

THIRD DIVISION

[G.R. No. 193108, December 10, 2014]

MARILYN VICTORIO-AQUINO, PETITIONER, VS. PACIFIC PLANS, INC. AND MAMERTO A. MARCELO, JR. (COURT-APPOINTED REHABILITATION RECEIVER OF PACIFIC PLANS, INC.), RESPONDENTS.

DECISION

PERALTA, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court which seeks to annul and set aside the Decision^[1] of the Special First Division of the Court of Appeals (CA), dated February 26, 2010, and its Resolution^[2] dated July 21, 2010 denying petitioner's Motion for Reconsideration in the case entitled *Marilyn Victorio-Aquino v. Pacific Plans, Inc. and Mamerto A. Marcelo, Jr.*, docketed as CA-G.R. SP No. 105237.

Respondent Pacific Plans, Inc. (now Abundance Providers and Entrepreneurs Corporation or "APEC")^[3] is engaged in the business of selling pre-need plans and educational plans, including traditional open-ended educational plans (*PEPTrads*). PEPTrads are educational plans where respondent guarantees to pay the planholder, without regard to the actual cost at the time of enrolment, the full amount of tuition and other school fees of a designated beneficiary.^[4]

Petitioner is a holder of two (2) units of respondent's PEPTrads.^[5]

On April 7, 2005, foreseeing the impossibility of meeting its obligations to the availing planholders as they fall due, respondent filed a Petition for Corporate Rehabilitation with the Regional Trial Court (*Rehabilitation Court*), praying that it be placed under rehabilitation and suspension of payments pursuant to Presidential Decree (*P.D.*) No. 902-A, as amended, in relation to the Interim Rules of Procedure on Corporate Rehabilitation (*Interim Rules*).^[6] At the time of filing of the Petition for Corporate Rehabilitation, respondent had more or less thirty four thousand (34,000) outstanding PEPTrads.^[7]

On April 12, 2005, the Rehabilitation Court issued a Stay Order, directing the suspension of payments of the obligations of respondent and ordering all creditors and interested parties to file their comments/oppositions, respectively, to the Petition for Corporate Rehabilitation.^[8] The same Order also appointed respondent Mamerto A. Marcelo (*Rehabilitation Receiver*) as the rehabilitation receiver and set the initial hearing of the case on May 25, 2005.^[9]

Pursuant to the prevailing rules on corporate rehabilitation, respondent submitted to the Rehabilitation Court its proposed rehabilitation plan. Under the terms thereof,

respondent proposed the implementation of a "Swap,"^[10] which will essentially give the planholder a means to exit from the PEPTrads at terms and conditions relative to a termination value that is more advantageous than those provided under the educational plan in case of voluntary termination.^[11]

On February 16, 2006, the Rehabilitation Receiver submitted an Alternative Rehabilitation Plan (ARP) for the approval of the Rehabilitation Court. Under the ARP, the benefits under the PEPTrads shall be translated into fixed-value benefits as of December 31, 2004, which will be termed as Base Year-end 2004 Entitlement, and shall be computed as follows: (i) *for availing plan holders*, based on fifty-percent (50%) of Average School Fee of SY 2005-2006 for every remaining year of availment; (ii) *for non-availing (Group 1) plan holders*,^[12] based on the higher of Base Year-end 2004 Entitlement under the Rehabilitation Proposal or fifty-percent (50%) of Average School Fee of SY 2005-2006 for every year of availment; and (iii) *for non-availing (Group 2) plan holders*,^[13] based on the planholders' contributions with seven percent (7%) net interest per annum from date of full payment on record to December 31, 2004.^[14] The Base Year-end Entitlement will be covered by a Rehabilitation Plan Agreement in lieu of a fixed-value plan.^[15]

For petitioner, she is entitled to receive an aggregate amount consisting of: (a) the value of her total contributions plus interest at the rate of seven percent (7%) from the date of full payment until December 31, 2005 (*Net Translated Value*); and (b) interest on the Net Translated Value at the annual rate of seven percent (7%) from January 1, 2006 until 2010.^[16]

