

## SECOND DIVISION

[ G.R. No. 179558, June 01, 2011 ]

### ASIATRUST DEVELOPMENT BANK, PETITIONER, VS. FIRST AIKKA DEVELOPMENT, INC. AND UNIVAC DEVELOPMENT, INC., RESPONDENTS.

#### DECISION

##### NACHURA, J.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Court of Appeals (CA) Decision<sup>[1]</sup> dated June 28, 2007 and Resolution<sup>[2]</sup> dated August 29, 2007 in CA-G.R. SP No. 97408.

##### *The Facts*

Respondents First Aikka Development, Inc. (FADI) and Univac Development, Inc. (UDI) are domestic corporations engaged in the construction and/or development of roads, bridges, infrastructure projects, subdivisions, housing, land, memorial parks, and other industrial and commercial projects for the government or any private entity or individual.<sup>[3]</sup>

In the course of their business, FADI and UDI availed of separate loan accommodations or credit lines with petitioner Asiatrust Development Bank.<sup>[4]</sup> The aggregate amount of the loan obtained by respondents was P114,000,000.00. Respondents religiously and faithfully complied with their loan obligations, but during the Asian Financial Crisis, which directly and adversely affected mainly the construction and real estate industry, respondents could not pay their obligations in cash.<sup>[5]</sup> This prompted respondents to negotiate with petitioner for different modes of payment that the former might avail of. Petitioner thus agreed that respondents assign the receivables of their various contracts to sell involving the lots in the residential subdivision projects they were developing, instead of paying in cash.<sup>[6]</sup>

Notwithstanding the above agreement, petitioner insisted on collecting the loan per the loan documents. Petitioner claimed that respondents were already in default and demanded the payment of P145,830,220.95. Respondents denied that they were in default because of the assignment of their receivables to petitioner. Respondents contested petitioner's claim and demanded for an accounting to determine the correct and true amount of their obligations.<sup>[7]</sup>

On May 10, 2006, respondents filed a consolidated Petition for Corporate Rehabilitation with Prayer for Suspension of Payments<sup>[8]</sup> with the Regional Trial Court (RTC) of Baguio City, Branch 59. The case was docketed as Civil Case No. 6267-R. Respondents alleged that they were unable to pay their loan based on the claim of petitioner. Though they have sufficient assets to pay their loan, respondents

averred that they were not liquid. They also stated that they were threatened by petitioner with various cases aimed at disrupting the operations of respondents which might eventually lead to the cessation of their business.<sup>[9]</sup> Respondents prayed that an order be issued staying the enforcement of any and all claims of their creditors, investors, and suppliers, whether for money or otherwise, against petitioner, their guarantors, and sureties.<sup>[10]</sup> By way of rehabilitation, respondents also sought the determination of the true and correct amount of their loan obligation with petitioner.<sup>[11]</sup>

On May 16, 2006, the RTC issued an Order,<sup>[12]</sup> the pertinent portions of which read:

After an examination of the contents of the petition setting forth with sufficient particularity and material facts pursuant to Section 2 of Rule 4 of the Interim Rules of Procedures (sic) of Corporate Rehabilitation and the supporting documents attached thereto and finding the same to be sufficient in form and substance, the Court hereby:

1. ORDERS STAYING enforcement of all claims whether for money or otherwise and whether such enforcement is by court action or otherwise, against the debtors (herein petitioners)[, their] guarantors and [sureties] not solidarily liable with the debtors. In particular[, ] ASIATRUST BANK BE STAYED from proceeding with the foreclosure and auction sale of the mortgaged properties;

2. APPOINTS PATRICK V. CAOILE as interim rehabilitation receiver with a bond of two million (P2,000,000.00) pesos;

x x x x

7. FIXES the initial hearing on the petition on June 29, 2006 at 11:00 o'clock (sic) in the morning.<sup>[13]</sup>

On June 2, 2006, Robert Cuchado, an officer of petitioner, went to Baguio City to secure a copy of the petition for rehabilitation but failed to do so because, at that time, the personnel of the rehabilitation court were attending the Judicial Service Training. Petitioner then tried to secure a copy of the petition through the sheriff of the RTC of La Trinidad, Benguet. The rehabilitation court, however, required petitioner to file a motion to that effect, together with a written document authorizing the sheriff to secure a copy thereof. On June 9, 2006, the rehabilitation court issued an Order granting the motion filed by petitioner and gave it a certified true copy of the petition.<sup>[14]</sup>

