

BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. SARABIA MANOR HOTEL CORPORATION, RESPONDENT.

G.R. No. 175844. July 29, 2013

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

Before the Court is a petition for review on certiorari[1] assailing the Decision[2] dated April 24, 2006 and Resolution[3] dated December 6, 2006 of the Court of Appeals, Cebu City (CA) in CA-G.R. CV. No. 81596 which affirmed with modification the rehabilitation plan of respondent Sarabia Manor Hotel Corporation (Sarabia) as approved by the Regional Trial Court of Iloilo City, Branch 39 (RTC) through its Order[4] dated August 7, 2003.

The Facts

Sarabia is a corporation duly organized and existing under Philippine laws, with principal place of business at 101 General Luna Street, Iloilo City.[5] It was incorporated on February 22, 1982, with an authorized capital stock of P10,000,000.00, fully subscribed and paid-up, for the primary purpose of owning, leasing, managing and/or operating hotels, restaurants, barber shops, beauty parlors, sauna and steam baths, massage parlors and such other businesses incident to or necessary in the management or operation of hotels.[6]

In 1997, Sarabia obtained a P150,000,000.00 special loan package from Far East Bank and Trust Company (FEBTC) in order to finance the construction of a five-storey hotel building (New Building) for the purpose of expanding its hotel business. An additional P20,000,000.00 stand-by credit line was approved by FEBTC in the same year.[7]

The foregoing debts were secured by real estate mortgages over several parcels of land[8] owned by Sarabia and a comprehensive surety agreement dated September 1, 1997 signed by its stockholders.[9] By virtue of a merger, Bank of the Philippine Islands (BPI) assumed all of FEBTC's rights against Sarabia.[10]

Sarabia started to pay interests on its loans as soon as the funds were released in October 1997. However, largely because of the delayed completion of the New Building, Sarabia incurred various cash flow problems. Thus, despite the fact that it had more assets than liabilities at that time,[11] it, nevertheless, filed, on July 26, 2002, a Petition[12] for corporate rehabilitation (rehabilitation petition) with prayer for the issuance of a stay order before the RTC as it foresaw the impossibility to meet its maturing obligations to its creditors when they fall due.

In the said petition, Sarabia claimed that its cash position suffered when it was forced to take-over the construction of the New Building due to the recurring default of its contractor, Santa Ana – AJ Construction Corporation (contractor),[13] and its subsequent abandonment of the said project.[14] Accordingly, the New Building was completed only in the latter part of 2000, or two years past the original target date of August 1998, thereby skewing Sarabia's projected revenues. In addition, it was compelled to divert some of its funds in order to cover cost overruns. The situation became even more difficult when the grace period for the payment of the principal loan amounts ended in 2000 which resulted in higher amortizations. Moreover, external events adversely

affecting the hotel industry, i.e., the September 11, 2001 terrorist attacks and the Abu Sayyaf issue, also contributed to Sarabia's financial difficulties.[15] Owing to these circumstances, Sarabia failed to generate enough cash flow to service its maturing obligations to its creditors, namely: (a) BPI (in the amount of P191,476,421.42); (b) Rural Bank of Pavia (in the amount of P2,500,000.00); (c) Vic Imperial Appliance Corp. (Imperial Appliance) (in the amount of P5,000,000.00); (d) its various suppliers (in the amount of P7,690,668.04); (e) the government (for minimum corporate income tax in the amount of P547,161.18); and (f) its stockholders (in the amount of P18,748,306.35).[16]

In its proposed rehabilitation plan,[17] Sarabia sought for the restructuring of all its outstanding loans, submitting that the interest payments on the same be pegged at a uniform escalating rate of: (a) 7% per annum (p.a.) for the years 2002 to 2005; (b) 8% p.a. for the years 2006 to 2010; (c) 10% p.a. for the years 2011 to 2013; (d) 12% p.a. for the years 2014 to 2015; and (e) 14% p.a. for the year 2018. Likewise, Sarabia sought to make annual payments on the principal loans starting in 2004, also in escalating amounts depending on cash flow. Further, it proposed that it should pay off its outstanding obligations to the government and its suppliers on their respective due dates, for the sake of its day to day operations.

