

## SECOND DIVISION

[ G.R. No. 170625, October 17, 2008 ]

**BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. COURT OF APPEALS AND TF KO DEVELOPMENT CORPORATION, RESPONDENTS.**

### DECISION

**TINGA, J.:**

Before the Court is a petition for review on certiorari<sup>[1]</sup> under Rule 45 of the 1997 Rules of Civil Procedure, which assails the twin resolutions of the Court of Appeals in CA-G.R. SP No. 00082 and the Decision<sup>[2]</sup> of the Regional Trial Court (RTC), Branch 23, General Santos City in Corporate Case No. 26. The Resolution<sup>[3]</sup> dated 29 July 2005 dismissed on procedural grounds the petition for review filed by petitioner while the Resolution<sup>[4]</sup> dated 22 November 2005 denied petitioner's motion for reconsideration of the earlier resolution.

The instant petition originated from a petition filed by TF KO Development Corporation (respondent) on 10 November 2003 before the RTC of General Santos City. The petition, denominated as a petition for declaration in the state of suspension of payments with approval of the proposed rehabilitation plan, was docketed as Corporate Case No. 26 and raffled to Branch 23 of the RTC of General Santos City.<sup>[5]</sup>

Respondent is a domestic corporation primarily engaged in agricultural commerce. In 1998, it became a full-fledged subdivision developer after being granted by the Housing and Land Use Regulatory Board (HLURB) the necessary licenses which enabled it to construct low-cost housing units and to sell them to prospective buyers. To secure additional working capital for its rice milling/trading and real estate and housing construction projects, respondent obtained various loans and credit accommodations from different commercial banks, including the Far East Bank & Trust Company, petitioner's predecessor-in-interest.

Respondent alleged that as of the filing of the petition, its outstanding loans with the creditor banks were in the following amounts:

- 1) Land Bank of the Philippines (LBP) - *P32,000,000.00*, more or less, inclusive of interest charges, as of the first quarter of 2003;
- 2) Bank of the Philippine Islands (BPI) - *P34,680,298.40*, inclusive of interest charges, as of February 2002; and
- 3) Metropolitan Bank & Trust Co. (Metrobank) - *P3,500,000.00*, inclusive of interest charges, as of August 2003.<sup>[6]</sup>

The petition also averred that LBP and petitioner BPI had already commenced foreclosure proceedings on the properties mortgaged to these creditor banks and the same remained pending before the RTC of Koronadal, South Cotabato at the time of the filing of the petition for rehabilitation.<sup>[7]</sup>

Finding the petition to be sufficient in form and substance, the RTC issued a Stay Order<sup>[8]</sup> on 14 November 2003, prohibiting the enforcement of all claims against respondent, scheduling the initial hearing on 06 January 2004 and appointing Pedro N. Suson as rehabilitation receiver. Forthwith, Suson accepted the appointment,<sup>[9]</sup> put up a bond<sup>[10]</sup> and took his oath as rehabilitation receiver.<sup>[11]</sup>

Upon petitioner's motion, the RTC issued an Order<sup>[12]</sup> dated 07 January 2004, enjoining creditor LBP and the Office of the Provincial Sheriff of Koronadal, South Cotabato from foreclosing the real estate mortgages constituted as security for respondent's obligation with creditor LBP. The RTC also ordered all three creditor banks to file their respective opposition to the petition for rehabilitation.

In its Verified Comment<sup>[13]</sup> dated 07 January 2004, petitioner BPI prayed that respondent's petition be denied and the rehabilitation plan disapproved based on the following grounds: (1) the petition was defective in form and substance and lacked a certification against forum shopping; (2) the rehabilitation plan was not viable or realistic and its alleged success was purely conjectural; and (3) the petition was without factual and legal bases.<sup>[14]</sup>

Creditors LBP<sup>[15]</sup> and Metrobank<sup>[16]</sup> likewise filed their respective oppositions to the petition. Thereafter, Mrs. Flora G. Ko, the president of respondent, filed a Motion for Relief of Metrobank, manifesting that she would personally settle the obligations of respondent in Metrobank.<sup>[17]</sup>

Upon agreement of the parties, the RTC fixed a date for a creditors' meeting.<sup>[18]</sup> On 22 March 2004, the rehabilitation receiver submitted a proposed Final Mode of Payment in compliance with the RTC's order.<sup>[19]</sup> The RTC then directed creditors LBP and petitioner to file a comment or opposition thereto.

