less than 51% of the total outstanding face amount of the Participation Certificates have made a written request to RCBC as the trustee that would exercise the powers conferred upon them by the MTI or institute proceedings under their own names; and (3) RCBC as the trustee is given a reasonable time to act on the Holders' written request but fails to do so. It is noted that Section 7.16 of the MTI even emphasized that the Holders of Participation Certificates may exercise their right to institute any action or proceeding for the foreclosure of mortgage only in the manner provided therein.

The Court of Appeals explicitly found that petitioner UBP did not meet the first two of the conditions set forth in

Section 7.16 of the MTI. According to the Court of Appeals, the failure of respondent ASBDC to pay its obligation under the MTI and supplemental indentures is legally justified by the issuance of the Order dated 4 May 2000 suspending all claims against respondent ASBDC and the subsequent approval of respondent's Rehabilitation Plan on 26 April 2001 by the SEC Hearing Panel. It further held that petitioner UBP failed to establish that Holders of at least 51% of the total outstanding face amount of the Participation Certificates had given their written request to RCBC as trustee to exercise their powers under the MTI or institute proceedings under their own names.

Petitioner UBP does not dispute the factual finding by the Court of Appeals that there was non-compliance with the requirement that the Holders of at least 51% of the total outstanding face amount of the Participation Certificates should have given their written request to RCBC as trustee to exercise their powers conferred by the MTI or institute proceedings under their own name. Petitioner UBP, however, maintains that there was an Event of Default, particularly described under Section 7.01(e) as follows:

Section 7.01. The COMPANY and TIFFANY shall, without the necessity of demand, be in default under this INDENTURE upon the occurrence of any one or more of the following events:

x x x x

e. The COMPANY and/or TIFFANY shall file a petition for voluntary bankruptcy, or shall consent to the filing of any such petition, or shall consent to the appointment of a trustee or receiver for the COMPANY and/or TIFFANY for all or any part of its properties, or shall file a petition or answer seeking reorganization or arrangement under any law or statute of the Republic of the Philippines for the relief or aid of the debtor or shall consent to the filing of any such petition, or shall file a petition to take advantage of the debtor's act.[27]

Petitioner UBP then reasons that Section 7.04 of the MTI authorizes the foreclosure of the mortgaged properties of respondent ASBDC even without the written request of the Holders of 51% of the total outstanding face amount of the Participation Certificates, provided that the Event of Default is under Section 7.01(c) or (e) of the MTI. Section 7.04 reads:

Section 7.04. Except in clauses (c) and (e) of Section 7.01, no foreclosure of the MORTGAGED PROPERTY or any part thereof may be made unless (i) an Event of Default has occurred as provided for in Section 7.01 and (ii) the HOLDERS of at least 51% of the total outstanding FACE AMOUNT of the PARTICIPATION CERTIFICATES shall have given written instructions to the TRUSTEE to foreclose. The TRUSTEE, within five (5) working days after its receipt of written instructions to foreclose as provided above, shall give written notice to the COMPANY [respondent corporation] that it is foreclosing on the MORTGAGED PROPERTY or any part thereof and shall furnish the other HOLDERS of PARTICIPATION CERTIFICATES who did not give instructions to foreclose, and the TRUSTEE shall have the right and power to foreclose immediately on all the MORTGAGED PROPERTY or any part thereof for all the credits secured by this INDENTURE, judicially or extrajudicially, in accordance with Philippine laws and this INDENTURE.[28]

Petitioner UBP is partially correct on this point. There was indeed an Event of Default under Section 7.01(e) of the MTI when respondent ASBDC filed a Petition for Rehabilitation with the SEC and consented to the appointment of a Receiver; and pursuant to the plain wording of Section 7.04 of the MTI, a foreclosure of the mortgaged properties or a part thereof may be had under the circumstances even without the written request of the Holders of at least 51% of the outstanding face amount of Participation Certificates.

Despite having the authority to foreclose the mortgaged properties under the MTI, the extrajudicial foreclosure initiated by petitioner UBP, nevertheless, remains invalid for being a blatant violation of the 4 May 2000 Order of the SEC Hearing Panel suspending all claims against respondent ASBDC. The 4 May 2000 Suspension Order of the SEC Hearing Panel, the validity of which is now unquestionable, likewise suspends the exercise by petitioner

UBP of its right under Section 7.04 of the MTI. The 4 May 2000 Order suspended "all actions or claims against pending or still to be filed before any tribunal, office, board, body, and/or Commission against ASB Group of Companies." [29] Section 1-1 of Rule I of the Rules of Procedure on Corporate Recovery states that the term claim "shall include all claims or debts of whatever character against a debtor or its property, whether secured or unsecured," and under which definition clearly falls the obligation of respondent ASBDC to petitioner UBP.

WHEREFORE, the Petition is DENIED. The Decision dated 31 May 2005 and Resolution dated 31 May 2006 of the Court of Appeals in CA-G.R. SP No. 85780 are AFFIRMED. Costs against petitioner.

SO ORDERED.

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

[1] Penned by Associate Justice Bienvenido L. Reyes with Associate Justices Godardo A. Jacinto and Rosalinda Asuncion-Vicente, concurring; rollo, pp. 72-91.

[2] Rollo, p. 90.

[3] Id. at 227.

[4] 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.

[5] Rollo, p. 227.