Finding Sarabia's rehabilitation petition sufficient in form and substance, the RTC issued a Stay Order[18] on August 2, 2002. It also appointed Liberty B. Valderrama as Sarabia's rehabilitation receiver (Receiver). Thereafter, BPI filed its Opposition.[19]

After several hearings, the RTC gave due course to the rehabilitation petition and referred Sarabia's proposed rehabilitation plan to the Receiver for evaluation.[20]

In a Recommendation[21] dated July 10, 2003 (Receiver's Report), the Receiver found that Sarabia may be rehabilitated and thus, made the following recommendations:

(1) Restructure the loans with Sarabia's creditors, namely, BPI, Imperial Appliance, Rural Bank of Pavia, and Barcelo Gestion Hotelera, S.L. (Barcelo), under the following terms and conditions: (a) the total outstanding balance as of December 31, 2002 shall be recomputed, with the interest for the years 2001 and 2002 capitalized and treated as part of the principal; (b) waive all penalties; (c) extend the payment period to seventeen (17) years, i.e., from 2003 to 2019, with a two-year grace period in principal payment; (d) fix the interest rate at 6.75% p.a. plus 10% value added tax on interest for the entire term of the restructured loans;[22] (e) the interest and principal based on the amortization schedule shall be payable annually at the last banking day of each year; and (f) any deficiency shall be paid personally by Sarabia's stockholders in the event it fails to generate enough cash flow; on the other hand, any excess funds generated at the end of the year shall be paid to the creditors to accelerate the debt servicing;[23]

(2) Pay Sarabia's outstanding payables with its suppliers and the government so as not to disrupt hotel operations;[24]

(3) Convert the Advances from stockholders amounting to P18,748,306.00 to stockholder's equity and other advances amounting to P42,688,734.00 as of the December 31, 2002 tentative financial statements to Deferred Credits; the said conversion should increase stockholders' equity to P268,545,731.00 and bring the debt to equity ratio to 0.85:1;[25]

(4) Require Sarabia's stockholders to pay its payables to the hotel recorded as Accounts Receivable – Trade, amounting to P285,612.17 as of December 31, 2001, and its remaining receivables after such date;[26]

(5) No compensation or cash dividends shall be paid to the stockholders during the rehabilitation period, except those who are directly employed by the hotel as a full time officer, employee or consultant covered by a valid

contract and for a reasonable fee;[27]

(6) All capital expenditures which are over and above what is provided in the case flow of the rehabilitation plan which will materially affect Sarabia's cash position but which are deemed necessary in order to maintain the hotel's competitiveness in the industry shall be subject to the RTC's approval prior to its implementation;[28]

(7) Terminate the management contract with Barcelo, thereby saving an estimated P25,830,997.00 in management fees, over and above the salaries and benefits of certain managerial employees;[29]

(8) Appoint a new management team which would be required to submit a comprehensive business plan to support the generation of the target revenue as reported in the rehabilitation plan;[30]

(9) Open a debt servicing account and transfer all excess funds thereto, which in no case should be less than P500,000.00 at the end of the month; the funds will be drawn payable to the creditors only based on the amortization schedule;[31] and

(10) Release the surety obligations of Sarabia's stockholders, considering the adequate collaterals and securities covered by the rehabilitation plan and the continuing mortgages over Sarabia's properties.[32]

The RTC Ruling

In an Order[33] dated August 7, 2003, the RTC approved Sarabia's rehabilitation plan as recommended by the Receiver, finding the same to be feasible. In this accord, it observed that the rehabilitation plan was realistic since, based on Sarabia's financial history, it was shown that it has the inherent capacity to generate funds to pay its loan obligations given the proper perspective.[34] The recommended rehabilitation plan was also practical in terms of the interest rate pegged at 6.75% p.a. since it is based on Sarabia's ability to pay and the creditors' perceived cost of money.[35] It was likewise found to be viable since, based on the extrapolations made by the Receiver, Sarabia's revenue projections, albeit projected to slow down, remained to have a positive business/profit outlook altogether.[36]

The RTC further noted that while it may be true that Sarabia has been unable to comply with its existing terms with BPI, it has nonetheless complied with its obligations to its employees and suppliers and pay its taxes to both local and national government without disrupting the day-to-day operations of its business as an on-going concern.[37]

