

THIRD DIVISION

[G.R. No. 172192, December 23, 2008]

CHINA BANKING CORPORATION, PETITIONER, VS. ASB HOLDINGS, INC., ASB REALTY CORP., ASB DEVELOPMENT CORP. (FORMERLY TIFFANY TOWER REALTY CORP.), ASB LAND, INC., ASB FINANCE, INC., MAKATI HOPE CHRISTIAN SCHOOL, INC., BEL-AIR HOLDINGS CORP., WINCHESTER TRADING, INC., VYL DEVELOPMENT CORP., GERICK HOLDINGS CORP., AND NEIGHBORHOOD HOLDINGS, INC., RESPONDENTS.

D E C I S I O N

REYES, R.T., J.:

THE Constitutional proscription on impairment of contracts and preference of credits are at the core of this controversy involving the rehabilitation plan of ASB Development Corporation, a debtor of petitioner China Banking Corporation (China Bank).

Before Us is a petition for review on *certiorari* under Rule 45 of the Decision^[1] of the Court of Appeals (CA) upholding the Securities and Exchange Commission (SEC) approval of respondents' corporate rehabilitation plan.

The Facts

In 1999, respondent ASB Development Corporation applied for and was granted a credit line by petitioner China Bank in the principal amount of P35,000,000.00. The loan was secured by a real estate mortgage constituted over two contiguous lots with a combined area of 1,332.5 square meters in Grace Park, Caloocan City. The said properties are covered by Transfer Certificate of Title (TCT) Nos. 2981096 and 298110 of the Register of Deeds of Caloocan City.

In 2000, respondent ASB Realty Corporation, an affiliate of ASB Development, obtained an omnibus credit line from petitioner China Bank in the amount of P265,000,000.00. The loan was secured by two real estate mortgages: (1) over two parcels of land situated at Salcedo, Legaspi Village, Makati City, covered by TCT Nos. 205136 and 206189; and (2) over a parcel of land located at Constellation Street, Bel-Air Village, Makati City, covered by TCT No. 201933.

Respondent corporations defaulted in the payment of the agreed loan amortizations, interest, and other charges. Demands to pay were left unheeded.

On May 2, 2000, ASB Development Corporation and its affiliates, including ASB Realty, ASB Holdings, ASB Land, ASB Finance, Makati Hope Christian School, Bel-Air Holdings, Winchester Trading, VYL Development, Gerick Holdings and Neighborhood Holdings, filed before the SEC a petition for rehabilitation with prayer for suspension

of actions and proceedings, pursuant to Presidential Decree No. 902-A, as amended, docketed as SEC Case No. 05-00-6609. In its petition, respondent averred, *inter alia*, that:

6. The total assets of petitioner ASB Group of Companies, together with petitioner ASB Allied Companies, amount to Nineteen Billion Four Hundred Ten Million Pesos (P19,410,000,000.00).

7. The Projects were financed with loans or borrowings from bank and individual creditors which resulted in petitioner Group of Companies having a total liability in the amount of Twelve Billion Seven Hundred Million Pesos (P12,700,000,000.00).

8. On account of the sudden non-renewal and/or the massive withdrawal by creditors of their loans to petitioner ASB Holdings, Inc., coupled with the recent developments in the country, like, among others, (i) the glut in the real estate market; (ii) the severe drop in the sale of real properties; (iii) the depreciation of the peso vis-à-vis the dollar; and (iv) the decreased investor confidence in the economy, petitioner Group of Companies was unable to complete and sell some of its projects on schedule and, hence, was unable to service its obligations as they fell due.

9. Petitioner Group of Companies possesses sufficient property to cover its obligations. However, petitioner Group of Companies foresees its inability to pay its obligations within a period of one (1) year.

10. Because of the inability of the Group of Companies to pay its obligations as they respectively fall due, its secured and non-secured creditors pressed for payments of due and maturing obligations and threatened to initiate separate actions against it, which will adversely affect its operations and shatter its hope in rehabilitating itself for the benefit of its investors and creditors and the general public.

11. There is a clear, present and imminent danger that the creditors of petitioner Group of Companies will institute extrajudicial and judicial foreclosure proceedings and file court actions unless restrained by this Honorable Commission.

12. The institution of extrajudicial and judicial foreclosure proceedings and the filing of court actions against petitioner Group of Companies will necessarily result in the paralization of its business operation and its assets being lost, dissipated or wasted.

13. There is, therefore, a need for the suspension of payment of all claims against petitioner Group of Companies, in the separate and combined capacities of its member companies, while it is working for its rehabilitation.

14. Petitioner Group of Companies has at least seven hundred twelve (712) creditors, three hundred seventeen (317) contractors/suppliers and four hundred ninety-two (492) condominium unit buyers, who will

certainly be prejudiced by the disruption of the operations of petitioner ASB Group of Companies which seeks to protect the interest of the parties from any precipitate action of any person who may only have his individual interest in mind.

15. The business of petitioner ASB Group of Companies is feasible and profitable. Petitioner Group of Companies will eventually be able to pay all its obligations given some changes in its management, organization, policies, strategies, operations, or finances.

