805 Phil. 58

SECOND DIVISION

[G.R. No. 193068, February 01, 2017]

DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, V. STA. INES MELALE FOREST PRODUCTS CORPORATION, RODOLFO CUENCA, MANUEL TINIO, CUENCA INVESTMENT CORPORATION AND UNIVERSAL HOLDINGS CORPORATION, RESPONDENTS.

[G.R. No. 193099, February 1, 2017]

NATIONAL DEVELOPMENT CORPORATION, PETITIONER, V. STA. INES MELALE FOREST PRODUCTS CORPORATION, RODOLFO M. CUENCA, MANUEL I. TINIO, CUENCA INVESTMENT CORPORATION AND UNIVERSAL HOLDINGS CORPORATION, RESPONDENTS.

D E C I S I O N

LEONEN, J.:

A condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfilment and a debtor loses the right to make use of the period when a condition is violated, making the obligation immediately demandable.[1]

This resolves the consolidated Petitions for Review filed by the Development Bank of the Philippines (DBP)[2] and the National Development Corporation (NEDC)[3] assailing the Court of Appeals Decision[4] dated March 24, 2010 and Court of Appeals Resolution[5] dated July 21, 2010, which affirmed with modifications the Decision[6] dated September 16, 2003 of Branch 137, Regional Trial Court of Makati City.[7]

Sometime in 1977, National Galleon Shipping Corporation (Galleon), "formerly known as Galleon Shipping Corporation, was organized to operate a liner service between the Philippines and its ... trading partners."[8] Galleon's major stockholders were respondents Sta. Ines Melale Forest Products Corporation (Sta. Ines), Cuenca Investment Corporation (Cuenca Investment), Universal Holdings Corporation (Universal Holdings), Galleon's President Rodolfo M. Cuenca (Cuenca), Manuel I. Tinio (Tinio), and the Philippine National Construction Corporation (PNCC).[9]

Galleon experienced financial difficulties and had to take out several loans from different sources such as foreign financial institutions, its shareholders (Sta. Ines, Cuenca Investment, Universal Holdings, Cuenca, and Tinio), and other entities "with whom it had ongoing commercial relationships."[10]

DBP guaranteed Galleon's foreign loans.[11] In return, Galleon and its stockholders Sta. Ines, Cuenca Investment, Universal Holdings, Cuenca, and Tinio, executed a

Deed of Undertaking[12] on October 10, 1979 and obligated themselves to guarantee DBP's potential liabilities.[13]

To secure DBP's guarantee, Galleon undertook to secure a first mortgage on its five new vessels and two second-hand vessels.[14] However, despite the loans extended to it, "[Galleon's] financial condition did not improve."[15]

Cuenca, as Galleon's president, wrote to the members of the Cabinet Standing Committee "for the consideration of a policy decision to support a liner service."[16] Cuenca also wrote then President Ferdinand Marcos and asked for assistance.[17]

On July 21, 1981, President Marcos issued Letter of Instructions No. 1155[18] addressed to the NDC, DBP, and the Maritime Industry Authority. Letter of Instructions No. 1155 reads:

> TO : Development Bank of the Philippines
> National Development Company
> Maritime Industry Authority
>
> DIRECTING A REHABILITATION PLAN FOR
> GALLEON SHIPPING CORPORATION
>
> WHEREAS, Galleon Shipping Corporation is presently in a distressed state in view of the unfavorable developments in the liner shipping business;
>
> WHEREAS, the exposure of the Philippine government financial institutions is substantial;
>
> WHEREAS, it is a policy of government to provide a reliable liner service between the Philippines and its major trading partners;
>
> WHEREAS, it is a policy to have a Philippine national flag liner service to compete with other heavily subsidized national shipping companies of other countries;
>
> NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, do hereby direct the following:
>
> 1. NDC shall acquire 100% of the shareholdings of Galleon Shipping Corporation from its present owners for the amount of P46.7 million which is the amount originally contributed by the present shareholders, payable after five years with no interest cost.
>
> 2. NDC to immediately infuse P30 million into Galleon Shipping Corporation in lieu of its previously approved subscription to Philippine National Lines. In addition, NDC is to provide additional equity to Galleon as may be required.
>
> 3. DBP to advance for a period of three years from date hereof both the principal and the interest on Galleon's obligations falling due and to convert such advances into 12% preferred shares in Galleon Shipping Corporation.

4. DBP and NDC to negotiate a restructuring of loans extended by foreign creditors of Galleon.

5. MARINA to provide assistance to Galleon by mandating a rational liner shipping schedule considering existing freight volume and to immediately negotiate a bilateral agreement with the United States in accordance with UNCTAD resolutions.