More significantly, the RTC did not give credence to BPI's opposition to the Receiver's recommended rehabilitation plan as neither BPI nor the Receiver was able to substantiate the claim that BPI's cost of funds was at the 10% p.a. threshold. In this regard, the RTC gave more credence to the Receiver's determination of fixing the interest rate at 6.75% p.a., taking into consideration not only Sarabia's ability to pay based on its proposed interest rates, i.e., 7% to 14% p.a., but also BPI's perceived cost of money based on its own published interest rates for deposits, i.e., 1% to 4.75% p.a., as well as the rates for treasury bills, i.e., 5.498% p.a. and CB overnight borrowings, i.e., 7.094% p.a.[38]

The CA Ruling

In a Decision[39] dated April 24, 2006, the CA affirmed the RTC's ruling with the modification of reinstating the surety obligations of Sarabia's stockholders to BPI as an additional safeguard for the effective implementation of the approved rehabilitation plan.[40] It held that the RTC's conclusions as to the feasibility of Sarabia's rehabilitation was well- supported by the company's financial statements, both internal and independent, which were properly analyzed and examined by the Receiver.[41]

It also upheld the 6.75% p.a. interest rate on Sarabia's loans, finding the said rate to be reasonable given that

BPI's interests as a creditor were properly accounted for. As published, BPI's time deposit rate for an amount of P5,000,000.00 (with a term of 360-364 days) is at 5.5% p.a.; while the benchmark ninety one-day commercial paper, which banks used to price their loan averages to 6.4% p.a. in 2005, has a three-year average rate of 6.57% p.a.[42] As such, the 6.75% p.a. interest rate would be higher than the current market interest rates for time deposits and benchmark commercial papers. Moreover, the CA pointed out that should the prevailing market interest rates change as feared by BPI, the latter may still move for the modification of the approved rehabilitation plan.[43]

Aggrieved, BPI moved for reconsideration which was, however, denied in a Resolution[44] dated December 6, 2006.

Hence, this petition.

The Issue Before the Court

The primordial issue raised for the Court's resolution is whether or not the CA correctly affirmed Sarabia's rehabilitation plan as approved by the RTC, with the modification on the reinstatement of the surety obligations of Sarabia's stockholders.

BPI mainly argues that the approved rehabilitation plan did not give due regard to its interests as a secured creditor in view of the imposition of a fixed interest rate of 6.75% p.a. and the extended loan repayment period.[45] It likewise avers that Sarabia's misrepresentations in its rehabilitation petition remain unresolved.[46]

On the contrary, Sarabia essentially maintains that: (a) the present petition improperly raises questions of fact;[47] (b) the approved rehabilitation plan takes into consideration all the interests of the parties and the terms and conditions stated therein are more reasonable than what BPI proposes;[48] and (c) BPI's allegations of misrepresentation are mere desperation moves to convince the Court to overturn the rulings of the courts a quo.[49]

The Court's Ruling

The petition has no merit.

A. Propriety of BPI's petition; procedural considerations.

It is fundamental that a petition for review on certiorari filed under Rule 45 of the Rules of Court covers only questions of law. In this relation, questions of fact are not reviewable and cannot be passed upon by the Court unless, the following exceptions are found to exist: (a) when the findings are grounded entirely on speculations, surmises, or conjectures; (b) when the inference made is manifestly mistaken, absurd, or impossible; (c) when there is a grave abuse of discretion; (d) when the judgment is based on misappreciation of facts; (e) when the findings of fact are conflicting; (f) when in making its findings, the same are contrary to the admissions of both parties; (g) when the findings are contrary to those of the trial court; (h) when the findings are conclusions without citation of specific evidence on which they are based; (i) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (j) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.[50]

The distinction between questions of law and questions of fact is well- defined. A question of law exists when the doubt or difference centers on what the law is on a certain state of facts. A question of fact, on the other hand, exists if the doubt centers on the truth or falsity of the alleged facts. This being so, the findings of fact of the CA are final and conclusive and the Court will not review them on appeal.[51]

In view of the foregoing, the Court finds BPI's petition to be improper – and hence, dismissible^[52] – as the issues raised therein involve questions of fact which are beyond the ambit of a Rule 45 petition for review.

To elucidate, the determination of whether or not due regard was given to the interests of BPI as a secured creditor in the approved rehabilitation plan partakes of a question of fact since it will require a review of the sufficiency and weight of evidence presented by the parties – among others, the various financial documents and data showing Sarabia's capacity to pay and BPI's perceived cost of money – and not merely an application of law. Therefore, given the complexion of the issues which BPI presents, and finding none of the above-mentioned exceptions to exist, the Court is constrained to dismiss its petition, and prudently uphold the factual findings of the courts a quo which are entitled to great weight and respect, and even accorded with finality. This especially obtains in corporate rehabilitation proceedings wherein certain commercial courts have been designated on account of their expertise and specialized knowledge on the subject matter, as in this case.

