

## **SECOND DIVISION**

**[ G.R. No. 190800, November 07, 2018 ]**

**METROPOLITAN BANK & TRUST COMPANY, PETITIONER, VS.  
FORTUNA PAPER MILL & PACKAGING CORPORATION,  
RESPONDENT.**

### **DECISION**

**REYES, A., JR., J.:**

Challenged before this Court *via* this Petition for Review<sup>[1]</sup> under Rule 45 of the Rules of Court is the Decision<sup>[2]</sup> dated July 7, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 102148, which dismissed the petition for review filed by petitioner Metropolitan Bank and Trust Company (MBTC). Likewise challenged is the Resolution<sup>[3]</sup> dated January 4, 2010 of the CA denying the Motion for Reconsideration likewise filed by MBTC.

In the said decision, the CA found no error in the assailed Order<sup>[4]</sup> dated December 20, 2007 of the Regional Trial Court (RTC) of Malabon City, Branch 74, in SEC Case No. S7-002-MN granting the Petition for Corporate Rehabilitation of respondent Fortuna Paper Mill and Packaging Corporation (Fortuna) considering the latter complied with the qualifications and minimum requirements provided for under Rule 4, Sections 1 and 5 of the Interim Rules of Procedure on Corporate Rehabilitation (Interim Rules).

### **The Antecedent Facts**

MBTC is a domestic banking corporation organized and existing under the laws of the Republic of the Philippines, and who extended various credit accommodations and loan facilities to Fortuna. Fortuna, before the closure of its business and cessation of its operations in 2006, was organized to manufacture special and craft papers from, waste and scrap materials, and which it used to sell its products principally to manufacturers of corrugated boxes, cement paper bags, and other stationary paper products.<sup>[5]</sup>

The credit accommodations and loan facilities extended by MBTC to Fortuna principally amounted to Php 259,981,915.33. In order to secure these obligations, Fortuna mortgaged to MBTC its real and movable properties as well as several pieces of realty owned by several sister companies.<sup>[6]</sup>

Fortuna eventually ended up defaulting on its obligations to MBTC, and failed to pay said indebtedness along with the interests and penalties despite repeated demands on the part of MBTC. Around this same period, the Manila Electric Company (Meralco) filed a criminal complaint against Fortuna for pilferage of electricity and

cut off the latter's electrical supply. Though Fortuna and Meralco eventually executed a compromise agreement that resulted in the reconnection of Fortuna's power supply, due to alleged dire financial straits and labor problems, Fortuna subsequently and for the second time defaulted in its payments. This led Meralco to once again disconnect Fortuna's supply of electricity, a turn of events which persisted up until the time the petition was filed.<sup>[7]</sup>

Instead of paying the overdue obligations to MBTC, Fortuna filed on June 21, 2007 a Petition for Corporate Rehabilitation (Rehabilitation Petition) with the RTC of Malabon, Branch 74. Attached therein was Fortuna's proposed Rehabilitation Plan, which consisted mainly of (i) the resumption and continuance of its business, to be made possible by the entry of a supposed investor and a debt moratorium on principal interest, and (ii) entry into the business condominium development.<sup>[8]</sup> The salient features of the proposed Rehabilitation Plan are the following:

30.a) PROGRAM I – Restart and Continuance of Business of Fortuna with Implementation of Specific Plans of Action – The general plan is to continue the operation of Fortuna. These will be implemented with the following features:

(1) Entry of Investor for Fortuna. The of (sic) Policity (sic) Enterprises Ltd. of Hongkong has been identified in buying into Fortuna.

(2) Debt moratorium on principal and interest for two years and debt restructuring for a longer term or tenure and reduced interest rates. It is proposed that interest rates for a certain period within the rehabilitation period be reduced.

It is proposed that interest rates for a certain period within the rehabilitation period be reduced.

