

## EN BANC

[ G.R. No. 164641, December 20, 2007 ]

**BANK OF THE PHILIPPINE ISLANDS, AS SUCCESSOR OF FAR EAST BANK AND TRUST COMPANY, PETITIONER, VS. SECURITIES AND EXCHANGE COMMISSION, REHABILITATION RECEIVER, ASB HOLDINGS, INC., ASB DEVELOPMENT CORPORATION, ASB LAND, INC., ASB FINANCE, INC., MAKATI HOPE CHRISTIAN SCHOOL, INC., BEL-AIR HOLDINGS CORP., WINCHESTER TRADING, INC., VYL DEVELOPMENT CORP., GERRICK HOLDINGS CORP., NEIGHBORHOOD HOLDINGS, INC., AND THE COURT OF APPEALS, RESPONDENTS.**

### D E C I S I O N

**TINGA, J.:**

For resolution is a petition seeking to nullify the 30 January 2004 Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. SP No. 77309<sup>[2]</sup> upholding the Securities and Exchange Commission's (SEC) approval of the ASB Group's rehabilitation in SEC *En Banc* Case No. EB-726.<sup>[3]</sup>

The antecedent facts are as follows:

Bank of the Philippine Islands (BPI), through its predecessor-in- interest, Far East Bank and Trust Company (FEBTC), extended credit accommodations to the ASB Group of Companies (ASB Group)<sup>[4]</sup> with an outstanding aggregate principal amount of P86,800,000.00, secured by a real estate mortgage over two (2) properties located in Greenhills, San Juan.<sup>[5]</sup> On 2 May 2000, the ASB Group filed a petition for rehabilitation and suspension of payments before the SEC, docketed as SEC Case No. 05-00-6609.<sup>[6]</sup> Thereafter, on 18 August 2000, the interim receiver submitted its Proposed Rehabilitation Plan (Rehabilitation Plan)<sup>[7]</sup> for the ASB Group. The Rehabilitation Plan provides, among others, a *dacion en pago* by the ASB Group to BPI of one of the properties mortgaged to the latter at the ASB Group as selling value of P84,000,000.00 against the total amount of the ASB Group's exposure to the bank. In turn, ASB Group would require the release of the other property mortgaged to BPI, to be thereafter placed in the asset pool. Specifically, the pertinent portion of the plan reads:

"x x x ASB plans to invoke a *dacion en pago* for its #35 Eisenhower property at ASB's selling value of P84 million against the total amount of the ASB's exposure to the bank. In return, ASB requests the release of the #27 Annapolis property which will be placed in the ASB creditors' asset pool." <sup>[8]</sup>

The *dacion* would constitute full payment of the entire obligation due to BPI because the balance was then to be considered waived, as per the Rehabilitation Plan.<sup>[9]</sup>

BPI opposed the Rehabilitation Plan and moved for the dismissal of the ASB Group's petition for rehabilitation.<sup>[10]</sup> However, on 26 April 2001, the SEC hearing panel issued an order<sup>[11]</sup> approving ASB Group's proposed rehabilitation plan and appointed Mr. Fortunato Cruz as rehabilitation receiver.

BPI filed a petition for review<sup>[12]</sup> of the 26 April 2001 order before the SEC *en banc*, imputing grave abuse of discretion on the part of the hearing panel. It argued that the Order constituted an arbitrary violation of BPI's freedom and right to contract since the Rehabilitation Plan compelled BPI to enter into a *dacion en pago* agreement with the ASB Group.<sup>[13]</sup> The SEC *en banc* denied the petition.<sup>[14]</sup>

BPI then filed a petition for review<sup>[15]</sup> before the Court of Appeals (CA), claiming that the SEC *en banc* erred in affirming the approval of the Rehabilitation Plan despite being violative of BPI's contractual rights. BPI contended that the terms of the Rehabilitation Plan would impair its freedom to contract, and alleged that the *dacion en pago* was a mode of payment beneficial to the ASB Group only.<sup>[16]</sup>

The CA dismissed the petition for lack of merit. It held that considering that the *dacion en pago* transaction could proceed only upon the mutual agreement of the parties, BPI's assertion that it is being coerced could not be sustained. At no point would the Rehabilitation Plan compel secured creditors such as BPI to agree to a settlement agreement against their will, the CA added. Moreover, BPI could refuse to accept any arrangement contemplated by the receiver and just assert its preferred right in the liquidation and distribution of the assets of the ASB Group.<sup>[17]</sup> BPI filed a motion for reconsideration, but the same was denied for lack of merit.<sup>[18]</sup>