Creditor LBP denied having acceded to any proposed mode of payment and reiterated its objection to the approval of the rehabilitation plan.<sup>[20]</sup> For its part, petitioner also denied accepting the mode of payment proposed by the rehabilitation receiver and objected to the discharge of Metrobank from the coverage of the rehabilitation plan. Petitioner also argued that the petition was not within the province of Section 1, Rule 4 of the Interim Rules on Corporate Rehabilitation (Interim Rules).<sup>[21]</sup>

On 09 November 2004, the RTC granted respondent's prayer for extension of the stay order.<sup>[22]</sup> On 24 January 2005, the RTC rendered the assailed decision, the dispositive portion of which reads:

**WHEREFORE,** in view of the foregoing premises, judgment is hereby rendered, approving the petitioner's rehabilitation plan submitted by the

petitioner. Accordingly, in consonance with the said rehabilitation plan, this Court hereby decrees as follows:

- 1) Petitioner Corporation shall pursue its housing development project as the main source of payment for its obligation with Creditors-banks;
- 2) As provided under Supplemental Mode of Payment, submitted by Rehabilitation Receiver Suson, the following schedule of payment for Creditors-BPI and Landbank shall be as follows:

Schedule of payment for Creditors-banks indicating the principal, the interest and the total amount due for every payment which is semi-annual or 6 months for eight (8) periods with an interest rate of 12% per annum compounded annually.

The principal and interest are discharged by a sequence of equal payments due at the ends of equal intervals of time. In such a case, the payments form an annuity which present value is the original principal of the date.

*Thus:*

*A.) For Creditor-BPI:*

<i>Date</i>	<i>principal</i>	<i>interest</i>	<i>total</i>
6.30.05	Php 3, 503, 957	2, 080, 818	5, 584, 775.00
12.31.05	3, 714, 194	1, 870, 581	5, 584, 775.00
6.30.06	3, 937, 046	1, 647, 729	5, 584, 775.00
12.31.06	4, 173, 268	1, 411, 506	5, 584, 775.00
6.30.07	4, 423, 664	1, 161, 110	5, 584, 775.00
12.31.07	4, 689, 084	895, 690	5, 584, 775.00
6.30.08	4, 970, 429	614, 345	5, 584, 775.00
12.31.08	5, 268, 656	316, 118	5, 584, 775.00
<b>Total</b>	Php 34, 680, 298	9, 997, 897	44, 678, 196.00

*B.) For Creditor-Landbank:*

<i>Date</i>	<i>principal</i>	<i>interest</i>	<i>total</i>
6.30.05	Php 3, 233, 150	1, 920, 000	5, 153, 150.00
	3, 427, 139	1, 726,	5, 153,

12.31.05		011	150.00
6.30.06	3, 632, 767	1, 520, 383	5, 153, 150.00
12.31.06	4, 850, 733	1, 302, 417	5, 153, 150.00
6.30.07	4, 081, 777	1, 071, 373	5, 153, 150.00
12.31.07	4, 326, 684	826, 466	5, 153, 150.00
6.30.08	4, 586, 285	566, 865	5, 153, 150.00
12.31.08	4, 861, 465	291, 685	5, 153, 150.00
<b>Total</b>	<i>Php</i> 320, 000.0	9, 997, 897	41, 225, 200.00

3.) Creditor-Metrobank is hereby discharged from the Rehabilitation Plan of the Petitioner Corporation. The obligation of the Petitioner Corporation against Creditor-Metrobank shall be settled personally by the President of the Corporation, Mrs. Flora Ko.

