

## FIRST DIVISION

[ G.R. NO. 166197, February 27, 2007 ]

**METROPOLITAN BANK & TRUST COMPANY, PETITIONER, VS. ASB HOLDINGS, INC., ASB REALTY CORPORATION, ASB DEVELOPMENT CORPORATION, ASB LAND, INC., ASB FINANCE, INC., MAKATI HOPE CHRISTIAN SCHOOL, INC., BEL-AIR HOLDINGS CORPORATION, WINCHESTER TRADING, INC., VYL DEVELOPMENT CORPORATION, GERICK HOLDINGS CORPORATION, NEIGHBORHOOD HOLDINGS, INC., AND ROSARIO S. BERNALDO, RESPONDENTS. CAMERON GRANVILLE 3 ASSET MANAGEMENT, INC., INTERVENOR.**

### DECISION

#### **SANDOVAL-GUTIERREZ, J.:**

For our resolution is the instant Petition for Review on Certiorari<sup>[1]</sup> assailing the Decision dated August 16, 2004<sup>[2]</sup> of the Court of Appeals in CA-G.R. SP No. 77260 and its Resolution dated December 1, 2004.

The facts borne by the records are:

The Metropolitan Bank and Trust Company, petitioner, is a creditor bank of respondent corporations, collectively known as the ASB Group of Companies, owner and developer of condominium and real estate projects. Specifically, the loans extended by petitioner bank to respondents ASB Realty Corporation and ASB Development Corporation amounted to P523.5 million and P1.073 billion, respectively. These loans were secured by real estate mortgages.

On May 2, 2000, the ASB Group of Companies filed with the Securities and Exchange Commission (SEC) a *Petition For Rehabilitation With Prayer For Suspension Of Actions And Proceedings Against Petitioners*,<sup>[3]</sup> pursuant to Presidential Decree (P.D.) No. 902-A, as amended, docketed as SEC Case No. 05-00-6609. The pertinent portions of the petition allege:

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-a-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.

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 sixty-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, the ASB Group of Companies submitted to the SEC for its approval a Rehabilitation Plan,<sup>[4]</sup> thus:

Metropolitan Bank and Trust Co.

Principal Amount - Principal (amount) plus any interest due and unpaid **as of April 30, 2000**, less any prepaid interest, **without any penalties and charges.**

Form of Agreement	- <b><i>Dacion en Pago</i> Agreement</b>
Purpose	- To retire existing loans.
Tenor	- <b>Immediate <i>Dacion en Pago</i> of related properties</b> , subject to the approval of the Securities and Exchange Commission (SEC).
Effective Date	- September 1, 2000, subject to the approval of the SEC.
<i>Dacion En Pago</i> Arrangement	- ASB will <i>dacion</i> the bank's equity in St. Francis Square and apply the excess <i>dacion</i> value on its BSA Twin Tower loan. Further, Makati Hope, Buendia cor. Malugay, 21 Annapolis (which is expected to be released by PNB) and # 28 & 23 Eisenhower St., will be dacioned to Metrobank, the excess of which will also be applied to Metrobank's exposure on BSA Twin Towers. In return, State Condominium will be freed up and placed in the ASB creditors' asset pool. Further, Metrobank shall also undertake the completion of BSA Twin Towers.
Outstanding Loan - Balance After <i>Dacion En Pago</i>	None <sup>[5]</sup>

Petitioner bank, in its *Comment/Opposition to the Rehabilitation Plan*,<sup>[6]</sup> objected to the above Plan, specifically the arrangement concerning the mode of payment by respondents ASB Realty Corporation and ASB Development Corporation of their loan obligations.

Petitioner bank claimed that the above arrangement "is not acceptable" because: (1) it does not agree with the valuation of the properties offered for *dacion*; (2) the waiver of interests, penalties and charges after April 30, 2000 is not feasible considering that the bank continues to incur costs on the funds owed by ASB Realty Corporation and ASB Development Corporation; and **(3)** since the proposed *dacion* is not acceptable to the bank, there is no basis to release the properties which serve as collateral for the loans. Petitioner thus prayed that the Rehabilitation Plan be disapproved.

On April 26, 2001, the SEC Hearing Panel, finding petitioner bank's objections unreasonable, issued an Order<sup>[7]</sup> approving the Rehabilitation Plan and appointing Mr. Fortunato Cruz as rehabilitation receiver, thus:

PREMISES CONSIDERED, the objections to the rehabilitation plan raised by the creditors are hereby considered **unreasonable**.

Accordingly, the Rehabilitation Plan submitted by petitioners is hereby APPROVED, except those pertaining to Mr. Roxas' advances, and the ASB-Malayan Towers. Finally, Interim Receiver Mr. Fortunato Cruz is appointed as Rehabilitation Receiver.

SO ORDERED.

On July 10, 2001, petitioner bank filed with the SEC *En Banc* a *Petition for Certiorari*,<sup>[8]</sup> docketed as EB-725, alleging that the SEC Hearing Panel, in approving the Rehabilitation Plan, committed grave abuse of discretion amounting to lack or excess of jurisdiction; and praying for the issuance of a temporary restraining order and/or a writ of preliminary injunction to enjoin its implementation. Subsequently, the ASB Group of Companies filed their *Opposition*<sup>[9]</sup> to the petition, to which petitioner bank filed its *Reply*.<sup>[10]</sup>

In a Resolution<sup>[11]</sup> dated April 15, 2003, the SEC *En Banc* denied petitioner bank's *Petition for Certiorari* and affirmed the SEC Hearing Panel's Order of April 26, 2001.

Petitioner bank then filed with the Court of Appeals a *Petition for Review*.<sup>[12]</sup> On August 16, 2004, the appellate court rendered its Decision<sup>[13]</sup> denying due course to the petition, thus:

WHEREFORE, finding the instant petition not impressed with merit, the same is DENIED DUE COURSE. No pronouncement as to costs.

SO ORDERED.

Petitioner bank's Motion for Reconsideration was likewise denied in a Resolution dated December 1, 2004.<sup>[14]</sup>

Hence, this petition for review on certiorari.

In the meantime, or on June 1, 2006, Cameron Granville 3 Asset Management, Inc. (Cameron Granville) filed a *Motion For Intervention*<sup>[15]</sup> alleging that in September of 2003, petitioner bank assigned the loans and mortgages of ASB Realty Corporation and ASB Development Corporation to Asset Recovery Corporation (ARC). However, pursuant to its Service Agreement with ARC, petitioner continued to pursue its action before the Court of Appeals in CA-G.R. SP No. 77260 and before this Court in the instant case. On March 31, 2006, ARC in turn assigned the loans and mortgages of the said two respondent corporations to herein intervenor, Cameron Granville.

In a Resolution dated June 5, 2006,<sup>[16]</sup> the Court granted the motion for intervention. Accordingly, on August 28, 2006, the intervenor filed its *Petition For Intervention*<sup>[17]</sup> and manifested therein that it adopts as its own petitioner bank's petition and all its other pleadings. Thereafter, respondent ASB Group of Companies filed their *Comment*.<sup>[18]</sup>

Now to the resolution of the instant petition.

Petitioner bank contends that the Court of Appeals erred:

1. In not nullifying the SEC Resolution dated April 15, 2003 approving the Rehabilitation Plan. Such approval illegally compels petitioner bank to accept, through a *dacion en pago* arrangement, the mortgaged properties based on ASB Group of Companies' transfer