On the day of the initial hearing, petitioner, through its counsel Atty. Mario C. Lorenzo (Atty. Lorenzo), went to court with a Motion for Leave of Court to Admit Opposition to Rehabilitation Petition<sup>[15]</sup> with the attached Opposition to Petition for Rehabilitation.<sup>[16]</sup> In an Order<sup>[17]</sup> dated July 17, 2006, the RTC denied the motion and explained:

Under par. 9 of the Stay Order[,] all creditors, etc., were given ten (10) days before the initial hearing to file their comment or opposition to the petition and putting them on notice that failure to do so will bar them from participating in the proceedings.

It is only on June 29, 2006, the date of the initial hearing that Asiatrust filed its Motion with Leave to Admit Opposition. The motion partakes of the nature of a motion for extension of time to file pleading which is a prohibited pleading under Rule 3(e) of the Interim Rules of Procedure on Corporate Rehabilitation.<sup>[18]</sup>

On July 31, 2006, when the case was called for hearing, Enrico J. Ong (Ong) appeared as representative of petitioner because the latter's counsel could not go to court due to the cancellation of his flight as a result of bad weather. The rehabilitation court recognized the appearance of Ong only to inform the court that the counsel for petitioner could not attend the hearing. There being no other oppositors or creditors in court despite due notices, the rehabilitation court terminated the initial hearing and directed the rehabilitation receiver to evaluate respondents' rehabilitation plan and then report the results thereof to the court.<sup>[19]</sup>

On October 13, 2006, the rehabilitation receiver called for a conference and presented the draft of the rehabilitation report to petitioner, represented by Atty. Lorenzo and Ong, and to respondents. Petitioner filed a manifestation and motion in court calling its attention to the alleged refusal of the receiver to hear its side. Petitioner thus asked for judicial assistance to enable it to actively participate in the rehabilitation proceedings and protect its interest. The receiver finalized and later on filed his evaluation report in court. He recommended the approval of the rehabilitation plan.<sup>[20]</sup>

On December 5, 2006, the RTC issued an Order,<sup>[21]</sup> the pertinent portions of which read:

On the same ground under Rule 3 of the Interim Rules, the Motion of Oppositor Asiatrust to participate in the Rehabilitation Proceedings is **DENIED**. This pleading partakes of a [P]etition for Relief which is also a prohibited pleading under par. d of Rule 3 of the same rule. Moreover, the motion has also the purpose to reconsider the court's ruling in denying the admission of their opposition to the [P]etition for Rehabilitation.

It must be stressed that under par. 9 of the Stay Order, "All creditors, etc., were given ten (10) days before the initial hearing to file their comment or opposition to the petition and **putting them on notice that failure to do so will bar them from participating in the proceedings.**"

As to the Rehabilitation Report and the Integrated Revised Rehabilitation Plan and Schedule of the petitioners, the court, after a careful and thorough examination and review of the report, it is its considered judgment that the rehabilitation of the debtor is feasible and hereby APPROVES the Rehabilitation Report and the REVISED REHABILITATION

PLAN.

x x x x

WHEREFORE, premises all duly considered, the Motion of Asiatrust to participate in the Rehabilitation Proceedings is hereby DENIED, the Rehabilitation Report and the Integrated Revised Rehabilitation Plan of Receiver Patrick Caoile is APPROVED and the Notice of the Appearance of the Cabato Law Office as collaborating counsel for Oppositor Asiatrust is NOTED.

The court appointed Receiver shall submit his report every three (3) months and a yearly report on the status of the progress of the rehabilitation and the implementation and monitoring of the same.

SO ORDERED.<sup>[22]</sup>

Aggrieved, petitioner elevated the case to the CA via a Petition for Review<sup>[23]</sup> under Rule 43 of the Rules of Court.