> These instructions are to take effect immediately.[19]

On August 10, 1981,[20] pursuant to Letter of Instructions No. 1155, Galleon's stockholders, represented by Cuenca, and NDC, through its then Chairman of the Board of Directors, Roberto V. Ongpin (Ongpin) entered into a Memorandum of Agreement,[21] where NDC and Galleon undertook to prepare and sign a share purchase agreement covering 100% of Galleon's equity for P46,740,755.00.[22] The purchase price was to be paid after five years from the execution of the share purchase agreement.[23] The share purchase agreement also provided for the release of Sta. Ines, Cuenca, Tinio and Construction Development Corporation of the Philippines from the personal counter-guarantees they issued in DBP's favor under the Deed of Undertaking.[24]

The Memorandum of Agreement reads:

> KNOW ALL MEN BY THESE PRESENTS:
>
> This Memorandum of Agreement made and entered into this day of August, 1981, at Makati, Metro Manila, Philippines, by and between the stockholders of Galleon Shipping Corporation listed in Annex A hereof, represented herein by their duly authorized attorney-in-fact, Mr. Rodolfo M. Cuenca (hereinafter called "Sellers") and National Development Company, represented herein by its Chairman of the Board, Hon. Minister Roberto V. Ongpin (hereinafter called "Buyer").
>
> WITNESSETH: That —
>
> WHEREAS, Sellers and Buyer desire to implement immediately Letter of Instructions No. 1155, dated July 21, 1981, which directs that Buyer acquire 100% of the shareholdings of Galleon Shipping Corporation ("GSC") from Sellers who are the present owners.
>
> WHEREAS, Sellers have consented to allow Buyer to assume actual control over the management and operations of GSC prior to the execution of a formal share purchase agreement and the transfer of all the shareholdings of Sellers to Buyer.
>
> NOW, THEREFORE, the parties agree as follows:
>
> 1. Within seven (7) days after the signing hereof, Sellers shall take all steps necessary to cause five (5) persons designated by Buyer to be elected directors of GSC, it being understood that Sellers shall retain the remaining two (2) seats in the GSC board subject to the condition hereafter stated in clause 7(b).

2. The new board to be created pursuant to clause 1 above shall elect Antonio L. Carpio as Chairman and Chief Executive Officer and Rodolfo M. Cuenca as President. All other officers will be nominated and appointed by Buyer.

3. As soon as possible, but not more than 60 days after the signing hereof, the parties shall endeavor to prepare and sign a share purchase agreement covering 100% of the shareholdings of Sellers in GSC to be transferred to Buyer, i.e. 10,000,000 fully paid common shares of the par value of P1.00 per share and subscription of an additional 100,000,000 common shares of the par value of P1.00 per share of which P36,740,755.00 has been paid, but not yet issued.

4. Sellers hereby warrant that P46,740,755[.00] had been actually paid to Galleon Shipping Corporation, which amount represents payment of Sellers for 46,740,755 common shares of said Corporation. This warranty shall be verified by Buyer, the results of which will determine the final purchase price to be paid to Sellers. The purchase price directed by LOI 1155 to be paid to Sellers shall be paid after five (5) years from date of the share purchase agreement with no interest cost to buyer.

5. As security for the payment of the aforementioned purchase price, Buyer shall issue to each of the GSC stockholders listed in Annex A a negotiable promissory note in the amount corresponding to the respective paid-up capital in GSC of each of such stockholders and with maturity on the date of the fifth annual anniversary of the share purchase agreement.

6. Notwithstanding the provisions of clauses 4 and 5 above, upon the signing of the share purchase agreement, it is understood that Sellers shall deliver to Buyer all the stock certificates covering 10,000,000 common shares of GSC, and duly and validly endorsed for transfer, free from any and all Hens and encumbrances whatsoever. It is likewise understood that Buyer shall at that time acquire all the subscription rights to 100,000,000 common shares of which P36,740,755.00 has been paid by Sellers, and shall assume the obligation to pay the unpaid portion of such subscription.

7. The stock purchase agreement to be prepared and signed by the parties within sixty (60) days from date hereof shall contain, among other things:

(a) standard warranties of seller including, but not limited to, warranties pertaining to the accuracy of financial and other statements of GSC; disclosure of liabilities; payment of all taxes, duties, licenses and fees; non-encumbrance of corporate assets; valid contracts with third parties, etc. including an indemnity clause covering any breach thereof.

(b) provisions that Buyer shall retain 2 representatives of Sellers in the board of GSC only for as long as Sellers have not been paid, or have not negotiated or discounted any of the promissory notes referred to in clause 5 above.

(c) provisions whereby Construction Development Corporation of the Philippines, Sta. Ines Melale Forest Products Corporation, Mr. Rodolfo M. Cuenca and Mr. Manuel I. Tinio shall be released from counter-guarantees they have issued in favor of DBP and other financial institutions in connection with GSC's various credit accommodations.

(d) provisions for arbitration as a means of settling disputes and differences of opinion regarding the stock purchase agreement.

8. Sellers hereby make a special warranty that:

(a) any and all liabilities and obligations as disclosed in the financial statements of Galleon Shipping Corporation are valid, regular, normal and incurred in the ordinary course of business of Galleon Shipping Corporation, and Buyer will verify this warranty and conduct an audit of Galleon Shipping Corporation as of March 31 and July 31, 1981; liabilities that do not fall under the above definition are to be for the account of the Seller; and

(b) from July 31, 1981 to the date of the election of Buyers' representatives to the Board of GSC, GSC has not and shall not enter into any contract and has not and shall not incur any liability except what is normal and usual in the ordinary course of shipping business.

9. Valid and duly authorized liabilities of GSC which are the subject of a meritorious lawsuit, or which have been arranged and guaranteed by Mr. Rodolfo M. Cuenca, may be considered by Buyer for priority in the repayment of accounts, provided that, upon review, the Buyer shall determine these to be legitimate and were validly incurred in the ordinary course of GSC's principal business.

IN WITNESS HEREOF, the parties have signed this Memorandum of Agreement this day of August 1981, in Makati, Metro Manila.

STOCKHOLDERS OF GALLEON SHIPPING CORPORATION

By:

(signed)
RODOLFO M. CUENCA

NATIONAL