

PHILIPPINE COMMERCIAL INTERNATIONAL BANK AND MELCHOR B. FRANCISCO, PETITIONERS, VS. THE HON. COURT OF APPEALS AND BENGZON, ZARRAGA, NARCISO, CUDALA, PECSON, AZCUNA AND BENGZON, ...

G.R. No. 76853. April 18, 1989

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for review on certiorari which seeks to reverse the decision of the Court of Appeals in CA-G.R. SP No. 10363 (Bengzon, et al. vs. Hon. Job Madayag, et al.) dated December 11, 1986 setting aside the order of the Regional Trial Court of Makati, Branch 145 dated September 24, 1986 and enjoining petitioners Philippine Commercial International Bank and Melchor B. Francisco from proceeding with the auction sale of pledged shares of stocks and bonds.

The following facts are not controverted:

On March 3, 1981, Philippine Underwriters Finance Corporation (Philfinance, for brevity) executed a pledge agreement involving certain shares of stocks and bonds in favor of Insular Bank of Asia and America (now Philippine Commercial International Bank, PCIB for brevity, the petitioner herein) as a security for its outstanding obligation. (p. 25, Rollo)

On June 18, 1981, the Securities and Exchange Commission (SEC, for brevity) placed Philfinance under suspension of payments upon "the directive of the President of the Philippines to conserve the assets of the Corporation and obtain an equitable payment to all its creditors." (p. 16, Records)

On August 7, 1981, SEC appointed a Receivership Committee to conserve the assets of Philfinance and determine the best way to protect the creditors, as well as make the necessary presentations with any court or other body for the consolidation of all claims against Philfinance which are pending before such court or body in order to forestall the probability of inequitable disposition/satisfaction of said claims. (p. 22, Records)

On December 19, 1983, upon the basis of the findings of the Receivership Committee and on its own, SEC ordered the dissolution and liquidation of Philfinance. From this order, some concerned parties appealed to this Court and respondent Court of Appeals.

On October 30, 1985, SEC appointed private respondent Bengzon, Zarraga, Narciso, Cudala, Pecson, Azcuna and Bengzon Law Office as the Rehabilitation Receiver instead of the SEC Receivership Committee under the same terms and conditions provided in the Order dated August 7, 1981 "in view of the considerable delay that would be entailed due to the appeals filed with the Appellate Courts before the liquidation of the Corporation can be undertaken . . ." (p. 19, Records)

Meanwhile, Philfinance failed to satisfy its outstanding obligation with PCIB which prompted the latter to post a

Notice of Auction Sale of the pledged shares of stocks and bonds on August 18, 1986 by the other petitioner, Notary Public Melchor B. Francisco.

On August 15, 1986, the Receiver filed a petition for a writ of preliminary injunction with the Regional Trial Court to stop the aforementioned auction sale.

On September 24, 1986, the trial court issued an order denying the petition, to wit (p. 55, Rollo):

"Acting upon the application for the issuance of a writ of preliminary injunction incorporated in the verified complaint dated August 15, 1986, and the opposition and supplemental opposition thereto filed by defendants dated September 10, and 17, 1986, the Court Resolved, in view of the cogent grounds stated in said opposition, to deny said application.

"SO ORDERED."

Thereupon, the Receiver filed a petition for certiorari with the Court of Appeals. On December 11, 1986, the Appellate Court issued a decision, the dispositive portion of which reads:

"WHEREFORE, the petition for certiorari is GRANTED and the order dated September 24, 1986 is SET ASIDE and the respondents are enjoined from proceeding with the auction sale of pledged shares of stocks and bonds until the termination of receivership of Philfinance. Without pronouncement as to costs.

"SO ORDERED." (p. 102, Rollo)

Hence, the present petition.

The issues raised for consideration are the following:

"IN ISSUING ITS DECISION DATED 11 DECEMBER 1986, RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION AND SAID DECISION IS NOT IN ACCORD WITH LAW OR WITH APPLICABLE DECISIONS OF THE HONORABLE COURT CONSIDERING THAT:

I

"RESPONDENT COURT OF APPEALS, IN ENJOINING THE FORECLOSURE OF THE SUBJECT PROPERTIES, TOTALLY IGNORED THE FACT THAT PRIVATE RESPONDENT HAS NOT ESTABLISHED A CLEAR AND POSITIVE RIGHT TO THE RELIEF DEMANDED SINCE:

"(A) THE SECURITIES AND EXCHANGE COMMISSION HAS ALREADY ORDERED THE DISSOLUTION AND LIQUIDATION OF PHILFINANCE. CONSEQUENTLY THE ORDER OF SUSPENSION OF PAYMENTS ON WHICH PRIVATE RESPONDENT BASED ITS ALLEGED RIGHT TO INJUNCTIVE RELIEF HAS BEEN VACATED;

"(B) ASSUMING THAT THE ORDER OF SUSPENSION OF PAYMENTS HAS NOT BEEN VACATED, THE SAME HAS, THROUGH THE LAPSE OF CONSIDERABLE TIME, ALREADY BECOME OPPRESSIVE AND VIOLATIVE OF PETITIONER PCIBANK'S CONSTITUTIONAL RIGHTS.

"II

"PRIVATE RESPONDENT FAILED TO PROVE ITS ALLEGATION ON GRAVE AND IRREPARABLE DAMAGE AND HOW PETITIONER PCIBANK'S EXERCISE OF ITS RIGHTS AS A SECURED CREDITOR TO HAVE THE PLEDGED PROPERTIES SOLD AT PUBLIC AUCTION WOULD VIOLATE PRIVATE RESPONDENT'S RIGHT; FURTHER, THE LOSS OF THE PLEDGED PROPERTIES, BEING THE ONLY

CONCEIVABLE LOSS, IS CLEARLY CAPABLE OF PECUNIARY ESTIMATION." (pp. 138-139, Rollo).

We sustain the petitioners.

SEC's order for suspension of payments of Philfinance as well as for all actions of claims against Philfinance could only be applied to claims of unsecured creditors. Such order can not extend to creditors holding a mortgage, pledge or any lien on the property unless they give up the property security or lien favor of all the creditors of Philfinance. This ruling finds support in *Chartered Bank vs. Imperial and National Bank* (48 Phil. 931) where We held:

"It is, therefore, clear and evident that the law recognizes and respects the right of a creditor holding a mortgage, pledge or lien of any kind, attachment or execution on the property of the debtor, recorded and not dissolved under said Act, to refrain from voting at the election of an assignee, and consequently, to preserve said right; to refrain from taking part or intervening in the insolvency proceedings and to retain the property mortgaged to him and the respective security or lien, the court having no power, even if the debtor is adjudged insolvent, to dispose of said property, security or lien and cede or transfer them to the sheriff or assignee by virtue of said adjudication x x x as long as the creditor does not voluntarily deliver or assign said property, security or lien for the benefit of all the creditors of the insolvent."

It is true that the aforequoted ruling deals with insolvency but by analogy the same could be adopted in this case considering that the rights of a preferred creditor remain to be respected and recognized in every existing situation. To hold otherwise would render the said rights inutile and illusory. Besides, We find no substantial difference between the suspension of actions in the instant case and that under the Insolvency Law. Consequently, the herein order of suspension could not have a different interpretation as regards secured credits than that already given by this Court. The records show that PCIB neither surrendered the pledged shares of stock and bonds nor participated in the proceedings before the SEC regarding the suspension of payments or actions of claims against Philfinance or in the latter's subsequent dissolution and liquidation. The pledged properties being still in PCIB's possession, the Receiver could not possess the same for equitable distribution to the creditors of Philfinance.

Further, We take judicial notice of the fact that the SEC order for the dissolution and liquidation of Philfinance has already been upheld by this Court in the resolutions dated December 9, 1985, March 20, 1986 and April 29, 1987 in G.R. No. 71821 (*Fereira, et al. vs. The Intermediate Appellate Court, et al.*), G.R. No. 71327 (*Luis Amor, et al. vs. The Intermediate Appellate Court, et al.*) and in G.R. No. 72675 (*Philippine Underwriters Finance Corporation, et al. vs. Securities and Exchange Commission, et al.*), respectively. In view of this development, it appears that the Rehabilitation Receiver has no more right to enjoin the auction sale since its prayer for injunctive relief was based on the order for suspension of payments which was in turn based on the "directive of the President of the Philippines to conserve the assets of the corporation and obtain an equitable payment to all its creditors," *supra*.

With the conclusions thus reached, We need not discuss the other issues involved in this petition.

ACCORDINGLY, the decision of the Court of Appeals dated December 11, 1986 is SET ASIDE and the decision of the Regional Trial Court dated September 24, 1986 is REINSTATED.

No pronouncement as to costs.

SO ORDERED.

Narvasa, (Chairman) Cruz, Gancayco, and Griño-Aquino, JJ., concur.

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