

THIRD DIVISION

[G.R. No. 172895, July 30, 2008]

UNION BANK OF THE PHILIPPINES PETITIONER, VS. ASB DEVELOPMENT CORPORATION, RESPONDENT.

D E C I S I O N

CHICO-NAZARIO, J.:

This is a Petition for Review seeking to set aside the Decision^[1] dated 31 May 2005 and Resolution dated 31 May 2006 of the Court of Appeals in CA-G.R. SP No. 85780 which sustained the Resolution dated 6 July 2004 of the Securities and Exchange Commission (SEC) *En Banc* in SEC-EB Case No. 12-03-08 which, in turn, affirmed the Resolution dated 11 December 2003 of the SEC Hearing Panel in SEC Case No. 05-00-6609.

I FACTS

The factual and procedural antecedents of this case are as follows:

The Indenture Contracts

On 29 May 1989, respondent ASB Development Corporation (ASBDC), a domestic corporation organized and existing under Philippine laws, executed a Mortgage Trust Indenture (MTI) and, thereafter, supplemental indentures, in favor of Rizal Commercial Banking Corporation (RCBC), as trustee for the following creditor banks: RCBC itself, petitioner Union Bank of the Philippines (UBP) and United Coconut Planters Bank (UCPB). Under said MTI and supplemental indentures, the creditor banks granted respondent ASBDC a loan in the total amount of P1.198 billion, P122 million of which was extended by petitioner UBP. As security for the loan, respondent ASBDC mortgaged to RCBC real properties covered by Transfer Certificates of Title (TCTs) No. 9836, No. 9837, and No. 9838. Petitioner UBP has an aliquot share of 10.32% in said mortgages as security for its loan to respondent ASBDC.

The Petition for Rehabilitation

On 2 May 2000, respondent ASBDC, together with ASB Holdings Inc., ASB Realty Corporation, ASB Land Inc., ASB Finance Inc., Makati Hope Christian School Inc., Bel-Air Holdings Corporation, Winchester Trading Inc., VYL Development Corporation, and Neighborhood Holdings Inc. (collectively referred to as the ASB Group of Companies), as affiliated companies commonly owned by Mr. Luke C. Roxas, filed with the SEC Securities and Investigations Clearing Department (SICD) a Petition for Rehabilitation with Prayer for Suspension of Actions and Proceedings. To take cognizance of the said Petition, the SEC Hearing Panel was formed

composed of three hearing officers from SICD.

Petitioner UBP, Metropolitan Bank and Trust Company (Metrobank), RCBC, Philippine National Bank (PNB), Prudential Bank, UCPB and Equitable-PCI Bank opposed the petition for rehabilitation of the ASB Group of Companies.

On 4 May 2000, the SEC Hearing Panel set for hearing on 22 May 2000 the prayer of the ASB Group of Companies for suspension of payment and the creation of a management committee and/or the appointment of a rehabilitation receiver. For the time being, the SEC Hearing Panel issued a sixty-day suspension order against all actions for claims against the ASB Group of Companies pending or still to be filed before any court, office, board, body and/or tribunal.

The SEC Hearing Panel then appointed Atty. Monico V. Jacob as Interim Receiver and ordered the latter to post a bond in the amount of P200,000.00 within ten days from notice. Atty. Jacob refused the appointment, leading to the appointment instead of Fortunato B. Cruz. The SEC Hearing Panel enjoined the ASB Group of Companies from disposing of their properties in any manner whatsoever except in the ordinary course of business and from making payments of its liabilities outstanding as of the date of the filing of its petition for rehabilitation.

The SEC Hearing Panel subsequently issued various Orders extending the suspension order it initially issued on 4 May 2000 until 29 April 2001.

On 10 October 2000, the SEC Hearing Panel issued an Order giving due course to the Petition for Rehabilitation.

The SEC Hearing Panel approved on 26 April 2001 the Rehabilitation Plan of the ASB Group of Companies. On the same day, the SEC Hearing Panel appointed Interim Receiver Fortunato B. Cruz as Rehabilitation Receiver of the ASB Group of Companies.

