

THIRD DIVISION

[CA-G.R. SP NO. 131232, May 29, 2014]

**GMAT MULTI PURPOSE AND TRANSPORT SERVICE
COOPERATIVE, PETITIONER, V. HON. LILIA MERCEDES
ENCARNACION A. GEPTY, IN HER CAPACITY AS PRESIDING
JUDGE OF THE REGIONAL TRIAL COURT OF VALENZUELA,
BRANCH 75, RESPONDENT.**

DECISION

BUESER, J.:

This is a Petition for Certiorari^[1] pursuant to the provisions Sections 1 and 4, Rule 65 of the Rules of Court, as amended, assailing the actions taken by the respondent Judge who has acted in the premises in excess of her jurisdiction and/or with grave abuse of discretion amounting to lack of jurisdiction.

The Antecedent Facts

On 7 June 2013 petitioner filed a Petition for Financial Rehabilitation^[2] under Section 12 of the Financial Rehabilitation and Insolvency Act of 2010 ("FRIA 2010" for brevity) or otherwise known as Republic Act 10142, praying within five (5) days upon filing thereof for the issuance of a Commencement Order in accordance with Chapter II, Section 12 of FRIA 2010 and likewise praying for the approval of the rehabilitation plan. The petition was docketed as SP Proc. No. 27-V-13, and was filed with respondent Judge.

However, on 17 June 2013, respondent Judge issued an Order^[3] dismissing the petition for financial rehabilitation on the ground that petitioner being a cooperative cannot avail of the benefits under the provisions of FRIA 2010. The respondent Judge ratiocinated:

"xxx xxx xxx. It is noteworthy to mention that under Section 4(k) of the FRIA of 2010, debtor is defined as follows:

"k) Debtor shall refer to, unless specifically excluded by a provision of this Act, a sole proprietorship duly registered with the Department of Trade and Industry (DTI), a partnership duly registered with the Securities and Exchange Commission (SEC), a corporation duly organized and existing under Philippine law, or an individual debtor who has become insolvent as defined herein.

"Hence, the availment of petitioner cooperative of the remedy of a financial rehabilitation pursuant to Section 63 of R.A. No. 9520 in relation to Section 12 of the FRIA of 2010 is unavailing.

"WHEREFORE, premises considered, the instant case is hereby *DISMISSED*."

Consequently, on 21 June 2013 petitioner filed a Very Urgent Motion for Reconsideration^[4] stressing that:

"5.1. FRIA OF 2010 NOW GOVERNS THE INSOLVENCY PROCEEDINGS FOR COOPERATIVES SUCH AS PETITIONER AND IT INCLUDES REHABILITATION

"5.2. A COOPERATIVE SUCH AS PETITIONER IS NOT ONE OF THOSE EXCLUDED UNDER SECTION 5, CHAPTER 1 OF FRIA 2010, AND A COOPERATIVE IS INCLUDED IN THE DEFINITION OF A DEBTOR AS CORPORATION

"5.3. THE POLICY OF THE STATE IN THE FRIA OF 2010 IS TO PRIORITIZE REHABILITATION OF DEBTORS IN FINANCIAL DISTRESS, THAT IF REHABILITATION IS FEASIBLE A DEBTOR SHALL UNDERGO REHABILITATION, and THE POLICY OF THE STATE IN THE CREATION OF COOPERATIVES SUCH AS PETITIONER IS TO ENHANCE AN ATMOSPHERE FOR THEIR CREATION AND DEVELOPMENT

Then, on 2 July 2013, petitioner filed a Very Urgent Supplemental Motion for Reconsideration,^[5] stating that:

"6.1 The legislative intent is very clear, considering that the word "cooperatives" were removed from the EXCLUSIONS, it was the intent of the law to include cooperatives as debtor under RA 10142. **Otherwise, it would have retained in the EXCLUSIONS if it intended to exclude it in its provisions as contained in the originating bills.**

"6.2 In addition, the legislative intent to include cooperatives such as petitioner under the definition of debtor in the FRIA 2010 is also explainable by the fact that Congress based said definition on the US and UK laws which both did not exclude cooperatives in the definition of debtor.

"6.3 Likewise, the Rules of Procedure for Corporate Rehabilitation of 2009 (A.M. No. 00-8-10-SC) promulgated by the Supreme Court, defines **"debtor" as any corporation, partnership or association or a group of companies, whether supervised or regulated by the Securities and Exchange Commission or other government agencies** xxxxxx. (Emphasis supplied). And the same Rules of Procedure also require a liberal construction.

"6.4. Introductory Notes of all the House Bills declared a comprehensive and modern insolvency, which we submit could not have intended to exclude cooperatives. Likewise, the Remarks from the Chair and the Joint Committee Hearing declared the policy that the FRIA was supposed to be comprehensive and modern."

