

SECOND DIVISION

[G.R. No. 183587, April 20, 2015]

LEXBER, INC., PETITIONER, VS. CAESAR M. AND CONCHITA B. DALMAN, RESPONDENTS.

D E C I S I O N

BRION, J.:

We resolve in this petition for review on *certiorari*^[1] the challenge to the April 14, 2008 decision^[2] and the June 30, 2008 resolution^[3] of the Court of Appeals (CA) in CA-G.R. SP No. 100946. These assailed CA rulings annulled the June 12, 2007^[4] and August 8, 2007^[5] orders of the Regional Trial Court of Quezon City, Branch 90 (*trial court*), which gave due course to the September 28, 2006 petition for rehabilitation^[6] of petitioner Lexber, Inc. (*Lexber*).

Factual Antecedents

Lexber is a domestic corporation engaged in the business of housing, construction, and real estate development. Its housing projects are mostly located in the province of Benguet, Baguio City, and Cabanatuan City.^[7]

Among those who availed of Lexber's housing projects are respondent-spouses Caesar and Conchita Dalman (*Spouses Dalman*), who bought a house and lot under a contract to sell in Lexber's Regal Lexber Homes at Tuba, Benguet.^[8]

Because of the 1997 Asian financial crisis and other external factors, Lexber's financial condition deteriorated. It was forced to discontinue some of its housing projects,^[9] including the one where the Spouses Dalman's purchased property is located.

As Lexber could no longer pay its creditors, it filed a petition for rehabilitation with prayer for the suspension of payments on its loan obligations.^[10] Among its creditors are the Spouses Dalman who are yet to receive their purchased house and lot, or, in the alternative, a refund of their payments which amounted to P900,000.00.^[11]

In an order dated June 12, 2007, the trial court gave due course to Lexber's rehabilitation petition and appointed Atty. Rafael Chris F. Teston (*Atty. Teston*) as rehabilitation receiver. It further ordered Atty. Teston to evaluate Lexber's rehabilitation plan and recommend the necessary actions to be taken.^[12]

The Spouses Dalman filed a motion for reconsideration^[13] from this order and argued that consistent with Rule 4, Section II^[14] of the Interim Rules of Procedure

on Corporate Rehabilitation (*Interim Rules*), the trial court should have dismissed outright the rehabilitation petition because it failed to approve the rehabilitation plan within 180 days from the date of the initial hearing.

The Spouses Dalman further submitted that no rehabilitation petition of a real estate company like Lexber should be given due course without the Housing and Land Use Regulatory Board's (HLURB) prior request for the appointment of the rehabilitation receiver.

On August 8, 2007, the trial court denied. Spouses Dalman's motion for reconsideration, prompting the Spouses Dalman to seek relief from the CA through a Rule 65 petition.^[15]

The CA's Ruling

The CA granted the petition for *certiorari*.

The CA ruled that the trial court should have dismissed Lexber's rehabilitation petition outright as there was no evidence to show that the HLURB requested the appointment of Lexber's rehabilitation receiver.^[16] The CA posited that under Section 6(c)^[17] of Presidential Decree (PD) 902-A, as amended,^[18] it is only after the HLURB's request that a rehabilitation court can give due course to a rehabilitation petition and validly appoint a receiver.^[19]

Lastly, the CA held that the rehabilitation petition must also be dismissed since the rehabilitation plan was not approved within the prescribed 180-day period under Rule 4, Section 11 of the Interim Rules.

The Petition

Lexber disclosed in its petition that in an order dated May 23, 2008, the trial court eventually dismissed the rehabilitation petition because of the disapproval of Lexber's proposed rehabilitation plan. **The CA is currently reviewing this subsequent order in a separate proceeding, docketed as CA G.R. No. 103917.**^[20]

Notwithstanding this supervening dismissal, Lexber argues that the CA erred in reversing the trial court's initial finding of merit in the rehabilitation petition.

Lexber submits that nowhere in Section 6(c) of PD 902-A, as amended, is it provided that the HLURB's prior request for the appointment of a receiver is mandatory before the rehabilitation court can give due course to the petition for rehabilitation of a real estate company.^[21]

Finally, Lexber contends that the outright dismissal of a rehabilitation petition for non-compliance with the 180-day period for the approval of the rehabilitation plan is against the Interim Rules' policy of liberal construction to facilitate the rehabilitation of distressed corporations.^[22]

The Issues

The main issue before us is whether the CA erred in finding grave abuse of discretion on the trial court's part when it gave due course to the rehabilitation petition, despite:

- a. the absence of the HLURB's prior request for the appointment of a rehabilitation receiver; and
- b. the lapse of the 180-day period for the approval of a rehabilitation plan.

The Court's Ruling

We resolve to **DENY** the petition due to the pendency of CA G.R. No. 103917, pending with the CA after the trial court dismissed Lexber's rehabilitation petition in its May 23, 2008 order. **Because of this supervening event, the Court is also compelled to deny the present petition. We so rule to avoid any conflicting ruling with the CA's decision in CA G.R. No. 103917, which is reviewing the rehabilitation petition's dismissal but for a different and more substantive reason, i.e., the disapproval of Lexber's rehabilitation plan.**

This possibility of rendering conflicting decisions among reviewing courts is one of the reasons why the Rules of Procedure on Corporate Rehabilitation^[23] (2008 Rules) amended the Interim Rules' provision on the available procedural remedies after the filing of the rehabilitation petition. This has also been further amended in the new Financial Rehabilitation Rules of Procedure^[24] (2013 Rules).