In any event, even discounting the above-discussed procedural considerations, the Courts still finds BPI's petition lacking in merit.

B. Approval of Sarabia's rehabilitation plan;
substantive considerations.

Records show that Sarabia has been in the hotel business for over thirty years, tracing its operations back to 1972. Its hotel building has been even considered a landmark in Iloilo, being one of its kind in the province and having helped bring progress to the community.^[53] Since then, its expansion was continuous which led to its decision to commence with the construction of a new hotel building. Unfortunately, its contractor defaulted which impelled Sarabia to take-over the same. This significantly skewed its projected revenues and led to various cash flow difficulties, resulting in its incapacity to meet its maturing obligations.

Recognizing the volatile nature of every business, the rules on corporate rehabilitation have been crafted in order to give companies sufficient leeway to deal with debilitating financial predicaments in the hope of restoring or reaching a sustainable operating form if only to best accommodate the various interests of all its stakeholders, may it be the corporation's stockholders, its creditors and even the general public. In this light, case law has defined corporate rehabilitation as an attempt to conserve and administer the assets of an insolvent corporation in the hope of its eventual return from financial stress to solvency. It contemplates the continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and liquidity. Verily, the purpose of rehabilitation proceedings is to enable the company to gain a new lease on life and thereby allow creditors to be paid their claims from its earnings.^[54] Thus, rehabilitation shall be undertaken when it is shown that the continued operation of the corporation is economically more feasible and its creditors can recover, by way of the present value of payments projected in the plan, more, if the corporation continues as a going concern than if it is immediately liquidated.^[55]

Among other rules that foster the foregoing policies, Section 23, Rule 4 of the Interim Rules of Procedure on Corporate Rehabilitation^[56] (Interim Rules) states that a rehabilitation plan may be approved even over the opposition of the creditors holding a majority of the corporation's total liabilities if there is a showing that rehabilitation is feasible and the opposition of the creditors is manifestly unreasonable. Also known as the "cram-down" clause, this provision, which is currently incorporated in the FRIA,^[57] is necessary to curb the majority creditors' natural tendency to dictate their own terms and conditions to the rehabilitation, absent due regard to the greater long-term benefit of all stakeholders. Otherwise stated, it forces the creditors to accept the terms and conditions of the rehabilitation plan, preferring long-term viability over immediate but incomplete recovery.

It is within the parameters of the aforesaid provision that the Court examines the approval of Sarabia's rehabilitation.

i. Feasibility of Sarabia's rehabilitation.

In order to determine the feasibility of a proposed rehabilitation plan, it is imperative that a thorough examination and analysis of the distressed corporation's financial data must be conducted. If the results of such examination and analysis show that there is a real opportunity to rehabilitate the corporation in view of the assumptions made and financial goals stated in the proposed rehabilitation plan, then it may be said that a rehabilitation is feasible. In this accord, the rehabilitation court should not hesitate to allow the corporation to operate as an on-going concern, albeit under the terms and conditions stated in the approved rehabilitation plan. On the other hand, if the results of the financial examination and analysis clearly indicate that there lies no reasonable probability that the distressed corporation could be revived and that liquidation would, in fact, better subserve the interests of its stakeholders, then it may be said that a rehabilitation would not be feasible. In such case, the rehabilitation court may convert the proceedings into one for liquidation.[58] As further guidance on the matter, the Court's pronouncement in *Wonder Book Corporation v. Philippine Bank of Communications*[59] proves instructive:

Rehabilitation is x x x available to a corporation [which], while illiquid, has assets that can generate more cash if used in its daily operations than sold. Its liquidity issues can be addressed by a practicable business plan that will generate enough cash to sustain daily operations, has a definite source of financing for its proper and full implementation, and anchored on realistic assumptions and goals. This remedy should be denied to corporations whose insolvency appears to be irreversible and whose sole purpose is to delay the enforcement of any of the rights of the creditors, which is rendered obvious by the following: (a) the absence of a sound and workable business plan; (b) baseless and unexplained assumptions, targets and goals; (c) speculative capital infusion or complete lack thereof for the execution of the business plan; (d) cash flow cannot sustain daily operations; and (e) negative net worth and the assets are near full depreciation or fully depreciated.[60] (Emphasis and underscoring supplied)

Keeping with these principles, the Court thus observes that:

First, Sarabia has the financial capability to undergo rehabilitation.

Based on the Receiver's Report, Sarabia's financial history shows that it has the inherent capacity to generate funds to repay its loan obligations if applied through the proper financial framework. The Receiver's examination and analysis of Sarabia's financial data reveals that the latter's business is not only an on-going but also a growing concern. Despite its financial constraints, Sarabia likewise continues to be profitable with its hotelier business as its operations have not been disrupted.[61] Hence, given its current fiscal position, the prospect of substantial and continuous revenue generation is a realistic goal.

Second, Sarabia has the ability to have sustainable profits over a long period of time.

As concluded by the Receiver, Sarabia's projected revenues shall have a steady year-on-year growth from the time that it applied for rehabilitation until the end of its rehabilitation plan in 2018, albeit with decreasing growth rates (growth rate is at 26% in 2003, 5% in 2004-2007, 3% in 2008-2018).[62] Should such projections come through, Sarabia would have the ability not just to pay off its existing debts but also to carry on with its intended expansion. The projected sustainability of its business, as mapped out in the approved rehabilitation plan, makes Sarabia's rehabilitation a more viable option to satisfy the interests of its stakeholders in the long run as compared to its immediate liquidation.

Third, the interests of Sarabia's creditors are well-protected.

As correctly perceived by the CA, adequate safeguards are found under the approved rehabilitation plan, namely: (a) any deficiency in the required minimum payments to creditors based on the presented amortization schedule shall be paid personally by Sarabia's stockholders;^[63] (b) the conversion of the advances from stockholders amounting to P18,748,306.00 and deferred credits amounting to P42,688,734 as of the December 31, 2002 tentative audited financial statements to stockholder's equity was granted;^[64] (c) all capital expenditures which are over and above what is provided in the cash flow of the approved rehabilitation plan which will materially affect the cash position of the hotel but which are deemed necessary in order to maintain the hotel's competitiveness in the industry shall be subject to the approval by the Court prior to implementation;^[65] (d) the formation of Sarabia's new management team and the requirement that the latter shall be required to submit a comprehensive business plan to support the generation of revenues as reported in the Rehabilitation Plan, both short term and long term;^[66] (e) the maintenance of all Sarabia's existing real estate mortgages over hotel properties as collaterals and securities in favor of BPI until the former's full and final liquidation of its outstanding loan obligations with the latter;^[67] and (f) the reinstatement of the comprehensive surety agreement of Sarabia's stockholders regarding the former's debt to BPI.^[68] With these terms and conditions^[69] in place, the subsisting obligations of Sarabia to its creditors would, more likely than not, be satisfied.

Therefore, based on the above-stated reasons, the Court finds Sarabia's rehabilitation to be feasible.

ii. Manifests unreasonableness of BPI's opposition.

Although undefined in the Interim Rules, it may be said that the opposition of a distressed corporation's majority creditor is manifestly unreasonable if it counter-proposes unrealistic payment terms and conditions which would, more likely than not, impede rather than aid its rehabilitation. The unreasonableness becomes further manifest if the rehabilitation plan, in fact, provides for adequate safeguards to fulfill the majority creditor's claims, and yet the latter persists on speculative or unfounded assumptions that his credit would remain unfulfilled.

While Section 23, Rule 4 of the Interim Rules states that the rehabilitation court shall consider certain incidents in determining whether the opposition is manifestly unreasonable,^[70] BPI neither proposes Sarabia's liquidation over its rehabilitation nor questions the controlling interest of Sarabia's shareholders or owners. It only takes exception to: (a) the imposition of the fixed interest rate of 6.75% p.a. as recommended by the Receiver and as approved by the courts a quo, proposing that the original escalating interest rates of 7%, 8%, 10%, 12%, and 14%, over seventeen years be applied instead;^[71] and (b) the fact that Sarabia's misrepresentations in the rehabilitation petition, i.e., that it physically acquired additional property whereas in fact the increase was mainly due to the recognition of Revaluation Increment and because of capital expenditures, were not taken into consideration by the courts a quo.^[72]

Anent the first matter, it must be pointed out that oppositions which push for high interest rates are generally frowned upon in rehabilitation proceedings given that the inherent purpose of a rehabilitation is to find ways and means to minimize the expenses of the distressed corporation during the rehabilitation period. It is the objective of a rehabilitation proceeding to provide the best possible framework for the corporation to gradually regain or achieve a sustainable operating form. Hence, if a creditor, whose interests remain well-preserved under the existing rehabilitation plan, still declines to accept interests pegged at reasonable rates during the period of rehabilitation, and, in turn, proposes rates which are largely counter-productive to the rehabilitation, then it may be said that the creditor's opposition is manifestly unreasonable.