16. With the support of this Honorable Commission, petitioner Group of Companies is confident that it will be able to embark on a sound and viable rehabilitation plan, with a built-in debt repayment schedule through the optimal use of their present facilities, assets and resources. Although a proposed rehabilitation plan is attached to this petition, a detailed and comprehensive rehabilitation proposal will be presented for the approval of this Honorable Commission, with the foregoing salient features:

- a. Servicing and eventual full repayment of all debts and liabilities, focusing on debt restructure and possible liquidation through *dacion en pago*, transfer and assignment, or outright sale of assets, in order to lighten the debt burden of petitioner Group of Companies;
- b. Forming of strategic alliances with third party investors, including joint ventures and similar arrangements;
- c. Contributing specified properties from petitioner ASB Allied Companies;
- d. Streamlining the operations of petitioner ASB Group of Companies, and the effective management of its revenues and funds towards the strengthening of its financial and business positions; and
- e. Stabilizing the operations of petitioner Group of Companies, and preparing it to take advantage of future opportunities for growth and development.^[2]

In filing the petition for rehabilitation, respondents contended that while they have sufficient capitalization, the company will be hard-pressed to service its obligations in favor of petitioner bank and its other creditors due to a glut in the real estate market, the depreciation of the currency and decreased investor confidence in the Philippine economy. Respondents then prayed that the SEC, after due hearing: (a) appoint an interim receiver; (b) suspend all actions against the ASB Group for a period of sixty days subject to extension; and (c) approve a rehabilitation plan for the ASB Group and appoint a rehabilitation receiver to monitor the implementation of the said rehabilitation plan.

On May 4, 2000, the Hearing Panel of the SEC Securities Investigation and Clearing Department, finding the petition for rehabilitation sufficient in form and substance,

issued a 60-day Suspension Order (a) suspending all actions for claims against the ASB Group of Companies pending or still to be filed with any court, office, board, body, or tribunal; (b) enjoining the ASB Group of Companies from disposing of their properties in any manner, except in the ordinary course of business, and from paying their liabilities outstanding as of the date of the filing of the petition; and (c) appointing Atty. Monico V. Jacob as interim receiver of the ASB Group of Companies.

On May 22, 2000, the SEC Hearing Panel issued an order appointing Mr. Fortunato Cruz as interim receiver of the ASB Group of Companies, replacing Atty. Monico Jacob.

On August 18, 2000, respondent ASB Development Corporation submitted the rehabilitation plan for approval of the SEC. The plan, in part, provides:

x x x Based on the program, secured creditors' claims amounting to PhP5.192 billion will be paid in full including interest up to April 30, 2000. Secured creditors have been asked to waive all penalties and other charges. This *dacion en pago* program is essential to eventually pay all creditors and rehabilitate the ASB Group of Companies. If the *dacion en pago* herein contemplated does not materialize for failure of the secured creditors to agree thereto, this rehabilitation plan contemplates to settle the obligations (without interest, penalties, and other related charges accruing after the date of the initial suspension order) to secured creditors with mortgaged properties at ASB selling prices for the general interest of the employees, creditors, unit buyers, government, general public, and the economy.^[3]

On April 26, 2001, the ASB rehabilitation plan was approved by the SEC.

Aggrieved, petitioner bank appealed the plan's approval to the SEC *En Banc*. According to petitioner, the SEC order compelling the bank to surrender its present collateral and accept certain properties located in Pasig City and Parañaque City as payment of the obligations due it violates the constitutional proscription against impairment of contracts. It was likewise argued that the value of the properties being offered by ASB via *dacion en pago* is insufficient to cover the amount of its outstanding loans; and that the preference conferred by law to the bank as a secured creditor has been rendered illusory.

On June 10, 2003, the SEC *En Banc* denied with finality petitioner bank's appeal. Undaunted, petitioner elevated the matter to the CA via petition for review under Rule 43 of the 1997 Rules of Civil Procedure.

CA Disposition

On October 28, 2005, the CA dismissed the bank's petition for lack of merit. In ruling against petitioner bank, the appellate court opined:

The assailed rehabilitation plan does not violate the principle of mutuality of contracts. In fact, the provisions of said plan recognize the secured creditors' right to refuse or reject the *dacion en pago* arrangements proposed therein. To illustrate, the rehabilitation plan pertinently states:

"x x x If the *dacion en pago* herein contemplated does not materialize for failure of the secured creditors to agree thereto, this rehabilitation plan contemplates to settle the obligations (without interest, penalties, and other related charges accruing after the date of the initial suspension order) to secured creditors with mortgaged properties at ASB selling prices for the general interest of the employees, creditors, unit buyers, government, general public and the economy."

Inasmuch as the proposed *dacion en pago* can proceed only upon agreement of all the parties concerned, there is no basis for petitioner's assertion that its freedom to contract is unduly curtailed and that it is being compelled to accept certain properties as settlement for respondents' obligations.

On the other hand, We find no cogent reason to disturb or reverse the findings of the lower tribunals regarding the valuation of respondents' assets and viability of the rehabilitation plan. As the SEC *en banc* observed:

"x x x the selling values and net realizable values of the properties are not much higher than the appraisals conducted by Cuervo Appraiser, Inc. in 1997 and 2000. In addition, the valuations given to the unfinished projects proposed to be *dacioned* to secured creditors are based on the selling price of appellees [respondents] on similar projects for which deeds of absolute sale have been consummated." (Resolution dated June 10, 2003)

It is a basic principle of law that courts will not interfere in matters which are addressed to the sound discretion or judgment of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies (*Olague vs. Domingo*, 359 SCRA 78). Given their special knowledge and expertise over matters falling under their jurisdiction, they are in a better position to pass judgment thereon and their findings of fact in that regard are generally accorded respect, if not finality, by the courts (*Palele vs. Court of Appeals*, 362 SCRA 141).

At any rate, petitioner's concerns about the viability of the rehabilitation plan should be laid to rest by the fact that less than two years after its approval by the SEC hearing panel, 54% of respondents' obligations to creditor banks had already been paid. This only shows that the continued implementation of the rehabilitation plan may well lead to petitioner's full recovery of its claims against respondents.

All told, We find that the SEC correctly upheld the order of the hearing panel approving the ASB Group's rehabilitation plan.^[4]

Issues

Petitioner has resorted to the present review on *certiorari*, raising twin issues: