

THIRD DIVISION

[G.R. No. 178768, November 25, 2009]

**PACIFIC WIDE REALTY AND DEVELOPMENT CORPORATION,
PETITIONER, VS. PUERTO AZUL LAND, INC., RESPONDENT.**

[G.R. No. 180893]

**PACIFIC WIDE REALTY AND DEVELOPMENT CORPORATION,
PETITIONER, VS. PUERTO AZUL LAND, INC., RESPONDENT.**

D E C I S I O N

NACHURA, J.:

Before the Court are the consolidated petitions for review on *certiorari* under Rule 45 of the Rules of Court: (1) G.R. No. 180893, assailing the Decision^[1] dated May 17, 2007 and the Resolution^[2] dated October 30, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 92695, entitled "*Export and Industry Bank v. Puerto Azul Land, Inc.*"; and (2) G.R. No. 178768, assailing the Decision^[3] dated March 16, 2007 and the Resolution^[4] dated June 29, 2007 of the CA in CA-G.R. SP No. 91996, entitled "*Puerto Azul Land, Inc. v. The Regional Trial Court of Manila, Br. 24; Sheriff IV of Pasay City Virgilio F. Villar; and Pacific Wide Realty & Development Corporation (as substitute for Export and Industry Bank, Inc.)*."

The Facts

In G.R. No. 180893

Puerto Azul Land, Inc. (PALI) is the owner and developer of the Puerto Azul Complex situated in Ternate, Cavite. Its business involves the development of Puerto Azul into a satellite city with residential areas, resort, tourism and retail commercial centers with recreational areas.^[5] In order to finance its operations, it obtained loans from various banks, the principal amount of which amounted to Six Hundred Forty Million Two Hundred Twenty-Five Thousand Three Hundred Twenty-Four Pesos (P640,225,324.00). PALI and its accommodation mortgagors, *i.e.*, Ternate Development Corporation (TDC), Ternate Utilities, Inc. (TUI), and Mrs. Trinidad Diaz-Enriquez, secured the loans.^[6]

In the beginning, PALI's business did very well. However, it started encountering problems when the Philippine Stock Exchange rejected the listing of its shares in its initial public offering which sent a bad signal to the real estate market. This resulted in potential investors and real estate buyers shying away from the business venture. The situation was aggravated by the 1997 Asian financial crisis and the decline of the real estate market. Consequently, PALI was unable to keep up with the payment of its obligations, both current and those that were about to fall due. One of its

creditors, the Export and Industry Bank^[7] (EIB), later substituted by Pacific Wide Realty and Development Corporation (PWRDC), filed foreclosure proceedings on PALI's mortgaged properties. Thrust to a corner, PALI filed a petition for suspension of payments and rehabilitation,^[8] accompanied by a proposed rehabilitation plan and three (3) nominees for the appointment of a rehabilitation receiver.^[9]

On September 17, 2004, after finding that the petition was sufficient in form and substance, the Regional Trial Court (RTC) issued a Stay Order^[10] and appointed Patrick V. Caoile as rehabilitation receiver.^[11] Dissatisfied, EIB filed a motion to replace the appointed rehabilitation receiver. On January 25, 2005, the RTC denied the motion.^[12]

On April, 20, 2005, the rehabilitation receiver filed his rehabilitation report and recommendation, wherein he proposed that PALI should be rehabilitated rather than be dissolved and liquidated. On June 9, 2005, PALI filed a revised rehabilitation plan.^[13]

EIB and the other creditors of PALI filed their respective comments/opposition to the report/recommendations of the rehabilitation receiver. On November 2, 2005, EIB, together with another creditor of PALI, Tranche I (SPV-MC), Inc., filed an urgent motion to disqualify the appointed rehabilitation receiver. The RTC denied the motion in an Order^[14] dated December 9, 2005.^[15]

On December 13, 2005, the RTC rendered a Decision^[16] approving PALI's petition for suspension of payments and rehabilitation. The pertinent portions of the decision read:

The rehabilitation of the petitioner, therefore, shall proceed as follows:

1. The creditors shall have, as first option, the right to be paid with real estate properties being offered by the petitioner in dacion en pago, which shall be implemented under the following terms and conditions:

- a. The properties offered by the petitioner shall be appraised by three appraisers, one to be chosen by the petitioner, a second to be chosen by the bank creditors and the third to be chosen by the Receiver. The average of the appraisals of the three (3) chosen appraisers shall be the value to be applied in arriving at the dacion value of the properties. In case the dacion amount is less than the total of the secured creditor's principal obligation, the balance shall be restructured in accordance with the schedule of payments under option 2, paragraph (a). In case of excess, the same shall [be] applied in full or partial payment of the accrued interest on the obligations. The balance of the accrued interest, if any, together with the penalties shall [be] condoned.

2. Creditors who will not opt for dacion shall be paid in accordance with the restructuring of the obligations as recommended by the Receiver as follows:

a) The obligations to secured creditors will be subject to a 50% haircut of the principal, and repayment shall be semi-annually over a period of 10 years, with 3-year grace period. Accrued interests and penalties shall be condoned. Interest shall be paid at the rate of 2% p.a. for the first 5 years and 5% p.a. thereafter until the obligations are fully paid. The petitioner shall allot 50% of its cash flow available for debt service for secured creditors. Upon completion of payments to government and employee accounts, the petitioner's cash flow available for debt service shall be used until the obligations are fully paid.

b) One half (1/2) of the principal of the petitioner's unsecured loan obligations to other creditors shall be settled through non-cash offsetting arrangements, with the balance payable semi-annually over a period of 10 years, with 3-year grace period, with interest at the rate of 2% p.a. for the first 5 years and 5% p.a. from the 6th year onwards until the obligations are settled in full. Accrued interest and penalties shall be condoned.

c) Similarly, one half (1/2) of the petitioner's obligations to trade creditors shall be settled through non-cash offsetting arrangements. The cash payments shall be made semi-annually over a period of 10 years on a pari passu basis with the bank creditors, without interest, penalties and other charges of similar kind.

WHEREFORE, the rehabilitation of petitioner Puerto Azul Land, Inc. is hereby approved in accordance with the foregoing pronouncements by the Court. Subject to the following terms and conditions:

1. Immediately upon the implementation of the rehabilitation of the petitioner, the Rehabilitation Receiver shall inform the Court thereof;
2. The Rehabilitation Receiver, creditors, and the petitioner shall submit to the Court at the end of the first year of the petitioner's rehabilitation, and annually thereafter until the termination of the rehabilitation, their respective reports on the progress of the petitioner's rehabilitation, specially the petitioner's compliance with the provisions of the plan as modified by the Rehabilitation Receiver;
3. The Rehabilitation Receiver shall report to the Court any change in the assumptions used in the Rehabilitation Plan, its projections, and forecasts, that may be brought about by the settlement through dacion en pago of any of the obligations and to recommend corresponding changes, if any, in such assumptions, projections, and forecasts;
4. The rehabilitation of the petitioner is binding upon the creditors and all persons who may be affected by it, including the creditors, whether or not they have participated in the proceedings or opposed the plan or whether or not their claims have been scheduled.

The petitioner is hereby strictly enjoined to abide by the terms and conditions set forth in this Order and the provisions of the Interim Rules on Corporate Rehabilitation.

The Rehabilitation Receiver is hereby directed to perform his functions and responsibilities pursuant to Section 14 of the Interim Rules, with particular emphasis on the following:

"u) To be notified of, and to attend all meetings of the board of directors and stockholders of the debtors";

"v) To recommend any modification of an approved rehabilitation plan as he may deem appropriate";

"w) To bring to the attention of the court any material change affecting the debtor's ability to meet the obligations under the rehabilitation plan";

[x x x x]

"y) To recommend the termination of the proceedings and the dissolution of the debtor if he determines that the continuance in business of such entity is no longer feasible or profitable or no longer works to the best interest of the stockholders, parties-litigants, creditors, or the general public."

