715 Phil. 420

SECOND DIVISION

[G.R. No. 175844, July 29, 2013]

BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. SARABIA MANOR HOTEL CORPORATION, RESPONDENT.

D E C I S I O N

PERLAS-BERNABE, J.:

Before the Court is a petition for review on *certiorari*[1] assailing the Decision[2] dated April 24, 2006 and Resolution[3] dated December 6, 2006 of the Court of Appeals, Cebu City (CA) in CA-G.R. CV. No. 81596 which affirmed with modification the rehabilitation plan of respondent Sarabia Manor Hotel Corporation (Sarabia) as approved by the Regional Trial Court of Iloilo City, Branch 39 (RTC) through its Order[4] dated August 7, 2003.

The Facts

Sarabia is a corporation duly organized and existing under Philippine laws, with principal place of business at 101 General Luna Street, Iloilo City.[5] It was incorporated on February 22, 1982, with an authorized capital stock of P10,000,000.00, fully subscribed and paid-up, for the primary purpose of owning, leasing, managing and/or operating hotels, restaurants, barber shops, beauty parlors, sauna and steam baths, massage parlors and such other businesses incident to or necessary in the management or operation of hotels.[6]

In 1997, Sarabia obtained a P150,000,000.00 special loan package from Far East Bank and Trust Company (FEBTC) in order to finance the construction of a five-storey hotel building (New Building) for the purpose of expanding its hotel business. An additional P20,000,000.00 stand-by credit line was approved by FEBTC in the same year.[7]

The foregoing debts were secured by real estate mortgages over several parcels of land[8] owned by Sarabia and a comprehensive surety agreement dated September 1, 1997 signed by its stockholders.[9] By virtue of a merger, Bank of the Philippine Islands (BPI) assumed all of FEBTC's rights against Sarabia.[10]

Sarabia started to pay interests on its loans as soon as the funds were released in October 1997. However, largely because of the delayed completion of the New Building, Sarabia incurred various cash flow problems. Thus, despite the fact that it had more assets than liabilities at that time,[11] it, nevertheless, filed, on July 26, 2002, a Petition[12] for corporate rehabilitation (rehabilitation petition) with prayer for the issuance of a stay order before the RTC as it foresaw the impossibility to meet its maturing obligations to its creditors when they fall due.

In the said petition, Sarabia claimed that its cash position suffered when it was forced to take-over the construction of the New Building due to the recurring default of its contractor, Santa Ana – AJ Construction Corporation (contractor),[13] and its subsequent abandonment of the said project.[14] Accordingly, the New Building was completed only in the latter part of 2000, or two years past the original target date of August 1998, thereby skewing Sarabia's projected revenues. In addition, it was compelled to divert some of its funds in order to cover cost overruns. The situation became even more difficult when the grace period for the payment of the principal loan amounts ended in 2000 which resulted in higher amortizations. Moreover, external events adversely affecting the hotel industry, *i.e.*, the September 11, 2001 terrorist attacks and the Abu Sayyaf issue, also contributed to Sarabia's financial difficulties.[15] Owing to these circumstances, Sarabia failed to generate enough cash flow to service its maturing obligations to its creditors, namely: (*a*) BPI (in the amount of P191,476,421.42); (*b*) Rural Bank of Pavia (in the amount of P2,500,000.00); (*c*) Vic Imperial Appliance Corp. (Imperial Appliance) (in the amount of P5,000,000.00); (*d*) its various suppliers (in the amount of P7,690,668.04); (*e*) the government (for minimum corporate income tax in the amount of P547,161.18); and (*f*) its stockholders (in the amount of P18,748,306.35).[16]

In its proposed rehabilitation plan,[17] Sarabia sought for the restructuring of all its outstanding loans, submitting that the interest payments on the same be pegged at a uniform escalating rate of: (*a*) 7% per annum (p.a.) for the years 2002 to 2005; (*b*) 8% p.a. for the years 2006 to 2010; (*c*) 10% p.a. for the years 2011 to 2013; (*d*) 12% p.a. for the years 2014 to 2015; and (*e*) 14% p.a. for the year 2018. Likewise, Sarabia sought to make annual payments on the principal loans starting in 2004, also in escalating amounts depending on cash flow. Further, it proposed that it should pay off its outstanding obligations to the government and its suppliers on their respective due dates, for the sake of its day to day operations.

