

## FIRST DIVISION

[ G.R. No. 171132, August 15, 2012 ]

**MANUEL D. YNGSON, JR. (IN HIS CAPACITY AS THE LIQUIDATOR OF ARCAM & COMPANY, INC.), PETITIONER, VS. PHILIPPINE NATIONAL BANK, RESPONDENT.**

### D E C I S I O N

**VILLARAMA, JR., J.:**

On appeal are the Resolutions dated April 14, 2005<sup>[1]</sup> and January 24, 2006<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 88735. The CA dismissed petitioner's petition for review of the January 4, 2005 Resolution<sup>[3]</sup> and February 9, 2000 Order<sup>[4]</sup> of the Securities and Exchange Commission (SEC) for failure of petitioner to attach to the petition copies of material portions of the records and other relevant or pertinent documents.

The facts follow:

ARCAM & Company, Inc. (ARCAM) is engaged in the operation of a sugar mill in Pampanga.<sup>[5]</sup> Between 1991 and 1993, ARCAM applied for and was granted a loan by respondent Philippine National Bank (PNB).<sup>[6]</sup> To secure the loan, ARCAM executed a Real Estate Mortgage over a 350,004square meter parcel of land covered by TCT No. 340592-R and a Chattel Mortgage over various personal properties consisting of machinery, generators, field transportation and heavy equipment.

ARCAM, however, defaulted on its obligations to PNB. Thus, on November 25, 1993, pursuant to the provisions of the Real Estate Mortgage and Chattel Mortgage, PNB initiated extrajudicial foreclosure proceedings in the Office of the Clerk of Court/Ex Officio Sheriff of the Regional Trial Court (RTC) of Guagua, Pampanga.<sup>[7]</sup> The public auction was scheduled on December 29, 1993 for the mortgaged real properties and December 8, 1993 for the mortgaged personal properties.

On December 7, 1993, ARCAM filed before the SEC a Petition for Suspension of Payments, Appointment of a Management or Rehabilitation Committee, and Approval of Rehabilitation Plan, with application for issuance of a temporary restraining order (TRO) and writ of preliminary injunction. The SEC issued a TRO and subsequently a writ of preliminary injunction, enjoining PNB and the Sheriff of the RTC of Guagua, Pampanga from proceeding with the foreclosure sale of the mortgaged properties.<sup>[8]</sup> An interim management committee was also created.

On February 9, 2000, the SEC ruled that ARCAM can no longer be rehabilitated. The SEC noted that the petition for suspension of payment was filed in December 1993 and six years had passed but the potential "white knight" investor had not infused the much needed capital to bail out ARCAM from its financial difficulties.<sup>[9]</sup> Thus, the

SEC decreed that ARCAM be dissolved and placed under liquidation.<sup>[10]</sup> The SEC Hearing Panel also granted PNB's motion to dissolve the preliminary injunction and appointed Atty. Manuel D. Yngson, Jr. & Associates as Liquidator for ARCAM.<sup>[11]</sup> With this development, PNB revived the foreclosure case and requested the RTC Clerk of Court to re-schedule the sale at public auction of the mortgaged properties.

Contending that foreclosure during liquidation was improper, petitioner filed with the SEC a Motion for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction to enjoin the foreclosure sale of ARCAM's assets. The SEC *en banc* issued a TRO effective for seventy-two (72) hours, but said TRO lapsed without any writ of preliminary injunction being issued by the SEC. Consequently, on July 28, 2000, PNB resumed the proceedings for the extrajudicial foreclosure sale of the mortgaged properties.<sup>[12]</sup> PNB emerged as the highest winning bidder in the auction sale, and certificates of sale were issued in its favor.

On November 16, 2000, petitioner filed with the SEC a motion to nullify the auction sale.<sup>[13]</sup> Petitioner posited that all actions against companies which are under liquidation, like ARCAM, are suspended because liquidation is a continuation of the petition for suspension proceedings. Petitioner argued that the prohibition against foreclosure subsisted during liquidation because payment of all of ARCAM's obligations was proscribed except those authorized by the Commission. Moreover, petitioner asserted that the mortgaged assets should be included in the liquidation and the proceeds shared with the unsecured creditors.