On June 28, 2007, the appellate court affirmed the above RTC Orders. The appellate court emphasized that petitioner's failure to participate in the rehabilitation proceedings was due to its own fault. First, petitioner failed to file on time its opposition to the petition for rehabilitation and still failed to present good reason for it to be belatedly admitted. Second, on the date of the second hearing, its counsel failed to go to court allegedly due to the cancellation of his flight, which, to the mind of the court, was inexcusable. Lastly, instead of filing a comment to the rehabilitation proceedings, petitioner filed a motion to participate in the rehabilitation proceedings, which is a prohibited pleading. The CA thus concluded that petitioner was given every opportunity to be heard in the rehabilitation proceedings, but it failed to avail of these remedies. On the propriety of the joint petition for rehabilitation, the CA opined that the Interim Rules of Procedure on Corporate Rehabilitation (the Rules) contains no prohibition. Finally, the CA stressed that rehabilitation proceedings are non-adversarial and summary in nature which, therefore, necessitate the proper observance of the period and procedures provided for by law and the Rules.<sup>[24]</sup>

#### *The Issues*

Undaunted, petitioner comes before this Court, raising the following errors:

A.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ERRORS OF LAW WHEN IT FAILED TO RULE THAT PETITIONER WAS UNJUSTLY DEPRIVED OF ITS PROPERTY WITHOUT DUE PROCESS OF LAW WHEN IT WAS NOT ALLOWED TO PROVE THE TRUE AND CORRECT AMOUNT OF THE LOAN OBLIGATIONS OWING TO IT BY THE RESPONDENTS BASED ON A MERE TECHNICALITY, IN BLATANT DISREGARD OF THE APPLICABLE LAWS AND DECISIONS OF THIS

HONORABLE COURT.

B.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ERRORS OF LAW WHEN IT AFFIRMED THE APPROVAL OF THE REHABILITATION PLAN DESPITE THE REHABILITATION COURT'S FAILURE TO CONDUCT A CLARIFICATORY HEARING TO RESOLVE THE UNSETTLED ISSUE ON THE AMOUNT OF INDEBTEDNESS OF PRIVATE RESPONDENTS AND THE REHABILITATION RECEIVER'S FAILURE TO MAKE A CREDIBLE AND INDEPENDENT INVESTIGATION ON THE AMOUNT OF INDEBTEDNESS OF RESPONDENT CORPORATIONS, THEREBY DEVIATING FROM THE USUAL AND ACCEPTED COURSE OF JUDICIAL PROCEEDINGS.

C.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ERRORS OF LAW WHEN IT INEXPLICABLY AFFIRMED THE REHABILITATION COURT'S APPROVAL OF THE CONSOLIDATED *PETITION* FOR REHABILITATION, DESPITE THE SUBSTANTIAL EVIDENCE SHOWING THAT THE *PETITION* WAS FILED IN THE WRONG VENUE INSOFAR AS RESPONDENT UNIVAC DEVELOPMENT IS CONCERNED AND WAS FATALLY DEFECTIVE ON ITS FACE.

D.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW WHEN IT REFUSED TO RULE ON THE SUBSTANTIAL AND FORMAL DEFECTS OF THE REHABILITATION PLAN ON THE PRETEXT THAT THE REHABILITATION COURT'S APPROVAL OF THE RESPONDENTS' REHABILITATION IS BINDING ON IT, DESPITE THE ABSENCE OF SUBSTANTIAL EVIDENCE THAT WOULD SUPPORT THE DECISION OF THE REHABILITATION COURT.

E.

WHETHER OR NOT THE HONORABLE COURT'S EXERCISE OF ITS DISCRETIONARY REVIEW POWERS IS WARRANTED UNDER THE CIRCUMSTANCES.<sup>[25]</sup>

### *Petitioner's Arguments*

Petitioner avers that it was denied due process when the rehabilitation court refused to admit its opposition to the petition for rehabilitation and to comment on the rehabilitation plan.<sup>[26]</sup> It explains that the late submission of the opposition was brought about by the baseless and unfounded requirements imposed by the court.<sup>[27]</sup> Considering that there are valid and substantial grounds for the dismissal of the petition for rehabilitation, petitioner insists that its comment and opposition should have been admitted by the rehabilitation court. Petitioner points out that while the court denied its motion for leave to admit its opposition, it (the court) allowed the