Finding Sarabia's rehabilitation petition sufficient in form and substance, the RTC issued a Stay Order[18] on August 2, 2002. It also appointed Liberty B. Valderrama as Sarabia's rehabilitation receiver (Receiver). Thereafter, BPI filed its Opposition.[19]

After several hearings, the RTC gave due course to the rehabilitation petition and referred Sarabia's proposed rehabilitation plan to the Receiver for evaluation.[20]

In a Recommendation[21] dated July 10, 2003 (Receiver's Report), the Receiver found that Sarabia may be rehabilitated and thus, made the following recommendations:

(1) Restructure the loans with Sarabia's creditors, namely, BPI, Imperial Appliance, Rural Bank of Pavia, and Barcelo Gestion Hotelera, S.L. (Barcelo), under the following terms and conditions: (*a*) the total outstanding balance as of December 31, 2002 shall be recomputed, with the interest for the years 2001 and 2002 capitalized and treated as part of the principal; (*b*) waive all penalties; (c) extend the payment period to seventeen (17) years, *i.e.*, from 2003 to 2019, with a two-year grace period in principal payment; (*d*) fix the interest rate at 6.75% p.a. plus

10% value added tax on interest for the entire term of the restructured loans;[22] (*e*) the interest and principal based on the amortization schedule shall be payable annually at the last banking day of each year; and (*f*) any deficiency shall be paid personally by Sarabia's stockholders in the event it fails to generate enough cash flow; on the other hand, any excess funds generated at the end of the year shall be paid to the creditors to accelerate the debt servicing;[23]

(2) Pay Sarabia's outstanding payables with its suppliers and the government so as not to disrupt hotel operations;[24]

(3) Convert the Advances from stockholders amounting to P18,748,306.00 to stockholder's equity and other advances amounting to P42,688,734.00 as of the December 31, 2002 tentative financial statements to Deferred Credits; the said conversion should increase stockholders' equity to P268,545,731.00 and bring the debt to equity ratio to 0.85:1;[25]

(4) Require Sarabia's stockholders to pay its payables to the hotel recorded as Accounts Receivable – Trade, amounting to P285,612.17 as of December 31, 2001, and its remaining receivables after such date;[26]

(5) No compensation or cash dividends shall be paid to the stockholders during the rehabilitation period, except those who are directly employed by the hotel as a full time officer, employee or consultant covered by a valid contract and for a reasonable fee;[27]

(6) All capital expenditures which are over and above what is provided in the case flow of the rehabilitation plan which will materially affect Sarabia's cash position but which are deemed necessary in order to maintain the hotel's competitiveness in the industry shall be subject to the RTC's approval prior to its implementation;[28]

(7) Terminate the management contract with Barcelo, thereby saving an estimated P25,830,997.00 in management fees, over and above the salaries and benefits of certain managerial employees;[29]

(8) Appoint a new management team which would be required to submit a comprehensive business plan to support the generation of the target revenue as reported in the rehabilitation plan;[30]

(9) Open a debt servicing account and transfer all excess funds thereto, which in no case should be less than P500,000.00 at the end of the month; the funds will be drawn payable to the creditors only based on the amortization schedule;[31] and

(10) Release the surety obligations of Sarabia's stockholders, considering the adequate collaterals and securities covered by the rehabilitation plan and the continuing mortgages over Sarabia's properties.[32]

The RTC Ruling

In an Order[33] dated August 7, 2003, the RTC approved Sarabia's rehabilitation plan as recommended by the Receiver, finding the same to be feasible. In this accord, it observed that the rehabilitation plan was realistic since, based on Sarabia's financial history, it was shown that it has the inherent capacity to generate funds to pay its loan obligations given the proper perspective.[34] The recommended rehabilitation plan was also practical in terms of the interest rate pegged at 6.75% p.a. since it is based on Sarabia's ability to pay and the creditors' perceived cost of money.[35] It was likewise found to be viable since, based on the extrapolations made by the Receiver, Sarabia's revenue projections, albeit projected to slow down, remained to have a positive business/profit outlook altogether.[36]

The RTC further noted that while it may be true that Sarabia has been unable to comply with its existing terms with BPI, it has nonetheless complied with its obligations to its employees and suppliers and pay its taxes to both local and national government without disrupting the day-to-day operations of its business as an on-going concern.[37]

