

## THIRD DIVISION

[ G.R. No. 202052, March 07, 2018 ]

**SECURITIES AND EXCHANGE COMMISSION (SEC) AND  
INSURANCE COMMISSION (IC), PETITIONERS, VS. COLLEGE  
ASSURANCE PLAN PHILIPPINES, INC., RESPONDENT.**

### DECISION

**BERSAMIN, J.:**

The dispute concerns the use of the assets of the trust fund of the respondent as a pre-need company. We reiterate that the law clearly establishes the trust fund for the sole benefit of the planholders, and its assets cannot be used to satisfy the claims of the creditors of the company.

#### The Case

This appeal assails the decision promulgated on June 14, 2011,<sup>[1]</sup> whereby the Court of Appeals (CA) nullified the orders issued by the Regional Trial Court (RTC), Branch 149, in Makati City on April 29, 2009,<sup>[2]</sup> September 18, 2009<sup>[3]</sup> and January 18, 2010<sup>[4]</sup> in SP. No. M-6144 entitled *In the Matter of Petition for Corporate Rehabilitation; College Assurance Plan Philippines, Inc., Petitioner*, and disposed thusly:

**WHEREFORE, premises considered**, finding grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent, the instant petition is **GRANTED**. The assailed Orders dated April 29, 2009, September 18, 2009 and January 18, 2010 of the Regional Trial Court of Makati City, Branch 149, is hereby **NULLIFIED**. Petitioner College Assurance Plan Philippines, Inc., through its Receiver, is directed to pay its outstanding obligation to Smart Share Investment, Ltd., and Fil-Estate Management, Inc. in the amount of \$6 million as set aside by the Trustee, Philippine Veterans Bank.

**SO ORDERED.**<sup>[5]</sup>

#### Antecedents

The CA narrated the following factual and procedural antecedents:

Petitioner College Assurance Plan Philippines, Inc. (CAP) is a duly registered domestic corporation with the primary purpose of selling pre-need educational plans. To guarantee the payment of benefits under its educational plans, CAP set up a Trust Fund contributing therein a certain percentage of the amount actually collected from each planholder. The Trust Fund, with the aid of trustee banks, is invested in assets and

securities with yields higher than the projected increase in tuition fees. With the adoption of the policy of deregulation of private educational institutions by the Department of Education in 1993 and the economic crisis and peso devaluation which started in 1997, CAP and its Trust Fund were adversely affected.

In 2000, Republic Act No. 8799 (Securities Regulation Code) was passed. Pursuant thereto, the Securities and Exchange Commission (SEC) promulgated on August 16, 2001 the New Rules on the Registration and Sale of Pre-Need Plans under Section 16 of the Securities Regulation Code. With the adoption of the Pre-Need Uniform Chart of Accounts for the accounting and reporting of the operations of the pre-need companies in the Philippines and the new rules on the valuation of trust funds invested in real property, CAP incurred a trust fund deficiency of 3.179 billion as of December 31, 2001. In compliance with the directive of SEC to submit a funding scheme to correct the deficiency, CAP, among others, proposed to purchase MRT III Bonds and assign the same to the Trust Fund. Hence, on August 6, 2002, CAP purchased MRT III Bonds with a present value then of \$14 million from Smart<sup>[6]</sup> and FEMI,<sup>[7]</sup> and assigned the same to the Trust Fund. The purchase price was to be paid by CAP in sixty (60) monthly installments payable over five (5) years. This obligation was secured by a Deed of Chattel Mortgage over 9,762,982 common shares of Comprehensive Annuity Plans & Pension Corporation owned by CAP. In 2003, after having paid US\$6,536,405.01 of the total purchase price, CAP was ordered by the SEC Oversight Board to stop paying SMART/FEMI due to its perceived inadequacy of CAP's funds.

On August 23, 2005, CAP filed a *Petition for Rehabilitation*. After finding the petition to be sufficient in form and substance, a Stay Order was issued by the court effectively staying and suspending the enforcement of all claims against CAP. Mr. Mamerto Marcelo, Jr. was appointed as Interim Rehabilitation Receiver.

In its Order dated December 16, 2005, the trial court gave due course to CAP's Petition for Rehabilitation and directed the Receiver to submit a report on the rehabilitation plan. The 2006 Revised Business Plan was approved by the court on November 8, 2006. Under the Rehabilitation Plan, CAP intended to sell in 2009 the MRT Bonds at 60% of their face value of US\$ 81.2 million.

