

TENTH DIVISION

[CA-G.R. SP. NO. 92673, August 18, 2006]

D.M. CONSUNJI, INC., PETITIONER, VS. ANNABELLE ABAYA, ET AL., ROBERT H. BLOCK AND LANDMARK ENTERTAINMENT GROUP, JARVIS YU CO, SPOUSES RAY J. CONCEPCION AND TERESITA CONCEPCION, EXPORT AND INDUSTRY BANK, INC., DRA. ROSALIA HILARIO, PHILIPPINE BANK OF COMMUNICATIONS, PIONEER HIGHLANDS NORTH CONDOMINIUM CORPORATION, SUREQUEST DEVELOPMENT ASSOCIATES, INC., UNIVERSAL LEISURE CLUB, INC., AND UNIVERSAL RIGHTFIELD PROPERTY HOLDINGS, INC., RESPONDENTS.

D E C I S I O N

REYES, JR., A. J.:

For resolution is the instant petition for review under Rule 43 of the 1997 Rules of Civil Procedure filed by petitioner, seeking to reverse and set aside the Order dated December 9, 2005 issued by the Regional Trial Court, Branch 211, of Mandaluyong City, in a case docketed as SEC-MC04-080, dismissing the petition for the rehabilitation of URPHI.

The reasons given by the court *a quo* in dismissing the petition for rehabilitation of URPHI are vividly stated in the Order of December 9, 2005, as follows:

“This is the second time that the court encountered the petitioner on this matter that would have resulted to its rehabilitation. Initially, it filed a petition for rehabilitation of URPHI docketed as SEC CASE No. MCO4-079) but was dismissed by the court in its order dated January 19, 2004.

A scrutiny of the petition, the oppositions thereto, the reply to the oppositions, would show that the petition for rehabilitation of URPHI is a scheme to defraud certain creditors and favoring certain creditors because despite its being in financial distress, URPHI was able to settle its obligation to Export and Industry Bank, Inc. in the amount of P171,000,000.00, inclusive of interest and penalties on January 05, 2004 a few days before it filed the rehabilitation which is suspicious as the Rehabilitation Plan (Annex “H”) of the petition calls for the infusion of P150,000,000.00 to jumpstart its rehabilitation.

Further, the petitioner herein has the same set of officers and stockholders of the company to be rehabilitated. Other Oppositors claimed that the petition for rehabilitation was filed in bad faith for the reason that the attachments submitted to the court are false considering that its payment of its obligation to Export and Industry Bank, Inc. was not alleged thereto.

On the matter of Rehabilitation Receiver's Report and Recommendation, the court, finds that the receiver filed his recommendation prematurely in that, before he could file his recommendations, the court should have first given due course to the petition and referred it together with the annexes, to the receiver(.) Rule 4, Section 9, second paragraph states, thus:

'If, after the initial hearing, the court is satisfied that there is merit in the petition, it shall give due course to the petition and immediately refer the petition and its annexes to the Rehabilitation Receiver who shall evaluate the rehabilitation plan and submit his recommendations to the court not later than one hundred twenty (120) days from the date of initial hearing.'

While the court sympathizes with the plight of URPHI's creditors, it is best for them to confront their situation now when assets of the petitioner are still available, rather than to postpone it at a later date when nothing may be left at all.

That being so, the receiver has no basis in filing his 'Receiver's Report and Recommendation' dated January 06, 2005, be it treated as a consent on, or an evaluation of, the rehabilitation plan. Accordingly, it shall not be given any consideration or application in the present petition.

WHEREFORE, the above-entitled case is hereby ordered DISMISSED.

xxx." (*Rollo*, pp. 101-103)

A review of the Order sought to be reversed and set aside, in relation to the petition filed before the court *a quo*, will show that the lower court did not commit any reversible error and has sufficient basis in dismissing the petition for rehabilitation of URPHI filed by herein petitioner.

First, so many things were alleged in the petition before the lower court to prove that URPHI should be rehabilitated, like a) to ensure that petitioner will be paid by URPHI under a court appointed rehabilitation receiver (par. 5 thereof); b) DMCI (herein petitioner) is aware that the business of URPHI had deteriorated to such an extent that it was no longer able to pay its obligations with respect to the Financial Indebtedness as and when they fell due (Par. 13 thereof); c) (given) the current inability of URPHI to meet its maturing obligations constrained by its cash flow shortfall (par. 14 thereof); d) URPHI has difficulty in paying for its maturing liabilities and debts over the past three years (par. 15 thereof), among others. Yet, URPHI was able to settle its obligation with Export and Industry Bank, Inc., in the amount of P171,000,000.00, inclusive of interest and penalties on **05 January 2004**, or, a few days before it filed the rehabilitation petition on **28 January 2004**. Thus, it was correct for the lower court to deny the said petition using as justification the said payment to Export and Industry Bank, Inc., - even granting for the sake of argument that all the allegations of the petition for rehabilitation are indeed correct and can be supported by evidence.

Second, the infusion of P150,000,000.00 to jumpstart its rehabilitation as contained