In this case, the Court finds BPI's opposition on the approved interest rate to be manifestly unreasonable considering that: (a) the 6.75% p.a. interest rate already constitutes a reasonable rate of interest which is concordant with Sarabia's projected rehabilitation; and (b) on the contrary, BPI's proposed escalating interest

rates remain hinged on the theoretical assumption of future fluctuations in the market, this notwithstanding the fact that its interests as a secured creditor remain well-preserved.

The following observations impel the foregoing conclusion: first, the 6.75% p.a. interest rate is actually higher than BPI's perceived cost of money as evidenced by its published time deposit rate (for an amount of P5,000,000.00, with a term of 360-364 days) which is only set at 5.5% p.a.; second, the 6.75% p.a. is also higher than the benchmark ninety one-day commercial paper, which is used by banks to price their loa averages to 6.4% p.a. in 2005, and has a three-year average rate of 6.57% p.a.; and third, BPI's interests as a secured creditor are adequately protected by the maintenance of all Sarabia's existing real estate mortgages over its hotel properties as collateral as well as by the reinstatement of the comprehensive surety agreement of Sarabia's stockholders, among other terms in the approved rehabilitation plan.

As to the matter of Sarabia's alleged misrepresentations, records disclose that Sarabia already clarified its initial statements in its rehabilitation petition by submitting, on its own accord, a supplemental affidavit dated October 24, 2002^[73] that explains that the increase in its properties and assets was indeed by recognition of revaluation increment.^[74]

Proceeding from this fact, the CA observed that BPI actually failed to establish its claimed defects in light of Sarabia's assertive and forceful explanation that the alleged inaccuracies do not warrant the dismissal of its petition.^[75] Thus, absent any compelling reason to disturb the CA's finding on this score, the Court deems it proper to dismiss BPI's allegations of misrepresentation against Sarabia.

As a final point, BPI claims that Sarabia's projections were "too optimistic," its management was "extremely incompetent"^[76] and that it was even forced to pay a pre-termination penalty due to its previous loan with the Land bank of the Philippines.^[77] Suffice it to state that bare allegations of fact should not be entertained as they are bereft of any probative value.^[78] In any event, even if it is assumed that the said allegations are substantiated by clear and convincing evidence, the Court, absent any cogent basis to proceed otherwise, remains steadfast in its preclusion to thresh out matters of fact on a Rule 45 petition, as in this case.

All told, Sarabia's rehabilitation plan, as approved and modified by the CA, is hereby sustained. In view of the foregoing pronouncements, the Court finds it unnecessary to delve on the other ancillary issues as herein raised.

WHEREFORE, the petition is DENIED. Accordingly, the Decision dated April 24, 2006 and Resolution dated December 6, 2006 of the Court of Appeals, Cebu City in CA-GR. CV. No. 81596 are hereby AFFIRMED.

SO ORDERED.

Brion, (Acting Chairperson), Bersamin,^[*] Del Castillo, and Perez, JJ., concur.

[*] Designated Additional Member per Raffle dated July 29, 2013.

[1] Rollo, pp. 28-46.

[2] Id. at 49-64. Penned by Associate Justice Enrico A. Lanzas, with Associate Justices Isaias P. Dicdican and Pampio A. Abarintos, concurring.

[3] Id. at 66-67. Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Pampio A. Abarintos and Romeo F. Barza, concurring.

[4] Id. at 189-213. Penned by Acting Presiding Judge Alfonso V. Combong, Jr.

[5] Id. at 192.

[6] Id.

[7] Id. at 10.

[8] Id. at 70. Including parcels of land covered by Transfer Certificates of Title Nos. T-116065 to T-116088.

[9] Id. Referring to Sps. Salvador Sr. and Amparo Sarabia, Salvador Sarabia, Jr., Suzanne Javelosa, Sandra S. Gomez, Gina S. Espinosa, Rosalie S. Treñas, Melvin D. Sarabia, and John Paul Sarabia.