While negotiations to effect the sale were ongoing, Smart demanded that CAP settle its outstanding balance of US\$ 10,680,045.25 as February 28, 2009 and warned that, should CAP insist on holding on to the MRT III Bonds instead of selling them, Smart would demand the immediate return of the MRT III Bonds as full and final settlement of CAP's outstanding obligation. The Receiver denied that CAP has agreed to pay its liabilities to FEMI and Smart from the proceeds of the prospective sale of the MRT III Bonds. On April 13, 2009, the Receiver filed a Manifestation seeking the public respondent's approval of the sale of MRT III Bonds, with a face value of US\$ 81,200,000.00, "at the best possible price" to the Development Bank of the Philippines (DBP) and the Land

Bank of the Philippines.

In the Order of April 15, 2009, the public respondent approved the sale of MRT III Bonds "at the best possible price." Two days later, the Receiver received a letter from FEMI that Smart intended to annotate a notice of unpaid seller's lien on the MRT III Bonds with Deutsche Bank, the custodian bank. However, Smart opted not to do so and would instead assist in finding a buyer provided that the seller's lien of US\$ 9.5 million will be settled through the arrangement it presented, subject to the approval of the rehabilitation court. The Receiver then filed a Manifestation with Motion dated April 22, 2009 where he sought the public respondent's approval of CAP's payment of its obligations to Smart and FEMI, partly from the proceeds of the sale of the MRT III Bonds.

The MRT III Bonds were in fact sold at US\$ 21,501,760 to DBP and Land Bank. The Buyers agreed to purchase the MRT III Bonds at a premium of 3.30% made possible by: (1) Smart's desistance from enforcing its unpaid seller's lien, (2) FEMI's relinquishing its four (4) board seats with Metro Rail Transit Corporation, (3) swap arrangement of FEMI shares held by CAP to liquidate \$3.5 million of the outstanding obligation; and (4) substantial discount of \$1.2 million from CAP's outstanding liabilities. The contract of sale was perfected and partly consummated-FEMI gave up its four (4) board seats in MRTC, the MRT III Bonds were delivered to the buyers, and the buyers paid \$21,501,760 to CAP, which amount was credited to its trust accounts with Philippine Veterans Bank (PVB). However, CAP's payment to Smart and FEMI remained to be executed.<sup>[8]</sup>

Based on the foregoing antecedents, the receiver moved for the payment of the respondent's obligations to Smart and FEMI. The RTC approved the motion in open court on April 24, 2009.<sup>[9]</sup> However, on April 29, 2009, the RTC withdrew the approval and instead ordered the receiver and the respondent to file their reply to the opposition.<sup>[10]</sup> After the exchange of pleadings, the RTC issued a joint order dated September 18, 2009 denying the motion to approve payment to Smart as well as the motion to approve the respondent's additional equity infusion in CAP General Insurance.<sup>[11]</sup>

Subsequently, the respondent received summons from the High Court of Hong Kong Special Administrative Region, Court of First Instance, directing it to either satisfy the claim of Smart and FEMI, or to return the Acknowledgment of Service, stating whether it intended to contest the proceedings or to make an admission. In view of this, the respondent filed its motion dated December 21, 2009 in the RTC seeking authorization to pay the claims of Smart and FEMI and explaining that the institution of the action in Hong Kong presented a real threat that the buyers would rescind their contact with the respondent and demand the return of the purchase price of \$21,501,760.00.<sup>[12]</sup>

On January 18, 2010, the RTC issued the assailed order denying the respondent's motion for payment to Smart and FEMI, and holding that in keeping with the principle of "equality is equity" in rehabilitation proceedings, the respondent's assets should be held in trust for the equal benefit of all the creditors, both secured and

unsecured, who stood on equal footing during the rehabilitation.<sup>[13]</sup> The RTC disposed as follows:

**WHEREFORE**, premises considered, the motion dated December 21, 2009 for authority to settle CAP's obligations to Smart Share Investments Ltd. and Fil Estate Management, Inc. is hereby **denied** for utter lack of merit.