The ARP also provided for tuition support for each enrolment period until SY 2009-2010 depending on the prevailing market rate of the NAPOCOR Bonds and Peso-Dollar exchange rate.^[17] The tuition support is computed as the lesser of the remaining balance of Base Year-end 2004 Entitlement, the last-term tuition or reimbursement on record and the following tuition support ceiling:

Availment Mode	Ceiling (in Php)
Annual	P20,000.00
Semester	P10,000.00
Trimester	P6,000.00 ^[18]

These tuition support payments are considered advances from the Base Year-end 2004 Entitlement.^[19]

As to the funding for the tuition support, the same shall be sourced from either two (2) ways:

- (1) Outright sale of the NAPOCOR bonds and conversion of Dollar proceeds to Peso, up to the equivalent of the tuition support requirements. The payment of the tuition support will be dependent on the terms and exchange rate under which the bonds are liquidated; or
- (2) Forward sale of the underlying Dollars to a financial institution, which then issues notes credit linked with NAPOCOR Bonds. The notes can then be sold to interested financial institution to

provide for liquidity to fund the requirements for tuition support.^[20]

The creditors/oppositors did not oppose/comment on the Rehabilitation Receiver's ARP, although the Parents Enabling Parents Coalition, Inc. (*PEPCI*) filed with the CA, a Petition for *Certiorari* with Application for a TRO/Writ of Preliminary Injunction dated February 10, 2006. As no TRO/Writ of Preliminary Injunction has been issued against the conduct of further proceedings, on April 27, 2006, the Court issued a Decision^[21] approving the ARP, which cradled several appeals filed with the CA, and later on, to this Court that are still pending resolution.^[22]

Nevertheless, respondent commenced with the implementation of its ARP in coordination with, and with clearance from, the Rehabilitation Receiver.^[23]

In the meantime, the value of the Philippine Peso strengthened and appreciated. In view of this development, and considering that the trust fund of respondent is mainly composed of NAPOCOR bonds that are denominated in US Dollars, respondent submitted a manifestation with the Rehabilitation Court on February 29, 2008, stating that the continued appreciation of the Philippine Peso has grossly affected the value of the U.S. Dollar-denominated NAPOCOR bonds, which stood as security for the payment of the Net Translated Values of the PEPTrads.^[24]

Thereafter, the Rehabilitation Receiver filed a Manifestation with Motion to Admit dated March 7, 2008, echoing the earlier tenor and substance of respondent's manifestation, and praying that the Modified Rehabilitation Plan (*MRP*) be approved by the Rehabilitation Court. Under the *MRP*, the ARP previously approved by the Rehabilitation Court is modified as follows: (a) suspension of the tuition support; (b) converting the Philippine Peso liabilities to U.S. Dollar liabilities by assigning to each planholder a share of the remaining asset in proportion to the share of liabilities in 2010; and (c) payments of the trust fund assets in U.S. Dollars at maturity.^[25]

After the submission of comments/opposition by the concerned parties, the Rehabilitation Court issued a Resolution^[26] dated July 28, 2008 approving the *MRP*. In approving the same, the Rehabilitation Court reasoned that in view of the "cram down" power of the rehabilitation court under Section 23 of the Interim Rules, courts have the power to approve a rehabilitation plan over the objection of creditors and even when such proposed rehabilitation plan involves the impairment of contractual obligations.^[27]

Petitioner questioned the approval of the *MRP* before the CA on September 26, 2008. It likewise prayed for the issuance of a TRO and a writ of preliminary injunction to stay the execution of the Resolution dated July 28, 2008.^[28]

In dismissing or denying the Petition for Review, the CA held that: (a) petitioner did not pay the proper amount of docket fees; (b) a Petition for Review under Rule 43 is an improper remedy to question the approval of a modified rehabilitation plan; (c) contrary to petitioner's claim, the alterations in the *MRP* are consistent with the goals of the ARP; and (d) the approval of the *MRP* did not amount to an impairment of the contract between petitioner and respondent. The *fallo* of the assailed Decision^[29] states:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us **DENYING** or **DISMISSING** the petition for review filed in this case and **AFFIRMING** the corporate rehabilitation Court's Resolution dated July 28, 2008 in Special Proceeding No. M-6059.^[30]

Unfortunately for petitioner, despite its motion for reconsideration, the CA denied the same on July 21, 2010.^[31]

Hence, this Petition for Review on *Certiorari* raising the following grounds:

I

The Court of Appeals rendered a decision contrary to law and not in accord with the applicable decisions of the Supreme Court when it sustained the Rehabilitation Court's approval of the Modified Rehabilitation Plan.

II

The Court of Appeals rendered a decision contrary to law when it ruled that a Petition for Review was an improper remedy to question a final order of the Rehabilitation Court approving the Modified Rehabilitation Plan.

III

The Court of Appeals rendered a decision not in accord with the issuances of the Supreme Court and the usual course of judicial proceedings when it declared that Petitioner had not paid the proper amount of filing and docket fees, despite the fact that, as clearly shown in the receipts presented by petitioner, the proper amount of filing fees were paid.^[32]

In its Comment dated October 23, 2006, respondent raised various procedural infirmities on the petition warranting its dismissal, to wit: (1) the assailed decision has become final and executory for failure of petitioner to timely serve a copy of the Petition for Time upon the CA in violation of Section 3, Rule 45 of the Rules of Court; (2) petitioner's motion for reconsideration on the questioned decision raises no new arguments; thus, is merely *pro forma* and did not toll the running of the reglementary period; (3) a petition for review under Rule 43 of the Rules of Court is an improper mode to question the MRP; and (4) petitioner failed to pay the appropriate amount of docket fees when she filed the Petition for Review with the CA.^[33]

On procedural grounds, this Court finds for the petitioner.

First. Respondent asseverates that the CA correctly held that the Petition for Review under Rule 43 of the Rules of Court is an improper mode to question the Resolution approving the MRP, since the same constitutes merely as an interlocutory order and, therefore, a proper subject of a *certiorari* case under Rule 65 of the Rules of Court. On the other hand, petitioner counters that such Resolution is a final order with respect to the approval of the MRP; hence, her recourse to a Petition for Review under Rule 43 of the Rules of Court was proper. Petitioner further argues that such

remedy is clearly in line with the directive of AM No. 04-9-07-SC,^[34] which took effect on October 15, 2004 and, therefore, was the correct rule on appeals prevailing at the time petitioner filed her petition with the CA.^[35]

Petitioner's contention is impressed with merit.

It bears emphasis that the governing rule at the time respondent filed its petition for rehabilitation was the Interim Rules, which does not expressly state the mode of appeal from the decisions, orders and resolutions of the Rehabilitation Court, either prior or after the approval of the rehabilitation plan. Accordingly, this Court issued a Resolution, A.M. No. 04-9-07-SC,^[36] which lays down the proper mode of appeal in cases involving corporate rehabilitation and intra-corporate controversies in order to prevent cluttering the dockets of the courts with appeals and/or petitions for *certiorari*. The first paragraph thereof provides:

1. **All decisions and final orders** in cases falling under the **Interim Rules of Corporate Rehabilitation** and the Interim Rules of Procedure Governing Intra-Corporate Controversies under Republic Act No. 8799 shall be **appealable to the Court of Appeals through a petition for review under Rule 43 of the Rules of Court.**^[37]

Under the said Resolution, all decisions and final orders of the rehabilitation court, regardless of whether they are issued before or after the approval of the rehabilitation court, shall be brought on appeal to the CA *via* a petition for review under Rule 43 of the Rules of Court.

Subsequently, the Supreme Court issued A.M. No. 00-8-10-SC^[38] (*Rehabilitation Rules*), which took effect on January 16, 2009, embodying the rehabilitation rules applicable to petitions for rehabilitation of corporations, partnerships and associations pursuant to P.D. No. 902-A, as amended. Section 1, Rule 8 thereof unequivocally states:

SEC. 1. *Motion for Reconsideration.* — 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 *certiorari* 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 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.^[39]

While We agree with respondent that the later rule states that orders 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, such rule does not apply to the instant case as the same was not yet in effect at the time petitioner filed her Petition for Review with the CA. Stated otherwise, the prevailing law at the time petitioner filed said petition with the CA is the Interim Rules as well as A.M. No. 04-