

FIRST DIVISION

[G.R. No. 160732, June 21, 2004]

**METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM,
PETITIONER, VS. HON. REYNALDO B. DAWAY, IN HIS CAPACITY
AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF
QUEZON CITY, BRANCH 90 AND MAYNILAD WATER SERVICES,
INC., RESPONDENTS.**

D E C I S I O N

AZCUNA, J.:

On November 17, 2003, the Regional Trial Court (RTC) of Quezon City, Branch 90, made a determination that the Petition for Rehabilitation with Prayer for Suspension of Actions and Proceedings filed by Maynilad Water Services, Inc. (Maynilad) conformed substantially to the provisions of Sec. 2, Rule 4 of the Interim Rules of Procedure on Corporate Rehabilitation (Interim Rules). It forthwith issued a Stay Order^[1] which states, in part, that the court was thereby:

X X X X X X X X

2. Staying enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the petitioner, its guarantors and sureties not solidarily liable with the petitioner;
3. Prohibiting the petitioner from selling, encumbering, transferring, or disposing in any manner any of its properties except in the ordinary course of business;
4. Prohibiting the petitioner from making any payment of its liabilities, outstanding as at the date of the filing of the petition;

X X X X X X X X

Subsequently, on November 27, 2003, public respondent, acting on two Urgent Ex Parte motions^[2] filed by respondent Maynilad, issued the herein questioned Order^[3] which stated that it thereby:

- "1. DECLARES that the act of MWSS in commencing on November 24, 2003 the process for the payment by the banks of US\$98 million out of the US\$120 million standby letter of credit so the banks have to make good such call/drawing of payment of US\$98 million by MWSS not later than November 27, 2003 at 10:00 P. M. or any similar act for that matter, is violative of the above-quoted sub-

paragraph 2.) of the dispositive portion of this Court's Stay Order dated November 17, 2003.

2. ORDERS MWSS through its officers/officials to withdraw under pain of contempt the written certification/notice of draw to Citicorp International Limited dated November 24, 2003 and DECLARES void any payment by the banks to MWSS in the event such written certification/notice of draw is not withdrawn by MWSS and/or MWSS receives payment by virtue of the aforesaid standby letter of credit."

Aggrieved by this Order, petitioner Manila Waterworks & Sewerage System (MWSS) filed this petition for review by way of certiorari under Rule 65 of the Rules of Court questioning the legality of said order as having been issued without or in excess of the lower court's jurisdiction or that the court a quo acted with grave abuse of discretion amounting to lack or excess of jurisdiction.^[4]

ANTECEDENTS OF THE CASE

On February 21, 1997, MWSS granted Maynilad under a Concession Agreement a twenty-year period to manage, operate, repair, decommission and refurbish the existing MWSS water delivery and sewerage services in the West Zone Service Area, for which Maynilad undertook to pay the corresponding concession fees on the dates agreed upon in said agreement^[5] which, among other things, consisted of payments of petitioner's mostly foreign loans.

To secure the concessionaire's performance of its obligations under the Concession Agreement, Maynilad was required under Section 6.9 of said contract to put up a bond, bank guarantee or other security acceptable to MWSS.

In compliance with this requirement, Maynilad arranged on July 14, 2000 for a three-year facility with a number of foreign banks, led by Citicorp International Limited, for the issuance of an Irrevocable Standby Letter of Credit^[6] in the amount of US\$120,000,000 in favor of MWSS for the full and prompt performance of Maynilad's obligations to MWSS as aforestated.