**SO ORDERED.**<sup>[14]</sup>

### **Decision of the CA**

The foregoing developments impelled the respondent to bring a petition for *certiorari* to the CA, insisting therein that:<sup>[15]</sup>

#### **I**

RESPONDENT COURT ACTED WITHOUT OR IN EXCESS OF JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF EXCESS OF JURISDICTION, WHEN IT UNILATERALLY MODIFIED THE TERMS AND CONDITIONS OF THE SALE OF THE MRT III BONDS AS AGREED UPON BY THE PARTIES

#### **II**

RESPONDENT COURT ACTED WITHOUT OR IN EXCESS OF JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION, WHEN IT DENIED THE RECEIVER'S MOTION, KNOWING FULLY WELL THAT SUCH ACTION WILL BE DETRIMENTAL TO THE INTERESTS OF CAP AND ITS STAKEHOLDERS

On August 17, 2010, upon the application of the respondent, the CA directed Philippine Veterans Bank and the receiver to set aside US\$6 million from the proceeds of the sale of the MRT III Bonds pending the determination of the suit.<sup>[16]</sup>

On June 14, 2011, the CA promulgated the assailed decision,<sup>[17]</sup> whereby it found and declared that the RTC had committed grave abuse of discretion in disapproving the payment of the respondent's obligation to Smart and FEMI from the proceeds of the sale of the MRT III Bonds.

The CA opined that payment to Smart and FEMI constituted "benefits" that could be validly withdrawn from the trust fund pursuant to Rule 16.4 of the *New Rules on the Registration and Sale of Pre-Need Plans under Section 16 of the Securities and Regulation Code* (New Rules) in relation to Section 30 of Republic Act No. 9829 (*Pre-Need Code of the Philippines*);<sup>[18]</sup> that because the MRT III Bonds had not been fully paid, the unpaid portion of the purchase price thereof could not be considered as part of the trust fund; that considering that there was an unpaid seller's lien, the payment to Smart and FEMI from the proceeds of the sale could not be considered as payment to an ordinary creditor, but as payment to the contributors of the source of the assets of the trust fund;<sup>[19]</sup> that at any rate the respondent's outstanding obligation to Smart and FEMI could be considered as an administrative expense not covered by the stay order, and was an expense to preserve the assets of the trust

fund;<sup>[20]</sup> and that the "equality is equity" principle did not apply because Smart and FEMI had played a significant role in the sale of the MRT III Bonds that had worked for the benefit of the planholders.<sup>[21]</sup>

The petitioners sought reconsideration, but the CA denied their motion for that purpose on May 21, 2012.<sup>[22]</sup>

Hence, this appeal.

### **Issues**

The petitioners hereby submit the following for consideration:

#### **I**

WHETHER OR NOT THE PAYMENT OF RESPONDENT'S OUTSTANDING OBLIGATION TO SMART AND FEMI, REPRESENTING THE BALANCE OF THE PURCHASE PRICE OF THE MRT III BONDS CAN BE VALIDLY WITHDRAWN FROM THE RESPONDENT'S TRUST FUND.

#### **II**

WHETHER OR NOT PAYMENT OF RESPONDENT'S OUTSTANDING OBLIGATION TO SMART AND FEMI CAN BE CONSIDERED AN ADMINISTRATIVE EXPENSE AND, THUS, AN ALLOWABLE WITHDRAWAL FROM THE RESPONDENT'S TRUST FUND.

#### **III**

WHETHER OR NOT THE TRIAL COURT ACTED WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN DENYING PAYMENT OF RESPONDENT'S OBLIGATION TO SMART AND FEMI FROM THE PROCEEDS OF THE SALE OF THE MRT III BONDS, WHICH FORM PART OF THE RESPONDENT'S TRUST FUND.<sup>[23]</sup>

The petitioners maintain that the trust fund, being essentially and primarily constituted for the sole and exclusive benefit of the planholders, should be treated separately and distinctly from the paid-up capital and assets of the respondent; that Section 30 of R.A. No. 9829 provided that the trust fund should in no case be used to satisfy the claims of the creditors of the pre-need company;<sup>[24]</sup> that because the proceeds of the sale of the MRT III Bonds formed part of the assets of the trust fund, they were not owned by the respondent, but by the trustee insofar as the legal title was concerned and by the planholders as beneficial owners;<sup>[25]</sup> that contrary to the view of the CA, the infusion to the trust fund made by the respondent to cover its deficiency could not have diluted the nature and purpose of the trust fund because the respondent was legally required to make the necessary deposit in case of fund insufficiency;<sup>[26]</sup> that the "benefits" mentioned in Section 16.4, Rule 16 of the New Rules referred to those that the pre-need company undertook to deliver to planholders; that consequently the "cost of services rendered or property delivered" should refer to the cost of any service or property