[10] Id. at 10.

[11] Id. at 69. Sarabia had total assets in the amount of P481,586,031.21 with total liabilities amounting to P225,962,556.99.

[12] Id. at 68-95. Docketed as Civil Case No. 02-27252.

[13] Id. at 70.

[14] Id. at 72-73.

[15] Id. at 71-72.

[16] Id. at 80.

[17] Records, pp. 269-285.

[18] Rollo, pp. 98-100.

[19] Id. at 101-122.

[20] Id. at 191.

[21]

[22] Id. at 171.

[23] Id. at 172.

[24] Id. at 173.

[25] Id.

[26] Id.

[27] Id.

[28] Id.

[29] Id. at 173-174.

[30] Id. at 174.

[31] Id. at 175.

[32] Id.

[33] Id. at 189-213.

[34] Id. at 204.

[35] Id.

[36] Id. at 205.

[37] Id. at 204.

[38] Id. at 207-208.

[39] Id. at 49-64.

[40] Id. at 62-63.

[41] Id. at 59.

[42] Id. at 60.

[43] Id.

[44] Id. at 66-67.

[45] Id. at 37-42.

[46] Id. at 42-44.

[47] Id. at 473-479.

[48] Id. at 480-489.

[49] Id. at 491-500.

[50] *Westmont Investment Corporation v. Francia, Jr.*, G.R. No. 194128, December 7, 2011, 661 SCRA 787, 797. (Citations omitted)

[51] Id.

[52] Section 5(g), Rule 56 of the Rules of Court states:

SEC. 5. Grounds for dismissal of appeal. — The appeal may be dismissed *motu proprio* or on motion of the respondent on the following grounds:

x x x x

(g) The fact that the case is not appealable to the Supreme Court.

[53] *Rollo*, p. 169.

[54] See *Express Investments III Private Ltd. v. Bayan Telecommunications, Inc.*, G.R. Nos. 174457-59, December 5, 2012, 687 SCRA 50, 86-87.

[55] Id. at 87.

[56] A.M. No. 00-8-10-SC dated November 21, 2000. The Court deems it proper to assess Sarabia's rehabilitation within the parameters of the Interim Rules since these were the rules applicable at the time the rehabilitation plan was approved. Republic Act No. 10142, otherwise known as the "Financial Rehabilitation and Insolvency Act of 2010" (FRIA), which is the current law on the matter, took effect only on August 31, 2010. Its rules of procedure have yet to be promulgated as of date.

[57] See Section 64 of the FRIA.

[58] Section 25 of the FRIA provides:

SEC. 25. Giving Due Course to or Dismissal of Petition, or Conversion of Proceedings. - Within ten (10) days from receipt of the report of the rehabilitation receiver mentioned in Section 24 hereof the court may:

x x x x

(c) convert the proceedings into one for the liquidation of the debtor upon a finding that:

(1) the debtor is insolvent; and

(2) there is no substantial likelihood for the debtor to be successfully rehabilitated as determined in accordance with the rules to be promulgated by the Supreme Court.

[59] G.R. No. 187316, July 16, 2012, 676 SCRA 489.

[60] Id. at 501.

[61] Rollo, p. 204.

[62] Id. at 205.

[63] Id. at 8.

[64] Id. at 9.

[65] Id.

[66] Id.

[67] Id. at 10.

[68] Id. at 20.

[69] Id. at 18-19, 21.

[70] Section 23, Rule 4 of the Interim Rules partly provides:

SEC. 23. Approval of the Rehabilitation Plan. – x x x.

In determining whether or not the opposition of the creditors is manifestly unreasonable, the court shall consider the following:

a. That the plan would likely provide the objecting class of creditors with compensation greater than that which they would have received if the assets of the debtor were sold by a liquidator within a three-month period;

b. That the shareholders or owners of the debtor lose at least their controlling interest as a result of the plan; and

c. The Rehabilitation Receiver has recommended approval of the plan.

x x x x

[71] Rollo, p. 37.

[72] Id. at 43-44.

[73] Id. at 123-141.

[74] Id. at 127 and 495.

[75] Id. at 61 and 495.

[76] Id. at 43.

[77] Id. at 40.

[78] "It is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence." (Real v. Belo, 542 Phil. 109, 122 [2007].)

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