SO ORDERED.^[17]

Finding the terms of the rehabilitation plan and the qualifications of the appointed rehabilitation receiver unacceptable, EIB filed with the CA a petition for review under Rule 42 of the Rules of Court. The case was entitled, "*Export and Industry Bank v. Puerto Azul Land, Inc.*"

On May 17, 2007, the CA rendered a Decision,^[18] the *fallo* of which reads:

WHEREFORE, in view of the forgoing, the petition for review is hereby **DISMISSED**. The assailed December 13, 2005 decision of the court *a quo* is hereby **AFFIRMED** *in toto*.^[19]

EIB filed a motion for reconsideration. However, the same was denied in a Resolution^[20] dated October 30, 2007.

In G.R. No. 178768

On September 21, 2004, EIB entered its appearance before the rehabilitation court and moved for the clarification of the stay order dated September 17, 2004 and/or leave to continue the extrajudicial foreclosure of the real estates owned by PALI's accommodation mortgagors. In opposition, PALI argued that the foreclosure sought would preempt the rehabilitation proceedings and would give EIB undue preference over PALI's other creditors. On November 10, 2004, the RTC issued an Order,^[21] denying EIB's motion.^[22]

On March 3, 2005, EIB filed an urgent motion to order PALI and/or the mortgagor TUI/rehabilitation receiver to pay all the taxes due on Transfer Certificate of Title

(TCT) No. 133164. EIB claimed that the property covered by TCT No. 133164, registered in the name of TUI, was one of the properties used to secure PALI's loan from EIB. The said property was subject to a public auction by the Treasurer's Office of Pasay City for non-payment of realty taxes. Hence, EIB prayed that PALI or TUI be ordered to pay the realty taxes due on TCT No. 133164.^[23]

PALI opposed the motion, arguing that the rehabilitation court's stay order stopped the enforcement of all claims, whether for money or otherwise, against a debtor, its guarantors, and its sureties not solidarily liable to the debtor; thus, TCT No. 133164 was covered by the stay order.^[24]

On March 31, 2005, the RTC issued an Order,^[25] the dispositive portion of which reads:

Accordingly, and as being invoked by the creditor movant, this Court hereby modifies the Stay Order of September 17, 2004, in such a manner that TCT No. 133614 which is mortgaged with creditor movant Export and Industry Bank, Inc. is now excluded from the Stay Order. As such, Export and Industry Bank, Inc. may settle the above-stated realty taxes of third party mortgagor with the local government of Pasay City. In return, and to adequately protect the creditor movant Export and Industry Bank, Inc., the latter may foreclose on TCT No. 133614.

SO ORDERED.^[26]

On April 12, 2005, PALI filed an urgent motion for a status quo order, praying that the stay order be maintained and that the enforcement of the claim of Pasay City be held in abeyance pending the hearing of its motion.^[27] On April 13, 2005, the RTC, so as not to render moot PALI's motion, issued an Order,^[28] directing EIB to refrain from taking any steps to implement the March 31, 2005 Order. The City Treasurer of Pasay City was, likewise, directed to respect the stay order dated September 17, 2004 insofar as TCT No. 133164 was concerned, until further orders from the court.^[29]

On August 16, 2005, the RTC issued an Order^[30] addressing the April 12, 2005 urgent motion of PALI. In the said order, the rehabilitation court maintained its March 31, 2005 Order. The court reiterated that TCT No. 133164, under the name of TUI, was excluded from the stay order. In order to protect the interest of EIB as creditor of PALI, it may foreclose TCT No. 133164 and settle the delinquency taxes of third-party mortgagor TUI with the local government of Pasay City.

PALI filed an urgent motion to modify the Order dated August 16, 2005. The same was denied by the RTC in an Order^[31] dated October 19, 2005. Aggrieved, PALI filed with the CA a petition for *certiorari* under Rule 65 of the Rules of Court, ascribing grave abuse of discretion on the part of the rehabilitation court in allowing the foreclosure of a mortgage constituted over the property of an accommodation mortgagor, to secure the loan obligations of a corporation seeking relief in a rehabilitation proceeding. The case was entitled, "*Puerto Azul Land, Inc. v. The Regional Trial Court of Manila, Br. 24; Sheriff IV of Pasay City Virgilio F. Villar; and Export and Industry Bank, Inc.*"