In its Opposition, PNB asserted that neither Presidential Decree (P.D.) No. 902-A nor the SEC rules prohibits secured creditors from foreclosing on their mortgages to satisfy the mortgagor's debt after the termination of the rehabilitation proceedings and during liquidation proceedings.<sup>[14]</sup>

On January 4, 2005, the SEC issued a Resolution<sup>[15]</sup> denying petitioner's motion to nullify the auction sale. It held that PNB was not legally barred from foreclosing on the mortgages.

Aggrieved, petitioner filed on February 28, 2005, a petition for review in the CA questioning the January 4, 2005 Resolution of the SEC.<sup>[16]</sup>

By Resolution dated April 14, 2005, the CA dismissed the petition on the ground that petitioner failed to attach material portions of the record and other documents relevant to the petition as required in Rule 46, Section 3 of the 1997 Rules of Civil Procedure, as amended. The CA likewise denied ARCAM's motion for reconsideration in its Resolution dated January 24, 2006.

Hence this petition under Rule 45 arguing that:

4.1. THE SEC ERRED IN FAILING TO APPLY THE RULES OF CONCURRENCE AND PREFERENCE OF CREDITS UNDER THE CIVIL CODE AND JURISPRUDENCE WHEN PD 902-A PROVIDES THAT THE SAME BE APPLIED IN INSTANCES WHEREBY AN ENTITY IS ORDERED DISSOLVED AND PLACED UNDER LIQUIDATION ON ACCOUNT OF FAILURE TO

REHABILITATE DUE TO INSOLVENCY.<sup>[17]</sup>

4.2. IT WAS GROSSLY ERRONEOUS FOR THE SEC TO HAVE ALLOWED PNB TO FORECLOSE THE MORTGAGE WITHOUT FIRST ALLOWING THE ARCAM LIQUIDATOR TO MAKE A DETERMINATION OF THE LIENS OVER THE ARCAM REAL PROPERTIES, SINCE THE LIQUIDATOR HAD INITIALLY DETERMINED THAT ASIDE FROM PNB, SOME ARCAM WORKERS MAY ALSO HAVE A LEGAL LIEN OVER THE SAID PROPERTY AS REGARDS THEIR CLAIMS FOR UNPAID WAGES. THESE LIENS OVER THE SAME MOVABLE OR REAL PROPERTY ARE TO BE SATISFIED PRO-RATA WITH THE CONTRACTUAL LIENS PURSUANT TO 2247 AND 2249 OF THE CIVIL CODE, IN RELATION TO 2241 TO 2242 RESPECTIVELY. ALSO, THERE MAY BE SOME TAX ASSESSMENTS THAT THE LIQUIDATOR DOES NOT KNOW ABOUT, AND IF THERE WERE, THESE COULD COMPRISE TAX LIENS, WHICH UNDER ARTICLE 2243 OF THE CIVIL CODE ARE CLEARLY GIVEN PRIORITY OVER OTHER PREFERRED CLAIMS SINCE SUCH ARE TO BE SATISFIED FIRST, OVER OTHER LIENS PROVIDED UNDER ARTICLES 2241 AND 2242 OF THE CIVIL CODE, SUCH AS MORTGAGE LIENS.<sup>[18]</sup>

4.3. THE SEC LABORED UNDER THE MISTAKEN IMPRESSION THAT AFTER AN ENTITY IS DISSOLVED AND PLACED UNDER LIQUIDATION DUE TO INSOLVENCY, SECURED CREDITORS ARE AUTOMATICALLY ALLOWED TO FORECLOSE OR EXECUTE OR OTHERWISE MAKE GOOD ON THEIR CREDITS AGAINST THE DEBTOR.<sup>[19]</sup>

4.4. JURISPRUDENCE ON THE MATTER ALSO NEGATES THE SEC'S HOLDING THAT THE FORECLOSURE BY PNB WAS LEGAL. EVEN ASSUMING FOR THE SAKE OF ARGUMENT THAT PNB IS THE SOLE AND ONLY LIEN HOLDER, IT STILL CANNOT FORECLOSE UNLESS THE LIQUIDATOR AGREES TO SUCH OR THAT THE SEC GAVE PNB PRIOR PERMISSION TO INSTITUTE THE SEPARATE FORECLOSURE PROCEEDINGS.<sup>[20]</sup>