[6] SECTION 3-12. Technical Insolvency of Petitioner. If it is established that the inability of the petitioner to pay, although temporary, will last for a period longer than one (1) year from the filing of the petition, the petitioner shall be considered technically insolvent and the petition shall be dismissed accordingly.

[7] SECTION 3-13. Supervening Insolvency or Violation of Suspension Order. - If at any time during the pendency of the proceedings, the petitioner has become or is shown to be insolvent, whether actual or technical, or that it has violated any of the conditions of the suspension order, or has failed to make payments on its obligations in accordance with the approved Repayment Schedule, the Commission shall terminate the proceedings and dismiss the petition. Instead of terminating the proceedings, however, the Commission may, upon motion, treat the petition as one for rehabilitation of the debtor. Thereupon, the pertinent provisions of the succeeding Rule shall govern the proceedings.

[8] SECTION 3-4. Effect of Filing of Petition. Upon the filing of the petition, an order shall be issued by the Commission suspending all actions and proceedings to enforce payment of all claims against the petitioner for a period of thirty (30) days from the issuance thereof but enjoining the petitioner during such period from selling, encumbering or transferring any of its properties in any manner or for whatever purpose, or from making any payment or any application thereof without the approval of the Commission. The order shall be automatically vacated upon the lapse of the said period unless extended or the period is granted. Its life may be extended only upon proof that petitioner will suffer irreparable injury unless so extended. In any event, the total period of the extension allowed may not exceed six (6) months.

[9] SECTION 3-8. - Suspension Order. If, after hearing, the solvency of the petitioner and the temporary inability to pay are established, the Commission shall issue an order suspending payment of all claims against the petitioner, and all actions and proceedings to enforce the same, during the period of temporary inability which in

no case shall exceed one (1) year from the filing of the petition. The order shall also direct the petitioner to resume payment of its obligations upon the lapse of said period in accordance with the Repayment Schedule approved by the Commission. The order may impose on the petitioner such terms and conditions as are necessary for the protection of the creditors and shall cover all actions for the recovery of the property being used by the petitioner in the normal course of its business operations even though such property belongs to a creditor.

In any event, the petition shall be deemed ipso facto denied and dismissed if no decision was taken thereon by the Commission after the lapse of two hundred and forty (240) days from the filing thereof. In such case, all orders issued in the proceedings are deemed automatically vacated.

[10] SECTION 4-4. Effect of Filing of the Petition. - Immediately upon the filing of a petition, the Commission shall issue an Order (a) appointing an Interim Receiver and fixing his bond; (b) suspending all actions and proceedings for claims against the debtor; (c) prohibiting the debtor from selling, encumbering, transferring or disposing in any manner any of its properties except in the normal course of business in which the debtor is engaged; (d) prohibiting the debtor from making any payment of its liabilities outstanding as of the date of the filing of the petition; x x x.

[11] SECTION 5-1. - Creation of a Management Committee. Upon agreement of the parties, or upon showing that there is imminent danger of dissipation, loss, wastage or destruction of the debtor's assets or those in its legal possession, or paralyzation of its business operations, the Commission may create a management committee for the debtor at any time during, the pendency of the petition for suspension of payments or for rehabilitation.

[12] CA rollo, pp. 109-119.

[13] Id. at 524.

[14] SEC Rules of Procedure on Corporate Recovery, Rule IV, Section 4-21.

[15] Rollo, p. 398.

[16] Section 3-12. Technical Insolvency of Petitioner. - If it is established that the inability of the petitioner to pay, although temporary, will last for a period longer than one (1) year from the filing of the petition, the petitioner shall be considered technically insolvent and the petition shall be dismissed accordingly.

[17] Section 3-13. Supervening Insolvency or Violation of Suspension Order. - If at any time during the pendency of the proceedings, the petitioner has become or is shown to be insolvent, whether actual or technical, or that it has violated any of the conditions of the suspension order, or has failed to make payments on its obligations in accordance with the approved Repayment Schedule, the Commission shall terminate the proceedings and dismiss the petition. Instead of terminating the proceedings, however, the Commission may, upon motion, treat the petition as one for rehabilitation of the debtor. Thereupon the pertinent provisions of the succeeding Rule shall govern the proceedings.

[18] When the petitioning corporation is unable to pay its debts for a period longer than one year.

[19] SECTION 4-1. Who May Petition. - A debtor which is insolvent because its assets are not sufficient to cover its liabilities, or which is technically insolvent under Section 3-12 of these Rules, but which may still be rescued or revived through the institution of some changes in its management, organization, policies, strategies, operations, or finances, may petition the Commission to be placed under rehabilitation.

Any of the creditors or stockholders of the debtor may file the petition on its behalf.

[20] SEC Rules of Procedure on Corporate Recovery, Rule III, Section 3-12.

[21] Reyes v. Court of Appeals, 328 Phil. 171, 179 (1996); Manila Bay Club Corporation v. Court of Appeals, 315 Phil. 805, 820 (1995).

[22] Id.

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

[24] De Knecht v. Court of Appeals, 352 Phil. 833, 847 (1998).

[25] G.R. No. L-47968, 9 May 1988, 161 SCRA 167, 171-172.

[26] People v. Pinuila, 103 Phil. 992, 999 (1958).

[27] Rollo, pp. 116-117.

[28] Id. at 117.

[29] CA rollo, p. 108.

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