Thus, the Program I of the Rehabilitation Plan calls for the forbearance of the creditors/bank to the longer payment period of eight (8) years with the provision for acceleration of payment as cash becomes available from operation or from investors. Reduction of interest rates to 2% on the first two years; then 4% thereafter until the eight year is also an essential component of the Rehabilitation Plan because:

1. Higher interest rates do not encourage the major stockholders to put in more capital and take additional risks;
2. Reduction is customary in rehabilitation or liquidation proceedings when the issue is self-preservation and survival of the debtor;
3. The reduced interest rates are reflective of a very reasonable remedial interest rate;

With the relief from debt burdens and threats of paralyzing foreclosures by the foregoing modifications of its debt-structure, and also as part of its rehabilitation plan, FORTUNA shall implement the following key plans of action to bolster its businesses; detailed as follows:

a. The entry of new investor shall pump in at least Php 70,000.000 into the Company; a communication identifying this new investor is hereto attached as Appendix "B";

b. The cash infusion shall be used principally to: (i) convert the bunker-fired boiler to cheaper coal; (ii) purchase of raw materials; (iii) operation of machines at or near maximum capacities; and (iv) settlement of liabilities to Meralco to assure power supply.

30.b) PROGRAM II – Expansion to Other Businesses to Take Advantage of Best-Use of Realty Assets – The Business Plan for the Rehabilitation of FORTUNA has the general premise that the present business of the Petitioner will remain, and in fact, will be expanded, considering that it is still viable.

The plans for additional or supplementary new businesses are hereby adopted only to augment the old business and serve as a cushion in the event that there are adverse environmental and business conditions that are not foreseen. This is also being done to ensure that the settlement of all obligations will occur at the programmed period of eight years or even shorter.

This supplementary business consists of developing some of the realty assets of the Petitioner and/or its sister companies into low-rise (sic) or medium-rise residential condominium under the Pag-IBIG City Program of the Home Mutual Development Fund (Pag-IBIG). Under this Program, the Pag-IBIG shall purchase the completed residential units at 70% of its appraised value and constitute the developer as the marketing agent. This way, the payment to the contractor, who shall complete the building on a turn-key basis, is assured.<sup>[9]</sup>

Finding the Rehabilitation Petition sufficient in form and substance, on June 27, 2007, the RTC issued a Stay Order setting the initial hearing involving the Rehabilitation Petition on August 6, 2007 and directing all of Fortuna's creditors and other interested parties to file their verified comments/opposition.<sup>[10]</sup>

The court likewise ordered for the appointment of a rehabilitation receiver pursuant to Rule 4, Section 6 of the Interim Rules. On July 13, 2007, Atty. Rafael F. Teston (Atty. Teston) accepted his appointment as rehabilitation receiver.<sup>[11]</sup>

On August 6, 2007, MBTC filed its Comment/Opposition<sup>[12]</sup> to the Rehabilitation Petition and prayed for its dismissal based on the following grounds: (1) Fortuna was not qualified for corporate rehabilitation under Section 1 of Rule 4 of the Interim Rules; (2) the petition was fatally defective for non-compliance with the minimum requirements of Section 5 of Rule 4 of the Interim Rules; and (3) the petition was filed solely for the purpose of unjustly delaying the payment of its debt obligations.<sup>[13]</sup>

Despite opposition, the Rehabilitation Petition was given due course in an Order dated September 20, 2007. The RTC thus referred the same to Atty. Teston for the latter's evaluation and recommendations.<sup>[14]</sup>

After reviewing the same, Atty. Teston submitted a Rehabilitation Receiver's Report and Comments to the Rehabilitation Plan (Receiver's Report), the said report recommending that the proposed Rehabilitation Plan be adopted, but subject to the following timelines and benchmarks: (1) The prospective investor Polycity must complete its due diligence and begin its infusion of new cash for MBTC within nine (9) months from approval of the Rehabilitation Plan; and (2) The construction of the Classic Frames property must be initiated within twelve (12) months from approval of the Rehabilitation Plan and completed as set forth in the Plan.<sup>[15]</sup>