Under the Interim Rules, a motion for reconsideration is a prohibited pleading.^[25] This is no longer true under the 2008 Rules and the new 2013 Rules, which implemented the procedural changes outlined below:

| 2008 Rules | 2013 Rules |
|--|---|
| Rule 8 Procedural Remedies | Rule 6 Procedural Remedies |
| <p>Section 1. <i>Motion for Reconsideration.</i> -A party may file a motion for reconsideration of any order issued by the court prior to the approval of the rehabilitation plan. No relief can be extended to the party aggrieved by the court's order on the motion through a special civil action for <i>certiorari</i> under Rule 65 of the Rules of Court. Such order can only be elevated to the Court of Appeals as an assigned error in the petition for review of the decision or order approving or</p> | <p>Section 1. <i>Motion for Reconsideration</i> -A party may file a motion for reconsideration of any order issued by the court prior to the approval of the rehabilitation plan. No relief can be extended to the party aggrieved by the court's order on the motion through a special civil action for <i>certiorari</i> under Rule 65 of the Rules of Court.</p> <p>An order issued after the approval of the rehabilitation plan can be reviewed only through a special civil action for <i>certiorari</i> under Rule 65 of the Rules of Court.</p> |

disapproving the rehabilitation plan.

An order issued after the approval of the rehabilitation plan can be reviewed only through a special civil action for *certiorari* under Rule 65 of the Rules of Court.

Section 2. Review of Decision or Order on Rehabilitation Plan. - An order approving or disapproving a rehabilitation plan can only be reviewed through a petition for review to the Court of Appeals under Rule 43 of the Rules of Court within fifteen (15) days from notice of the decision or order. [Emphasis supplied.]

Section 2. Review of Decision or Order on Rehabilitation Plan. - An order approving or disapproving a rehabilitation plan can only be reviewed through a petition for *certiorari* to the Court of Appeals under Rule 65 of the Rules of Court within fifteen (15) days from notice of the decision or order. [Emphasis supplied.]

Hence, under the 2008 Rules, an appeal (through a Rule 43 petition) may be filed only after the trial court issues an order approving or disapproving the rehabilitation plan. Any issue arising from a denied motion for reconsideration may only be raised as an assigned error in the Rule 43 petition and may not be questioned in a separate Rule 65 petition. The exception to this is when the issue only arose after the issuance of the order denying or approving the rehabilitation plan.

This procedural guideline had been further amended in the 2013 Rules where any relief from the trial court's denial of a motion for reconsideration is no longer available. Moreover, the CA's mode of review is now through Rule 65 and not Rule 43. But despite this further change, the 2013 Rules retained the guideline in the 2008 Rules **that review may be sought from the CA only after the rehabilitation court issues an order approving or disapproving the rehabilitation plan.**

Thus, if after the filing of the rehabilitation petition the trial court is satisfied that the jurisdictional requirements were complied with, the initial hearing shall commence and the petition for rehabilitation shall be given due course.^[26] **At this stage, no appeal or *certiorari* petition may yet be filed as any remedy is only available after the order approving or disapproving the rehabilitation plan.** This is to avoid the present situation where there are multiple petitions filed with the appellate courts from which conflicting decisions may be rendered.

But since these procedural rules were not yet in place when the facts of this case occurred, the Court's remedy is to deny the present petition in order to avoid pre-empting the proceedings in CA G.R. No. 103917.

Despite this denial, the Court still deems it appropriate to resolve the substantive issues which Lexber raised vis-a-vis the Interim Rules. This is to correct any erroneous legal reasoning which the CA committed, and uphold controlling legal principles for the benefit of the bench, the bar and the public.

The HLURB's prior request for the appointment of a rehabilitation receiver is not a condition precedent before the trial court can give due course to a rehabilitation petition.

To support its argument that the HLURB's prior request is a condition precedent that must be complied with before the trial court can give due course to a rehabilitation petition of a real estate company like Lexber, the CA invoked Section 6(c) of PD-902-A as basis. The pertinent part of this provision states:

*[T]he [SEC] may appoint a rehabilitation receiver of corporations, partnerships or other associations supervised or regulated by **other government agencies, such as banks and insurance companies, upon request of the government agency concerned.** [Emphasis supplied.]*

Notably, the Securities and Exchange Commission's (SECs) jurisdiction over rehabilitation cases had already been transferred to the regional trial courts acting as commercial courts by virtue of Republic Act (RA) 8799^[27] or the Securities Regulation Code.^[28] The CA argues that despite this jurisdictional transfer, the substantive provisions of PD 902-A, particularly those powers which the SEC may exercise in rehabilitation cases, remain.

The CA is correct in this line of reasoning. However it erred in interpreting Section 6(c) to mean that no rehabilitation petition of a corporation that the HLURB regulates, can be heard unless a prior request of this agency for the appointment of a rehabilitation receiver was made.

The CA explains that its reasoning is consistent with the rule that if there is a particular agency regulating a business, *e.g., the Bangko Sentral ng Pilipinas (BSP)* over banks, and the Insurance Commission (IC) over insurance companies, no rehabilitation petition can be initiated without their request for the appointment of a receiver.

The error in this generalization is its failure to identify the distinction between the enumerated examples in Section 6(c), *i.e., banks and insurance companies*, and Lexber, a construction and real estate company.

Under Section 30^[29] of RA 7653,^[30] which had been retained under Section 69^[31] of RA 8971,^[32] the designation of a conservator or the appointment of a receiver for the rehabilitation of banks and quasi-banks, is vested exclusively with the Monetary Board. On the other hand, PD 612^[33] specifically mandates the IC to designate the receiver of an insurance company in case of its insolvency or rehabilitation.^[34]

Clearly, the respective charters of the BSP and the IC specifically authorize them to appoint a receiver in case a company under their regulation is undergoing corporate rehabilitation. Notably, this is not the case with the HLURB. Its enabling law does not grant it this particular power.