Related Cases

In the course of the foregoing proceedings before the SEC Hearing Panel, the following cases arose:

Petitioner UBP and PNB assailed the 4 May 2000 Suspension Order of the SEC Hearing Panel before the Court of Appeals in a Petition for *Certiorari Ad Cautelam*, docketed as CA-G.R. SP No. 66649, wherein they prayed *inter alia* that the said Order be set aside. The Court of Appeals later dismissed CA-G.R. SP No. 66649 in its 31 January 2002 Resolution, and denied the Motion for Reconsideration of petitioner UBP and PNB in its 4 June 2002 Resolution. Petitioner UBP and PNB went to this Court via a Petition for Review on *Certiorari*, docketed as G.R. No. 153830, challenging the Resolutions dated 31 January 2002 and 4 June 2002 of the Court of Appeals in CA-G.R. SP No. 66649, but their petition was dismissed by this Court in a 16 September 2002 Resolution. Entry of Judgment was made in G.R. No. 153830 on 28 February 2003.

Petitioner UBP would also join a consortium of creditor banks which filed a Petition for Review on *Certiorari* with Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction before the SEC *En Banc* seeking to annul

the 10 October 2000 Order of the SEC Hearing Panel giving due course to the Petition for Rehabilitation of the ASB Group of Companies. Said consortium subsequently filed a Supplemental Petition with the SEC *En Banc* praying for the enjoinder of the implementation of the 27 October 2000 Order of the SEC Hearing Panel which granted yet again the motion of the ASB Group of Companies for extension of the 4 May 2000 Suspension Order. The SEC *En Banc* dismissed this Petition in its 11 November 2003 Resolution. Petitioner UBP, however, no longer participated when the PNB and Equitable- PCI Bank assailed the 11 November 2003 Resolution of the SEC *En Banc* before the Court of Appeals in CA-G.R. SP No. 82800.

- The Extrajudicial Foreclosure and Sale

In the meantime, two months after the SEC Hearing Panel approved the Rehabilitation Plan for the ASB Group of Companies and during the pendency of CA-G.R. SP No. 66649 before the Court of Appeals, petitioner UBP, citing the failure of respondent ASBDC to pay its indebtedness, filed on 27 July 2001 with the Office of the Clerk of Court of the Regional Trial Court (RTC) of Mandaluyong City, a Notice of Extrajudicial Sale of Properties under Act No. 3135, as amended, over its 10.32% participation in the mortgage of real properties covered by TCTs No. 9836, No. 9837, and No. 9838 securing the loans of respondent ASBDC under the MTI and supplemental indentures.

On 24 August 2001, Notary Public Jimmy D. Lacebal auctioned the mortgaged properties of respondent ASBDC, during which petitioner UBP submitted the highest bid in the amount of P178,635,330.48. Atty. Lacebal issued a Certificate of Sale over the said properties in favor of petitioner UBP. Vice Executive Judge Japar D. Dimaampao of the Mandaluyong City RTC approved the Certificate of Sale.

Petitioner UBP then filed a request with the Register of Deeds of Mandaluyong City for registration of the Certificate of Sale on TCTs No. 9836, No. 9837 and No. 9838. On 28 August 2001, the Register of Deeds requested RCBC (the trustee for petitioner UBP and the other creditor-mortgagee banks under the MTI and supplemental indentures) to present the owner's duplicate copies of said certificates of title for the purpose of annotating the Certificate of Sale on the same. RCBC, however, failed to act on said request.

In a letter dated 5 December 2001, petitioner UBP requested the Register of Deeds of Mandaluyong City to just effect the registration and annotation of the Certificate of Sale on the original copies of TCTs No. 9836, No. 9837 and No. 9838 which were on file with the Registry of Deeds.

The Register of Deeds, in a reply-letter dated 8 December 2002, denied the request of petitioner UBP to merely annotate the Certificate of Sale on the original copies of TCTs No. 9836, No. 9837 and No. 9838 since such annotation partakes of the nature of a voluntary dealing on registered land wherein the production of the owner's duplicate copies of the certificates of title is necessary.

On 22 January 2002, petitioner UBP filed a Motion for Reconsideration with the Register of Deeds of Mandaluyong City. However, the Register of Deeds maintained its original stand and denied the motion on 4 February 2002.

Petitioner UBP thus filed on 7 February 2002 a *Consulta* with the Land Registration Authority (LRA) soliciting a resolution reversing the denial of its request for

annotation of the Certificate of Sale on the original copies of TCTs No. 9836, No. 9837 and No. 9838.