Sometime in September 2000, respondent Maynilad requested MWSS for a mechanism by which it hoped to recover the losses it had allegedly incurred and would be incurring as a result of the depreciation of the Philippine Peso against the US Dollar. Failing to get what it desired, Maynilad issued a Force Majeure Notice on March 8, 2001 and unilaterally suspended the payment of the concession fees. In an effort to salvage the Concession Agreement, the parties entered into a Memorandum of Agreement (MOA)^[7] on June 8, 2001 wherein Maynilad was allowed to recover foreign exchange losses under a formula agreed upon between them. Sometime in August 2001 Maynilad again filed another Force Majeure Notice and, since MWSS could not agree with the terms of said Notice, the matter was referred on August 30, 2001 to the Appeals Panel for arbitration. This resulted in the parties agreeing to resolve the issues through an amendment of the Concession Agreement on October 5, 2001, known as Amendment No. 1,^[8] which was based on the terms set down in MWSS Board of Trustees Resolution No. 457-2001, as amended by MWSS Board of Trustees Resolution No. 487-2001,^[9] which provided inter alia for a formula that

would allow Maynilad to recover foreign exchange losses it had incurred or would incur under the terms of the Concession Agreement.

As part of this agreement, Maynilad committed, among other things, to:

- a) infuse the amount of UD\$80.0 million as additional funding support from its stockholders;
- b) resume payment of the concession fees; and
- c) mutually seek the dismissal of the cases pending before the Court of Appeals and with Minor Dispute Appeals Panel.

However, on November 5, 2002, Maynilad served upon MWSS a Notice of Event of Termination, claiming that MWSS failed to comply with its obligations under the Concession Agreement and Amendment No. 1 regarding the adjustment mechanism that would cover Maynilad's foreign exchange losses. On December 9, 2002, Maynilad filed a Notice of Early Termination of the concession, which was challenged by MWSS. This matter was eventually brought before the Appeals Panel on January 7, 2003 by MWSS.^[10] On November 7, 2003, the Appeals Panel ruled that there was no Event of Termination as defined under Art. 10.2 (ii) or 10.3 (iii) of the Concession Agreement and that, therefore, Maynilad should pay the concession fees that had fallen due.

The award of the Appeals Panel became final on November 22, 2003. MWSS, thereafter, submitted a written notice^[11] on November 24, 2003, to Citicorp International Limited, as agent for the participating banks, that by virtue of Maynilad's failure to perform its obligations under the Concession Agreement, it was drawing on the Irrevocable Standby Letter of Credit and thereby demanded payment in the amount of US\$98,923,640.15.

Prior to this, however, Maynilad had filed on November 13, 2003, a petition for rehabilitation before the court a quo which resulted in the issuance of the Stay Order of November 17, 2003 and the disputed Order of November 27, 2003.^[12]

PETITIONER'S CASE

Petitioner hereby raises the following issues:

1. DID THE HONORABLE PRESIDING JUDGE GRAVELY ERR AND/OR ACT PATENTLY WITHOUT JURISDICTION OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN CONSIDERING THE PERFORMANCE BOND OR ASSETS OF THE ISSUING BANKS AS PART OR PROPERTY OF THE ESTATE OF THE PRIVATE RESPONDENT MAYNILAD SUBJECT TO REHABILITATION.
2. DID THE HONORABLE PRESIDING JUDGE ACT WITH LACK OR EXCESS OF JURISDICTION OR COMMIT A GRAVE ERROR OF LAW IN HOLDING THAT THE PERFORMANCE BOND OBLIGATIONS OF THE BANKS WERE NOT SOLIDARY IN NATURE.

3. DID THE HONORABLE PRESIDING JUDGE GRAVELY ERR IN
ALLOWING MAYNILAD TO IN EFFECT SEEK A REVIEW OR APPEAL
OF THE FINAL AND BINDING DECISION OF THE APPEALS PANEL.

In support of the first issue, petitioner maintains that as a matter of law, the US\$120 Million Standby Letter of Credit and Performance Bond are not property of the estate of the debtor Maynilad and, therefore, not subject to the in rem rehabilitation jurisdiction of the trial court.

Petitioner argues that a call made on the Standby Letter of Credit does not involve any asset of Maynilad but only assets of the banks. Furthermore, a call on the Standby Letter of Credit cannot also be considered a "claim" falling under the purview of the stay order as alleged by respondent as it is not directed against the assets of respondent Maynilad.

Petitioner concludes that the public respondent erred in declaring and holding that the commencement of the process for the payment of US\$98 million is a violation of the order issued on November 17, 2003.

