

FIRST DIVISION

[G.R. No. 206528, June 28, 2016]

PHILIPPINE ASSET GROWTH TWO, INC. (SUCCESSOR-IN-INTEREST OF PLANTERS DEVELOPMENT BANK) AND PLANTERS DEVELOPMENT BANK, PETITIONERS, VS. FASTECH SYNERGY PHILIPPINES, INC. (FORMERLY FIRST ASIA SYSTEM TECHNOLOGY, INC.), FASTECH MICROASSEMBLY & TEST, INC., FASTECH ELECTRONIQUE, INC., AND FASTECH PROPERTIES, INC., RESPONDENTS.

D E C I S I O N

PERLAS-BERNABE, J.:

For the Court's resolution is a petition for review on *certiorari*^[1] assailing the Decision^[2] dated September 28, 2012 and the Resolution^[3] dated March 5, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 122836 which: (a) approved the Rehabilitation Plan^[4] of respondents Fastech Synergy Philippines, Inc. (formerly First Asia System Technology, Inc.) (Fastech Synergy), Fastech Microassembly & Test, Inc. (Fastech Microassembly), Fastech Electronique, Inc. (Fastech Electronique), and Fastech Properties, Inc. (Fastech Properties; collectively, respondents); (b) enjoined petitioner Planters Development Bank (PDB) from effecting the foreclosure of respondents' properties during the implementation thereof; and (c) remanded the case to the Regional Trial Court (RTC) of Makati City, Branch 149 (RTC-Makati) to supervise its implementation.

The Facts

On April 8, 2011, respondents filed a verified Joint Petition^[5] for corporate rehabilitation (rehabilitation petition) before the RTC-Makati, with prayer for the issuance of a Stay or Suspension Order,^[6] docketed as SP Case No. M-7130. They claimed that: (a) their business operations and daily affairs are being managed by the same individuals;^[7] (b) they share a majority of their common assets;^[8] and (c) they have common creditors and common liabilities.^[9]

Among the common creditors listed in the rehabilitation petition was PDB,^[10] which had earlier filed a petition^[11] for extrajudicial foreclosure of mortgage over the two (2) parcels of land, covered by Transfer Certificate of Title (TCT) Nos. T-458102^[12] and T-458103^[13] and registered in the name of Fastech Properties (subject properties),^[14] listed as common assets of respondents in the rehabilitation petition.^[15] The foreclosure sale was held on April 13, 2011, with PDB emerging as the highest bidder.^[16] Respondents claimed that this situation has impacted on their chance to recover from the losses they have suffered over the years, since the said

properties are being used by Fastech Microassembly and Fastech Electronique^[17] in their business operations, and a source of significant revenue for their owner-lessor, Fastech Properties.^[18] Hence, respondents submitted for the court's approval their proposed Rehabilitation Plan,^[19] which sought: (a) a waiver of all accrued interests and penalties; (b) a grace period of two (2) years to pay the principal amount of respondents' outstanding loans, with the interests accruing during the said period capitalized as part of the principal, to be paid over a twelve (12)-year period after the grace period; and (c) an interest rate of four percent (4%) and two percent (2%) per annum (p.a.) for creditors whose credits are secured by real estate and chattel mortgages, respectively.^[20]

On April 19, 2011, the RTC-Makati issued a Commencement Order with Stay Order,^[21] and appointed Atty. Rosario S. Bernaldo as Rehabilitation Receiver, which the latter subsequently accepted.^[22]

After the initial hearing on May 18, 2011, and the filing of the comments/oppositions on the rehabilitation petition,^[23] the RTC-Makati gave due course to the said petition, and, thereafter, referred the same to the court-appointed Rehabilitation Receiver, who submitted in due time her preliminary report,^[24] opining that respondents may be rehabilitated, considering that their assets appear to be sufficient to cover their liabilities, but reserved her comment to the Rehabilitation Plan's underlying assumptions, financial goals, and procedures to accomplish said goals after the submission of a revised rehabilitation plan as directed by the RTC-Makati,^[25] which respondents subsequently complied.^[26]

After the creditors had filed their respective comments and/or oppositions to the revised Rehabilitation Plan, and respondents had submitted their consolidated reply^[27] thereto, the court-appointed Rehabilitation Receiver submitted her comments,^[28] opining that respondents may be successfully rehabilitated, considering the sufficiency of their assets to cover their liabilities and the underlying assumptions, financial projections and procedures to accomplish said goals in their Rehabilitation Plan.^[29]