On 3 September 2003, respondent ASBDC filed before the SEC Hearing Panel a Motion and a Supplement dated 15 September 2003 praying for the nullification of the extrajudicial sale of its properties conducted on 24 August 2001. The SEC Hearing Panel issued a Resolution dated 11 December 2003 granting said Motion of respondent ASBDC, to wit:

WHEREFORE, premises considered, petitioners' Motion dated 3 September 2003 is GRANTED. Accordingly, all proceedings pertaining to and in connection with the extrajudicial sale caused by Union Bank of the Philippines involving properties covered by TCTs Nos. 9836, 9837 and 9838 issued by the Registry of Deeds of Mandaluyong City are hereby ANNULLED and SET ASIDE.^[2]

Petitioner UBP filed with the SEC *En Banc* a Petition for Review on *Certiorari* assailing the afore-quoted Resolution of the SEC Hearing Panel, which was docketed as SEC-EB Case No. 12-03-08. Petitioner UBP contended that the annulment of the extrajudicial sale was contrary to law, arguing that:

1. Article 1308 of the Civil Code of the Philippines on mutuality of contracts provides "The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them."

In signing the MTI and its Supplemental, ASBDC had agreed and bound itself to comply with all the provisions of the contract.

2. ASBDC violated the proscription against unilateral cancellation of contracts under Article 1159 of the Civil Code;
3. Respondent SEC Hearing Panel amended or expanded the rule making powers in suspending all actions and claims against ASBDC immediately after the petition for rehabilitation is filed;
4. Contravened the constitutional proscription against impairment of contracts;
5. Deprived Union Bank of its substantial right over its property without due process of law;
6. Unilaterally revoked and/or nullified the right of a secured creditor like Union Bank with existing contractual rights;
7. Amended and/or modified existing and valid contracts between the parties, without their consent.

On 6 July 2004, the SEC *En Banc* issued a Resolution denying the Petition, thus

WHEREFORE, the Petition for Review on *Certiorari* assailing the Resolution dated 11 December 2003 issued by Respondent Hearing Panel is hereby DENIED for lack of merit.^[3]

In so doing, the SEC *En Banc* held that the SEC Hearing Panel acted in accordance with Section 6(c) of Presidential Decree No. 902-A^[4] as amended, which granted to the SEC the following power:

- c) To appoint one or more receivers of the property, real and personal, which is the subject of the action pending before the Commission in accordance with the pertinent provisions of the Rules of Court in such other cases whenever necessary in order to preserve the rights of the parties- litigants and/or protect the interest of the investing public and creditors: x x x *Provided, finally, That **upon appointment of a management committee, rehabilitation receiver, board or body, pursuant to the Decree, all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body shall be suspended accordingly.*** (Emphasis supplied.)

CA-G.R. SP No. 85780

Petitioner UBP then sought recourse with the Court of Appeals *via* a Petition for Review, docketed as CA-G.R. SP No. 85780, seeking the reversal of the 6 July 2004 Resolution of the SEC *En Banc*. It argued that respondent ASBDC should not have filed a Petition for Rehabilitation as the latter itself admitted in the same petition that it possessed sufficient properties to cover its obligations, but only that it foresaw its inability to pay its obligations within a period of one year.

On 31 May 2005, the Court of Appeals rendered the assailed Decision dismissing the Petition for Review, the dispositive of which reads:

WHEREFORE, premises considered, the PETITION FOR REVIEW is hereby DISMISSED. Accordingly, the Securities and Exchange Commission En Banc's Resolution dated July 6, 2004 and the Securities and Exchange Commission's Hearing Panel's Resolution dated December 11, 2003 are hereby affirmed *in toto*.^[5]

The Court of Appeals cited the Rules of Procedure on Corporate Recovery which provides for two distinct remedies for a financially distressed corporation, namely: (1) **suspension of payments under Section 3-1, Rule III**; and (2) **rehabilitation proceedings under Section 4-1, Rule IV**. These provisions read:

SECTION 3-1. Suspension of Payments. - Any debtor which possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due may petition the Commission that it be declared in the state of suspension of payments.

x x x x

SECTION 4-1. Who may petition. - A debtor which is insolvent because its assets are not sufficient to cover its liabilities, or which is technically insolvent under Section 3-12 of these Rules, but which may still be rescued or revived through the institution of some changes in its management, organization, policies, strategies operations or finances, may petition the Commission to be placed under rehabilitation.