Before this Court, BPI asserts that the CA erred in ruling that the approval by the SEC of the ASB Group's Rehabilitation Plan did not violate BPI's rights as a creditor.<sup>[19]</sup> It maintains its position that the *dacion en pago* is a form of coercion or compulsion, and violative of the rights of secured creditors.<sup>[20]</sup> It asserts that in order for the Rehabilitation Plan to be feasible and legally tenable, it must reflect the express and free consent of the parties; *i.e.*, that the conditions should not be imposed but agreed upon by the parties. By approving the Rehabilitation Plan, the SEC hearing panel totally disregarded the efficacy of the mortgage agreements between the parties, and sanctioned a mode of payment which is solely for the unilateral benefit of the ASB Group.<sup>[21]</sup> This is so because in the event that the secured creditors such as itself would not agree to *dacion en pago*, the ASB Group's obligations would be settled at the selling prices of the mortgaged properties to be dictated by the ASB Group,<sup>[22]</sup> rendering BPI's status as a preferred creditor illusory.<sup>[23]</sup>

BPI further claims that despite its rejection of the Rehabilitation Plan, no effort was made to resolve the impasse on the valuation of the mortgaged properties. With no repayment scheme for secured creditors not accepting the Rehabilitation Plan, the same has become discriminatory.<sup>[24]</sup> Moreover, any interference on the rights of the secured creditors must not be so indefinite and open-ended as to effectively

deprive secured creditors of their right to their security,<sup>[25]</sup> BPI adds.

In its Comment,<sup>[26]</sup> the SEC, through the Office of the Solicitor General, claims that the terms and conditions of the Rehabilitation Plan do not violate BPI's right as a creditor because the *dacion en pago* transaction contemplated in the plan can only proceed upon mutual agreement of the parties. Moreover, being a secured creditor, BPI enjoys preference over unsecured creditors, thus there is no reason for BPI to fear the non-payment of the loan, or the inability to assert its preferred right over the mortgaged property.<sup>[27]</sup>

On the other hand, private respondents maintain that the non-impairment clause of the Constitution relied on by BPI is a limit on the exercise of legislative power and not of judicial or quasi-judicial power. The SEC's approval of the Rehabilitation Plan was an exercise of adjudicatory power by an administrative agency and thus the non-impairment clause does not apply.<sup>[28]</sup> In addition, they stress that there is no coercion or compulsion that would be employed under the Rehabilitation Plan. If *dacion en pago* fails to materialize, the Rehabilitation Plan contemplates to settle the obligations to secured creditors with mortgaged properties at selling prices.<sup>[29]</sup> Finally, they claim that BPI failed to submit any valuation of the mortgage properties to substantiate its objection to the Rehabilitation Plan, making its objection thereto totally unreasonable.<sup>[30]</sup>

The petition must be denied.

The very same issues confronted the Court in the case of *Metropolitan Bank & Trust Company v. ASB Holdings, et al.*<sup>[31]</sup> In this case, Metropolitan Bank & Trust Company (MBTC) refused to enter into a *dacion en pago* arrangement contained in ASB's proposed Rehabilitation Plan.<sup>[32]</sup> MBTC argued, among others, that the forced transfer of properties and the diminution of its right to enforce its lien on the mortgaged properties violate its constitutional right against impairment of contracts and right to due process. The Court ruled that there is no impairment of contracts because the approval of the Rehabilitation Plan and the appointment of a rehabilitation receiver merely suspends the action for claims against the ASB Group, and MBTC may still enforce its preference when the assets of the ASB Group will be liquidated. But if the rehabilitation is found to be no longer feasible, then the claims against the distressed corporation would have to be settled eventually and the secured creditors shall enjoy preference over the unsecured ones. Moreover, the Court stated that there is no compulsion to enter into a *dacion en pago* agreement, nor to waive the interests, penalties and related charges, since these are merely proposals to creditors such as MBTC, such that in the event the secured creditors refuse the *dacion*, the Rehabilitation Plan proposes to settle the obligations to secured creditors with mortgaged properties at selling prices.

Rehabilitation proceedings in our jurisdiction, much like the bankruptcy laws of the United States, have equitable and rehabilitative purposes. On the one hand, they attempt to provide for the efficient and equitable distribution of an insolvent debtor's remaining assets to its creditors; and on the other, to provide debtors with a "fresh start" by relieving them of the weight of their outstanding debts and permitting them to reorganize their affairs.<sup>[33]</sup> The rationale of P.D. No. 902-A, as amended, is to "effect a feasible and viable rehabilitation,"<sup>[34]</sup> by preserving a foundering