4.5. RESPONDENT PNB SHOULD BE MADE TO PAY DAMAGES FOR THE REASON THAT THE FORECLOSURE PROCEEDINGS WERE ATTENDED WITH BAD FAITH.<sup>[21]</sup>

The issues to be resolved are: (1) whether the CA correctly dismissed the petition for failure to attach material documents referred to in the petition; and (2) whether PNB, as a secured creditor, can foreclose on the mortgaged properties of a corporation under liquidation without the knowledge and prior approval of the liquidator or the SEC.

On the procedural issue, the Court finds that the CA erred in dismissing the petition for review before it on the ground of failure to attach material portions of the record and other documents relevant to the petition. A perusal of the petition for review filed with the CA, and as admitted by PNB,<sup>[22]</sup> reveals that certified true copies of the assailed January 4, 2005 SEC Resolution and the February 9, 2000 SEC Order appointing petitioner Atty. Manuel D. Yngson, Jr. as liquidator were annexed therein.

We find the foregoing attached documents sufficient for the appellate court to decide the case at bar considering that the SEC resolution contains statements of the factual antecedents material to the case. The Resolution also contains the SEC's findings on the legality of PNB's foreclosure of the mortgages. The SEC held that when the rehabilitation proceeding was terminated and the suspensive effect of the order staying the enforcement of claims was lifted, PNB could already assert its preference over unsecured creditors, and the secured asset and the proceeds need not be included in the liquidation and shared with the unsecured creditors.<sup>[23]</sup> Before the CA, petitioner raised only the same legal questions as there was no controversy involving factual matters. Petitioner claimed that the SEC erred in not applying the rules on concurrence and preference of credits, and in denying its motion to nullify the auction sale of the secured properties.<sup>[24]</sup> Therefore, the assailed SEC Resolution is the only material portion of the record that should be annexed with the petition for the CA to decide on the correctness of the SEC's interpretation of the law and jurisprudence on the matter before it.

Having so ruled, this Court would normally order the remand of the case to the CA for resolution of the substantive issues. However, we find it more appropriate to decide the merits of the case in the interest of speedy justice considering that the parties have adequately argued all points and issues raised. It is the policy of the Court to strive to settle an entire controversy in a single proceeding, and to leave no root or branch to bear the seeds of future litigation.<sup>[25]</sup> The ends of speedy justice would not be served by a remand of this case to the CA especially since any ruling of the CA on the matter could end up being appealed to this Court.

Did the SEC then err in ruling that PNB was not barred from foreclosing on the mortgages? We answer in the negative.

In the case of *Consuelo Metal Corporation v. Planters Development Bank*,<sup>[26]</sup> which involved factual antecedents similar to the present case, the court has already settled the above question and upheld the right of the secured creditor to foreclose the mortgages in its favor during the liquidation of a debtor corporation. In that case, Consuelo Metal Corporation (CMC) filed with the SEC a petition to be declared in a state of suspension of payment, for rehabilitation, and for the appointment of a rehabilitation receiver or management committee under Section 5(d) of P.D. No. 902-A. On April 2, 1996, the SEC, finding the petition sufficient in form and substance, declared that "all actions for claims against CMC pending before any court, tribunal, office, board, body and/or commission are deemed suspended immediately until further orders" from the SEC. Then on November 29, 2000, upon the management committee's recommendation, the SEC issued an Omnibus Order directing the dissolution and liquidation of CMC. Thereafter, respondent Planters Development Bank (Planters Bank), one of CMC's creditors, commenced the extrajudicial foreclosure of CMC's real estate mortgage. Planters Bank extrajudicially foreclosed on the real estate mortgage as CMC failed to secure a TRO. CMC questioned the validity of the foreclosure because it was done without the knowledge and approval of the liquidator. The Court ruled in favor of the respondent bank, as follows:

In *Rizal Commercial Banking Corporation v. Intermediate Appellate Court*, we held that if rehabilitation is no longer feasible and the assets of