RESPONDENT MAYNILAD'S CASE

Respondent Maynilad seeks to refute this argument by alleging that:

a) the order objected to was strictly and precisely worded and issued after carefully considering/evaluating the import of the arguments and documents referred to by Maynilad, MWSS and/or creditors Chinatrust Commercial Bank and Suez in relation to admissions, pleadings and/or pertinent records^[13] and that public respondent had the authority to issue the same;

b) public respondent never considered nor held that the Performance bond or assets of the issuing banks are part or property of the estate of respondent Maynilad subject to rehabilitation and which respondent Maynilad has not and has never claimed to be;^[14]

c) what is relevant is not whether the performance bond or assets of the issuing banks are part of the estate of respondent Maynilad but whether the act of petitioner in commencing the process for the payment by the banks of US\$98 million out of the US\$120 million performance bond is covered and/or prohibited under sub-paragraphs 2.) and 4.) of the stay order dated November 17, 2003;

d) the jurisdiction of public respondent extends not only to the assets of respondent Maynilad but also over persons and assets of "all those affected by the proceedings x x x upon publication of the notice of commencement;^[15]" and

e) the obligations under the Standby Letter of Credit are not solidary and are not exempt from the coverage of the stay order.

OUR RULING

We will discuss the first two issues raised by petitioner as these are interrelated and make up the main issue of the petition before us which is, did the rehabilitation

court sitting as such, act in excess of its authority or jurisdiction when it enjoined herein petitioner from seeking the payment of the concession fees from the banks that issued the Irrevocable Standby Letter of Credit in its favor and for the account of respondent Maynilad?

The public respondent relied on Sec. 1, Rule 3 of the Interim Rules on Corporate Rehabilitation to support its jurisdiction over the Irrevocable Standby Letter of Credit and the banks that issued it. The section reads in part "that jurisdiction over those affected by the proceedings is considered acquired upon the publication of the notice of commencement of proceedings in a newspaper of general circulation" and goes further to define rehabilitation as an in rem proceeding. This provision is a logical consequence of the in rem nature of the proceedings, where jurisdiction is acquired by publication and where it is necessary that the assets of the debtor come within the court's jurisdiction to secure the same for the benefit of creditors. The reference to "all those affected by the proceedings" covers creditors or such other persons or entities holding assets belonging to the debtor under rehabilitation which should be reflected in its audited financial statements. The banks do not hold any assets of respondent Maynilad that would be material to the rehabilitation proceedings nor is Maynilad liable to the banks at this point.

Respondent Maynilad's Financial Statement as of December 31, 2001 and 2002 do not show the Irrevocable Standby Letter of Credit as part of its assets or liabilities, and by respondent Maynilad's own admission it is not. In issuing the clarificatory order of November 27, 2003, enjoining petitioner from claiming from an asset that did not belong to the debtor and over which it did not acquire jurisdiction, the rehabilitation court acted in excess of its jurisdiction.

Respondent Maynilad insists, however, that it is Sec. 6 (b), Rule 4 of the Interim Rules that supports its claim that the commencement of the process to draw on the Standby Letter of Credit is an enforcement of claim prohibited by and under the Interim Rules and the order of public respondent.

Respondent Maynilad would persuade us that the above provision justifies a leap to the conclusion that such an enforcement is prohibited by said section because it is a "claim against the debtor, its guarantors and sureties not solidarily liable with the debtor" and that there is nothing in the Standby Letter of Credit nor in law nor in the nature of the obligation that would show or require the obligation of the banks to be solidary with the respondent Maynilad.

We disagree.

First, the claim is not one against the debtor but against an entity that respondent Maynilad has procured to answer for its non-performance of certain terms and conditions of the Concession Agreement, particularly the payment of concession fees.

Secondly, Sec. 6 (b) of Rule 4 of the Interim Rules does not enjoin the enforcement of all claims against guarantors and sureties, **but only those claims against guarantors and sureties who are not solidarily liable with the debtor.** Respondent Maynilad's claim that the banks are not solidarily liable with the debtor does not find support in jurisprudence.