4) There shall be no declaration and payment of dividends by the Petitioner Corporation until it has paid in full its loans with creditor banks.

5) The Rehabilitation program for the Petitioner Corporation shall commence this year, 2005.

6) Rehabilitation Receiver Suson is discharged from his duties and responsibilities as receiver for this Petition.

7) The Stay-Order is hereby terminated.

SO ORDERED.<sup>[23]</sup>

On 26 January 2005, petitioner received a copy of the decision. Forthwith, petitioner filed a motion with the Court of Appeals, asking for an extension of the period within which to file a Rule 43 petition.<sup>[24]</sup> Considering that the docket and other legal fees were paid and the motion was filed within the reglementary period, the Court of Appeals allowed petitioner until 25 February 2005 within which to file the petition.<sup>[25]</sup>

Petitioner filed the petition for review on 28 February 2005.<sup>[26]</sup> Petitioner argued that the rehabilitation of respondent pursuant to the Interim Rules was no longer feasible considering that its obligations to petitioner BPI had long matured prior to the filing of the petition.

On 29 July 2005, the Court of Appeals issued the first assailed Resolution, dismissing the petition for review based on a number of procedural errors.<sup>[27]</sup> Petitioner sought reconsideration but was denied in a Resolution issued on 22 November 2005.<sup>[28]</sup>

Hence, the instant petition, questioning the denial of its petition for review and motion for reconsideration based on procedural grounds. Petitioner also assails the RTC decision which approved the rehabilitation of respondent for the following reasons: (1) its obligations had fallen due long before the filing of the petition for rehabilitation; (2) no factual and legal bases support the approval of the rehabilitation; (3) the petition for rehabilitation was not accompanied by a certification against non-forum shopping; and (4) the filing of the petition for rehabilitation despite the pendency of a civil case for injunction filed by respondent against petitioner constituted forum shopping. [29]

The petition is meritorious.

The Court of Appeals dismissed the petition for review for the following reasons: (1) the verification and certification was not signed by the authorized person; (2) the petition was filed beyond the extended period; (3) the petition was not accompanied by pertinent documents and pleadings, in violation of Section 6(c), Rule 43[30] of the Rules of Court; (4) the date of issue of counsel's Integrated Bar of the Philippines (IBP) O.R. No. was not indicated; and (5) the docket fees for the prayer for temporary restraining order and/or writ of preliminary injunction were not paid. The Court of Appeals held that the inadvertence was too lame an excuse in not complying with the rules of procedure. It also noted that petitioner's motion for reconsideration of the earlier resolution was belatedly filed, which proved fatal to petitioner's cause.

A number of the procedural errors discovered by the Court of Appeals are either not supported by the records of the case or not grounds for the dismissal of the petition. One of them is the supposed late filing of the petition for review. Petitioner filed the petition for review only on 28 February 2005 or after the last day of the extended period which was on 25 February 2005. The latter date fell on a special national holiday declared as such under Proclamation No. 785. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.[31] *Ipso jure*, the last day for filing the petition for review ran until 28 February 2005, the working day immediately following the last day of the period. Thus, the petition for review was filed on time.

Also, contrary to the finding of the Court of Appeals, petitioner's motion for reconsideration of the Resolution dated 29 July 2005 was timely filed via registered mail and not through a private courier. When a pleading is filed through registered mail, the date of the mailing, as shown by the post office stamp on the envelope or the registry receipt, shall be considered as the date of its filing, payment, or deposit in court.[32] The envelope containing the motion for reconsideration attached to the records of the case has a postage stamp indicating that the same was received by the Philippine Postal Corporation on 30 August 2005, the last day for filing the motion for reconsideration. Although the mail reached the Court of Appeals only on 06 September 2005, petitioner's motion for reconsideration is deemed filed upon its deposit at the post office. Accordingly, petitioner filed the motion for reconsideration on time when it deposited the same with the post office on the last day of the reglementary period.

The failure by petitioner's counsel to indicate in the pleading the date of issue of his