Eventually, on 2 August 2013 petitioner filed a Manifestation with Very Urgent Plea for Judicial Mercy,^[6] manifesting that five (5) taxi units of petitioner have been foreclosed and prayed for the immediate issuance of Commencement Order.

On 8 August 2013 the very urgent motion for reconsideration was denied by the respondent Judge in an Order^[7] issued and dated 2 August 2013.

Hence, this present petition.

ISSUE

Whether or not respondent Judge acted without or in excess of its jurisdiction and/or with grave abuse of discretion amounting to lack of jurisdiction in dismissing the petition for financial rehabilitation and in denying the motion for reconsideration filed by petitioner.

THE RULING OF THE COURT

Petitioner claimed that FRIA 2010 now governs the insolvency proceedings for cooperatives and it includes rehabilitation.

We agree.

Under the provisions of the Philippine Cooperative Code of 2008 also known as Republic Act 9520 (R.A. 9520) specifically Chapter VI, Article 63 of the same, in cases of insolvency of cooperatives, they can avail of the remedies under the provisions of the Act No. 1956 otherwise known as the Insolvency Law, which provides:

"Art. 63. Proceeding Upon Insolvency.- In case a cooperative is unable to fulfill its obligations to creditors due to insolvency, such cooperative may apply for such remedies as it may deem fit under the provisions of Act No. 1956, as amended, otherwise known as the Insolvency Law.

"xxx xxx xxx."

Significantly, such particular provision of R.A. 9520 has been expressly repealed by Section 148, Chapter 10 of FRIA 2010, which states that:

"Section 148. Repealing Clause.- The Insolvency Law (Act No. 1956), as amended, is hereby repealed. All other laws, orders, rules and regulations or parts thereof inconsistent with any provision of this Act are hereby repealed or modified accordingly."

Evidently, by virtue of the express repeal of the Insolvency Law, it follows that it is now the provisions of FRIA 2010 that govern the insolvency of cooperatives. It bears stressing that this express repeal consequently made it available to a cooperative the remedy of applying for a financial rehabilitation.

This is strengthened by the fact that upon an astute perusal of the policy objective of the FRIA 2010 it is provided therein that if rehabilitation is feasible an insolvent debtor should and must undergo financial rehabilitation. Chapter 1, Section 2 of the FRIA 2010 states that:

"Sec. 2. Declaration of Policy. – State to encourage debtor and their creditors to collectively and realistically resolve and adjust competing claims and property rights. In furtherance thereof, the State shall ensure a timely, fair, transparent, effective and efficient rehabilitation or liquidation of debtors. The rehabilitation or liquidation shall be made with a view to ensure or maintain certainty and predictability in commercial affairs, preserve and maximize the value of the assets of these debtors, recognize creditor rights and respect priority of claims, and ensure

equitable treatment of creditors who are similarly situated. When rehabilitation is not feasible, it is in the interest of the State to facilitate a speedy and orderly liquidation of these debtor's assets and the settlement of their obligations."

The respondent Judge in denying the petition for financial rehabilitation states in its assailed Order that:

"Section 6 of R.A. 9520 reads:

SEC. 6. Article 64 of Chapter VI on Insolvency of Cooperatives of the same Code is hereby renumbered and amended to read, as follows:

CHAPTER VI INSOLVENCY OF COOPERATIVES

"ART. 63. Proceeding Upon Insolvency.- In case a cooperative is unable to fulfill its obligations to creditors due to insolvency, such cooperative may apply for such remedies as it may deem fit under the provisions of Act No. 1956, as amended, otherwise known as the Insolvency Law.

"Nothing in this Article, however, precludes creditors from seeking protection from said insolvency law."

On the other hand, Section 12 of FRIA of 2010 reads:

Section 12. Petition to Initiate Voluntary Proceedings by Debtor. When approved by the owner in case of a sole proprietorship, or by a majority of the partners in case of a partnership, or in case of a corporation, by a majority vote of the board of directors or trustees and authorized by the vote of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock, or in case of nonstick corporation, by the vote of at least two-thirds (2/3) of the members, in a stockholder's or member's meeting duly called for the purpose, an insolvent debtor may initiate voluntary proceedings under this Act by filing a petition for rehabilitation with the court and on the grounds hereinafter specifically provided. The petition shall be verified to establish the insolvency of the debtor and the viability of its rehabilitation, and include, whether as an attachment or as part of the body of the petition, as a minimum the following:

- (a) xxx xxx xxx
- (b) xxx xxx xxx
- (c) xxx xxx xxx
- (d) xxx xxx xxx
- (e) xxx xxx xxx
- (f) xxx xxx xxx
- (g) xxx xxx xxx
- (h) xxx xxx xxx