

SECOND DIVISION

[G.R. No. 167674, June 17, 2008]

**PHILIPPINE ISLANDS CORPORATION FOR TOURISM
DEVELOPMENT, INC., PETITIONER, VS. VICTORIAS MILLING
COMPANY, INC., RESPONDENT.**

DECISION

QUISUMBING, J.:

This is a petition for review under Rule 45 of the Rules of Court seeking a reversal of the Decision^[1] dated June 30, 2004 and the Resolution^[2] dated March 30, 2005 of the Court of Appeals in CA-G.R. SP No. 79230. The appellate court had affirmed the Order^[3] dated June 20, 2002 of the Securities and Exchange Commission (SEC) in SEC Case No. 07-97-5693, denying petitioner's motion to lift the suspension of proceedings of the civil case for collection of a sum of money which petitioner had filed against respondent Victorias Milling Company, Inc. (VMC) before the Regional Trial Court (RTC) of Makati City, Branch 148.

The facts culled from the records are as follows:

On March 7, 1997, petitioner Philippine Islands Corporation for Tourism Development, Inc. (PICTD) filed a complaint^[4] for collection of a sum of money with prayer for the issuance of a writ of preliminary attachment against VMC before the RTC of Makati City, Branch 148. The complaint was docketed as Civil Case No. 97-483. In its complaint, PICTD alleged that VMC obtained loans from the CICM Missionaries, Inc. in the amount of P3,259,988.08 and from the Congregation of the Most Holy Redeemer in the amount of P1,211,596.00 Both loans were assigned to PICTD by way of a deed of assignment.

When the loans matured on March 3, 1997, PICTD sought payment from VMC but the latter failed to pay, prompting PICTD to file the abovementioned complaint. The RTC ordered the issuance of a writ of preliminary attachment against VMC's properties. However, upon VMC's motion, the writ of attachment was lifted when VMC deposited a counter attachment bond.

Meanwhile, on July 4, 1997, VMC filed a petition^[5] before the SEC to declare itself in a state of suspension of payments, alleging that although it has sufficient property to cover all of its debts, it foresees its inability to pay them when they become due because of financial difficulties. VMC sought the appointment of a management committee that would oversee the implementation of its proposed rehabilitation plan so that it can continue its operations and thus enable it to meet its obligations and satisfy its liabilities.

On July 8, 1997, the SEC ordered the suspension of all actions or claims against

VMC pending before any court, tribunal, office, board, body and/or commission.^[6] Pursuant to said order, VMC filed before the RTC an urgent motion to suspend proceedings in Civil Case No. 97-483.^[7] The RTC, in an Order^[8] dated September 26, 1998, granted VMC's motion and suspended proceedings in the civil case.

On December 29, 1999, PICTD filed before the SEC a motion to lift the suspension of proceedings.^[9] In an Order dated June 20, 2002, the SEC denied PICTD's motion. The SEC ruled that PICTD is merely a general creditor who was able to seize the property of the debtor through an attachment issued before judgment and did not have a prior security agreement with VMC that will ripen into a creditor's right in case of default. Thus, its claim against VMC could not take precedence over the secured creditors.^[10] The dispositive portion of the SEC Order states:

WHEREFORE, premises considered, PIC's Motion to Lift [the] Suspension of Proceedings is hereby **DENIED** for lack of merit.

SO ORDERED. ^[11]

PICTD then appealed to the Court of Appeals which affirmed the SEC's Order. The dispositive portion of the appellate court's decision reads:

WHEREFORE, in view of the foregoing, the petition for review is hereby **DISMISSED** and the Order dated 20 June 2002 of the Securities and Exchange Commission in SEC Case No. 07-97-5693 is hereby **AFFIRMED** *in toto*.

SO ORDERED. ^[12]

Hence, this petition.

PICTD raises the following issues for our resolution:

I.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN LIMITING THE ISSUE ON THE APPLICABILITY OF THE ORDER OF SUSPENSION ISSUED BY THE SEC ON THE CLAIM OF PETITIONER FILED BEFORE THE RTC.

II.

WHETHER OR NOT THE COURT OF APPEALS FAILED TO RESOLVE THAT UNDER THE CIRCUMSTANCES OF THE PRESENT CASE *VIS-À-VIS* SECTION 4-10, RULE IV OF THE RULES OF PROCEDURE ON CORPORATE RECOVERY[,] THE SEC HAS THE POWER TO LIFT OR MODIFY THE ORDER OF SUSPENSION.

III.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT EXCLUDING THE CLAIM OF PETITIONER IN CIVIL CASE NO. 97-[483] FROM THE STAY ORDER ISSUED BY THE SEC IN SEC CASE NO. 07-97[-]5693.

IV.

WHETHER OR NOT PETITIONER IS GUILTY OF FORUM SHOPPING.^[13]

On the other hand, VMC posits the following issues for our resolution:

I.

WHETHER OR NOT PETITIONER'S CLAIM IN CIVIL CASE NO. 97-483 IS INCLUDED IN THE COVERAGE OF THE SEC ORDER OF SUSPENSION.

II.

WHETHER OR NOT PETITIONER IS GUILTY OF FORUM SHOPPING.^[14]

In sum, the issues are (1) whether or not the proceedings of the complaint for collection of a sum of money filed by PICTD against VMC before the RTC of Makati City should be excluded from the SEC Order suspending all actions or claims against VMC pending before any court, tribunal, office, board, body and/or commission; and (2) whether or not PICTD is guilty of forum shopping.

PICTD argues that the Court of Appeals erred when it ruled that the order of suspension suspends all actions or claims against VMC without qualification as to whether the claim is secured or unsecured. It also argues that the SEC, had it been objective and cognizant of the predicament of PICTD, should have lifted the order of suspension because under Section 4-10,^[15] Rule IV of the Rules of Procedure on Corporate Recovery of the SEC, the SEC can, on motion or *motu proprio*, grant, on a case-to-case basis, a relief from the stay order issued.^[16]

On the other hand, VMC counters that under Section 6(c)^[17] of Presidential Decree No. 902-A^[18] as amended by P.D. No. 1799, all claims for actions against a corporation declared to be in a status of suspension of payments and under a management committee are suspended.^[19] VMC also argues that PICTD's effort to distinguish itself as a secured creditor exempt from the order of suspension of proceedings will not help its cause since P.D. No. 902-A makes no distinction and the Order dated July 8, 1997 of the SEC suspending all actions is explicit.^[20]

Before ruling on the merits of the case, we first address the procedural issue of whether or not petitioner PICTD is guilty of forum shopping. Respondent VMC contends that PICTD is guilty of forum shopping because it wants to extirpate itself from the SEC Order dated July 8, 1997 directing the suspension of all claims or actions against VMC even though said order had already been upheld by the Court of Appeals in another case docketed as CA-G.R. SP No. 61267 and that said decision had already become final and executory.^[21]

After considering the circumstances of this case and the submissions of the parties, we are in agreement that PICTD is not guilty of forum shopping.

Forum shopping is defined as an act of a party, against whom an adverse judgment or order has been rendered in one forum, of seeking and possibly getting a favorable opinion in another forum, other than by appeal or special civil action for