More significantly, the RTC did not give credence to BPI's opposition to the Receiver's recommended rehabilitation plan as neither BPI nor the Receiver was able to substantiate the claim that BPI's cost of funds was at the 10% p.a. threshold. In this regard, the RTC gave more credence to the Receiver's determination of fixing the interest rate at 6.75% p.a., taking into consideration not only Sarabia's ability to pay based on its proposed interest rates, *i.e.*, 7% to 14% p.a., but also BPI's perceived cost of money based on its own published interest rates for deposits, *i.e.*, 1% to 4.75% p.a., as well as the rates for treasury bills, *i.e.*, 5.498% p.a. and CB overnight borrowings, *i.e.*, 7.094%. p.a.[38]

The CA Ruling

In a Decision[39] dated April 24, 2006, the CA affirmed the RTC's ruling with the modification of reinstating the surety obligations of Sarabia's stockholders to BPI as an additional safeguard for the effective implementation of the approved rehabilitation plan.[40] It held that the RTC's conclusions as to the feasibility of Sarabia's rehabilitation was well- supported by the company's financial statements, both internal and independent, which were properly analyzed and examined by the Receiver.[41]

It also upheld the 6.75%. p.a. interest rate on Sarabia's loans, finding the said rate to be reasonable given that BPI's interests as a creditor were properly accounted for. As published, BPI's time deposit rate for an amount of P5,000,000.00 (with a term of 360-364 days) is at 5.5% p.a.; while the benchmark ninety one-day commercial paper, which banks used to price their loan averages to 6.4% p.a. in 2005, has a three-year average rate of 6.57% p.a.[42] As such, the 6.75% p.a. interest rate would be higher than the current market interest rates for time deposits and benchmark commercial papers. Moreover, the CA pointed out that should the prevailing market interest rates change as feared by BPI, the latter may still move for the modification of the approved rehabilitation plan.[43]

Aggrieved, BPI moved for reconsideration which was, however, denied in a Resolution[44] dated December 6, 2006.

Hence, this petition.

The Issue Before the Court

The primordial issue raised for the Court's resolution is whether or not the CA correctly affirmed Sarabia's rehabilitation plan as approved by the RTC, with the modification on the reinstatement of the surety obligations of Sarabia's stockholders.

BPI mainly argues that the approved rehabilitation plan did not give due regard to its interests as a secured creditor in view of the imposition of a fixed interest rate of 6.75% p.a. and the extended loan repayment period.[45] It likewise avers that Sarabia's misrepresentations in its rehabilitation petition remain unresolved.[46]

On the contrary, Sarabia essentially maintains that: (a) the present petition improperly raises questions of fact;[47] (b) the approved rehabilitation plan takes into consideration all the interests of the parties and the terms and conditions stated therein are more reasonable than what BPI proposes;[48] and (c) BPI's allegations of misrepresentation are mere desperation moves to convince the Court to overturn the rulings of the courts *a quo*.[49]

The Court's Ruling

The petition has no merit.

A. Propriety of BPI's petition;
procedural considerations.

It is fundamental that a petition for review on *certiorari* filed under Rule 45 of the Rules of Court covers only questions of law. In this relation, questions of fact are not reviewable and cannot be passed upon by the Court unless, the following exceptions are found to exist: (*a*) when the findings are grounded entirely on speculations, surmises, or conjectures; (*b*) when the inference made is manifestly mistaken, absurd, or impossible; (*c*) when there is a grave abuse of discretion; (*d*) when the judgment is based on misappreciation of facts; (*e*) when the findings of fact are conflicting; (*f*) when in making its findings, the same are contrary to the admissions of both parties; (*g*) when the findings are contrary to those of the trial court; (*h*) when the findings are conclusions without citation of specific evidence on which they are based; (*i*) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (*j*) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.[50]

The distinction between questions of law and questions of fact is well- defined. A question of law exists when the doubt or difference centers on what the law is on a certain state of facts. A question of fact, on the other hand, exists if the doubt centers on the truth or falsity of the alleged facts. This being so, the findings of fact of the CA are final and conclusive and the Court will not review them on appeal.[51]

In view of the foregoing, the Court finds BPI's petition to be improper – and hence,