The RTC-Makati Ruling

In a Resolution^[30] dated December 9, 2011, the RTC-Makati dismissed the rehabilitation petition despite the favorable recommendation of its appointed Rehabilitation Receiver. It found the facts and figures submitted by respondents to be unreliable in view of the disclaimer of opinion of the independent auditors who reviewed respondents' 2009 financial statements,^[31] which it considered as amounting to a "straightforward unqualified adverse opinion."^[32] In the same vein, it did not give credence to the unaudited 2010 financial statements as the same were mere photocopied documents and unsigned by any of respondents' responsible officers.^[33] It also observed that respondents added new accounts and/or deleted/omitted certain accounts.^[34] Furthermore, it rejected the revised financial projections as the bases for which were not submitted for its evaluation on the ground of confidentiality.^[35]

Aggrieved, respondents appealed^[36] to the CA, with prayer for the issuance of a temporary restraining order (TRO) and/or a writ of preliminary injunction (WPI), docketed as CA-G.R. SP No. 122836.

The Proceedings Before the CA

In a Resolution dated January 24, 2012, the CA issued a TRO^[37] so as not to render moot and academic the case before it in view of PDB's pending *Ex-Parte* Petition for Issuance of a Writ of Possession over the subject properties before the RTC of Biñan, Laguna, docketed as LRC Case No. B-5141.^[38] Thereafter, the CA issued a WPI^[39] on March 22, 2012.

On April 30, 2012, the court-appointed Rehabilitation Receiver submitted a manifestation^[40] before the CA, maintaining that the rehabilitation of respondents is viable since the financial projections and procedures set forth to accomplish the goals in their Rehabilitation Plan are attainable.^[41]

After the creditors and respondents had filed their respective comments and reply to the manifestation, the CA rendered a Decision^[42] dated September 28, 2012 (September 28, 2012 Decision), reversing and setting aside the RTC-Makati ruling.^[43] It ruled that the RTC-Makati grievously erred in disregarding the report/opinion of the Rehabilitation Receiver that respondents may be successfully rehabilitated, despite being highly qualified to make an opinion on accounting in relation to rehabilitation matters.^[44] It likewise observed that the RTC-Makati failed to distinguish the difference between an adverse or negative opinion and a disclaimer or when an auditor cannot formulate an opinion with exactitude for lack of sufficient data.^[45] Finally, the CA declared that the Rehabilitation Plan is feasible and should be approved, finding that respondents would be able to meet their obligations to their creditors within their operating cash profits and other assets without disrupting their business operations, which will be beneficial to their creditors, employees, stockholders, and the economy.^[46]

Accordingly, the CA reinstated the rehabilitation petition, approved respondents' Rehabilitation Plan, and remanded the case to the RTC-Makati to supervise its implementation. Considering that respondents' creditors are placed in equal footing as a necessary consequence, it permanently enjoined PDB from "effecting the foreclosure" of the subject properties during the implementation of the Rehabilitation Plan.^[47]

Dissatisfied, PDB filed a motion for reconsideration^[48] which was, however, denied in a Resolution^[49] dated March 5, 2013 (March 5, 2013 Resolution).

In the interim, DivinaLaw entered^[50] its appearance as the new lead counsel of PDB, in collaboration^[51] and with the conformity of its counsel of record, Janda Asia & Associates.^[52] On April 3, 2013, DivinaLaw, on behalf of petitioner Philippine Asset Growth Two, Inc. (PAGTI), filed a Motion for Substitution of Parties (motion for substitution),^[53] averring that PAGTI had acquired PDB's claims and interests in the

instant case, hence, should be substituted as a party therein.