### **Ruling of the RTC**

On the basis of this, the RTC issued an Order<sup>[16]</sup> dated December 20, 2007 approving the Rehabilitation Plan. The trial court found the proposed Rehabilitation Plan feasible and viable and noted Fortuna's effort to improve its financial standing by establishing a new business of realty development in Malabon City. The RTC held:

With respect to the rehabilitation plan, the Court finds the same feasible and viable. A moratorium period of two (2) years on the payment of its loans/obligations will enable [Fortuna] to generate additional capital/funds to continue its business operations. This is in line with [Fortuna's] intention to source fund from its internal operations, the growth of which is expected to favorably expand. To achieve this goal, an extension period for the payment of [Fortuna] is just and proper. This is precisely the main reason why [Fortuna] filed the instant petition as corporate rehabilitation can, in one way, be effected by suspension of payments of obligation for a certain period. Thereafter, payment of their loan/obligations could be ably resumed.

Further, the Court notes that [Fortuna] is in the process of establishing a new business of realty development in Malabon City using the 13,000 square meters property of its sister company, Classic Frames Corporation. Although the proposed project site is, as correctly pointed out by [Fortuna], not feasible at this time as it is inundated by flood during heavy rains, the on-going flood control project being undertaken by the government (CAMANAVA Flood Control Project) will solve this problem. As further pointed out by [Fortuna], residential development in Malabon is a feasible and marketable project. The Comprehensive Land Use Plan for the City of Malabon indicates that the community requires a substantial housing for its residents of all income groups. There is a housing deficiency of about 7,000 units for the lower-to-middle income class economic segment. The development of a modern residential condominium for the City's middle class priced at the level presented by the debtor is a welcome addition to the community's housing inventory. The HMDF has projected that such an inventory can be marketed easily. The realty company Oroquieta Properties, Inc. is willing to consider and

to participate as the developer-contractor for the project. From this project, [Fortuna] expects to earn additional income which is a good source of cashflow for its operations.<sup>[17]</sup>

The dispositive portion of the order reads:

WHEREFORE, the Rehabilitation Plan filed with this Court and made as an Annex and integral part of this Order is hereby APPROVED. Petitioners are strictly enjoined to abide by its terms and conditions and they shall, unless directed otherwise, submit a quarterly report on the progress of the implementation of the Rehabilitation Plan. Further, and as prayed for, let the construction of the Valenzuela property be initiated within the twelve (12) months from this date and completed as set forth in the plan.<sup>[18]</sup>

### **Ruling of the CA**

Aggrieved, MBTC filed a Petition for Review under Rule 43 with the CA seeking to set aside the RTC's order. The CA dismissed the petition as it found that the rehabilitation was feasible, and the opposition of the petitioning creditors was manifestly unreasonable.<sup>[19]</sup>

The dispositive portion of the Decision<sup>[20]</sup> dated July 7, 2009 reads, to wit:

WHEREFORE, premises considered, the petition for review is DISMISSED. The Order dated 20 December 2007 of the [RTC], Branch 74, City of Malabon in SEC Case No. S7-002-MN is AFFIRMED.

SO ORDERED.<sup>[21]</sup>

MBTC filed its Motion for Reconsideration to the decision of the CA, which was however denied by the latter through a Resolution<sup>[22]</sup> dated January 4, 2010.

Hence, this Petition, wherein MBTC prays that this Court reverse and set aside the decision of the CA and order the termination of the rehabilitation proceedings and the liquidation of Fortuna.

### **The Issue and Contention of the Parties**

A perusal of the pleadings filed by the parties will show that the overlying issue in this case is whether or not the CA erred in affirming the Rehabilitation Plan approved by the RTC. MBTC advocates that the CA is mistaken, and anchors its contentions on the belief that Fortuna is not qualified to file a petition for