The Proceedings Before the Court

On April 18, 2013, PAGTI and PDB (petitioners), represented by DivinaLaw, filed the instant petition, claiming that PDB received a copy of the March 5, 2013 Resolution on April 3, 2013.^[54]

On July 10, 2013, respondents filed their Urgent Motion to Dismiss Petition for Review on *Certiorari* for Being Filed Out of Time^[55] (urgent motion), positing that contrary to petitioners' claim that PDB received notice of the March 5, 2013 Resolution on April 3, 2013, its counsel, Janda Asia & Associates, already received a Copy of the said resolution on March 12, 2013. Thus, petitioners only had until March 27, 2013 to file a petition for review on *certiorari* before the Court, and the petition filed on April 18, 2013 was filed out of time.^[56]

Meanwhile, the Court required respondents to file their comment^[57] to the petition, and subsequently directed petitioners to submit their comment on respondents' urgent motion, and reply to the latter's comment.^[58]

In their Comment,^[59] respondents prayed for the dismissal of the petition and reiterated their stand that the same was filed out of time, arguing that the receipt of the March 5, 2013 Resolution on March 12, 2013 by Janda Asia & Associates, which remained as collaborating counsel of PDB, binds petitioners and started the running of the fifteen (15)-day period within which to file a petition for review on *certiorari* before the Court. Thus, the petition filed on April 18, 2013 was filed beyond the reglementary period.^[60] Respondents likewise maintained the viability of the rehabilitation plan, which will benefit not only their employees, but their stockholders, creditors, and the general public.^[61]

For their part, petitioners contended^[62] that: (a) the date of receipt of petitioners' lead counsel, *i.e.*, DivinaLaw's receipt of the March 5, 2013 Resolution, should be the reckoning point of the fifteen (15)-day period within which to file the instant petition, since only the lead counsel is entitled to service of court processes,^[63] citing the case of *Home Guaranty Corporation v. R-II Builders, Inc.*;^[64] and (b) the CA erred in not upholding the dismissal of the rehabilitation petition despite the insufficiency of the Rehabilitation Plan which was based on financial statements that contained misleading statements, and financial projections that are mere unfounded assumptions/speculations.^[65]

Thereafter, respondents filed a Manifestation and Update (Re: Compliance to [the CA] Decision dated September 28, 2012)^[66] before the Court, stating that it had achieved the EBITDA^[67] requirement of the Rehabilitation Plan and made quarterly payments in favor of the bank and non-bank creditors from December 28, 2014 to September 28, 2015, totalling P27,119,481.79.^[68] However, the amount of P8,364,836.53 in favor of PDB was not accepted, and is being held by respondents.^[69]

The Issues Before the Court

The essential issues for the Court's resolution are: (a) whether or not the petition for review on *certiorari* was timely filed; and (b) the Rehabilitation Plan is feasible.

The Court's Ruling

I.

The Court first resolves the procedural issue anent the timeliness of the petition's filing.

It is a long-standing doctrine that where a party is represented by several counsels, notice to one is sufficient, and binds the said party.^[70] Notice to any one of the several counsels on record is equivalent to notice to all, and such notice starts the running of the period to appeal notwithstanding that the other counsel on record has not received a copy of the decision or resolution.^[71]

In the present case, PDB was represented by both Janda Asia & Associates and DivinaLaw. It was not disputed that Janda Asia & Associates, which remained a counsel of record, albeit, as collaborating counsel, received notice of the CA's March 5, 2013 Resolution on March 12, 2013. As such, it is from this date, and not from DivinaLaw's receipt of the notice of said resolution on April 3, 2013 that the fifteen (15)-day period^[72] to file the petition for review on *certiorari* before the Court started to run.

Hence, petitioners only had until March 27, 2013 to file a petition for review on *certiorari* before the Court, and the petition filed on April 18, 2013 was filed out of time. Notably, there is no showing that the CA had already resolved PAGTI's motion for substitution;^[73] hence, it remained bound by the proceedings and the judgment rendered against its transferor, PDB.

Generally, the failure to perfect an appeal in the manner and within the period provided for by law renders the decision appealed from final and executory,^[74] and beyond the competence of the Court to review. However, the Court has repeatedly relaxed this procedural rule in the higher interest of substantial justice. In *Barnes v. Padilla*,^[75] it was held that:

[A] final and executory judgment can no longer be attacked by any of the parties or be modified, directly or indirectly, even by the highest court of the land.

However, this Court has relaxed this rule in order to serve substantial justice[,], considering (a) matters of life, liberty, honor or property, (b) the existence of special or compelling circumstances, (c) the merits of the case, (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (e) a lack of any showing that the review sought is merely frivolous and dilatory, and (f) the other party will not be unjustly prejudiced thereby.^[76]

After a meticulous scrutiny of this case, the Court finds that the unjustified rehabilitation of respondents, by virtue of the CA ruling if so allowed to prevail, warrants the relaxation of the procedural rule violated by petitioners in the higher