

SECOND DIVISION

[G.R. NO. 163235, April 27, 2007]

**VIVA FOOTWEAR MANUFACTURING CORPORATION,
PETITIONER, VS. SECURITIES AND EXCHANGE COMMISSION,
PHILIPPINE NATIONAL BANK AND PHILIPPINE BANK OF
COMMUNICATIONS, RESPONDENTS.**

DECISION

QUISUMBING, J.:

For review on certiorari are the Decision^[1] dated August 4, 2003 and Resolution^[2] dated April 21, 2004 of the Court of Appeals in CA-G.R. SP No. 72271, which affirmed the July 16, 2002 Order^[3] of the Securities and Exchange Commission (SEC). The Order had dismissed the petition for rehabilitation filed by herein petitioner.

The facts, culled from the records, are as follows:

Petitioner Viva Footwear Manufacturing Corporation is a domestic corporation engaged in the manufacture of rubber footwear. Respondents Philippine National Bank (PNB) and Philippine Bank of Communications (PBCom) are two of petitioner's creditors.

In 1996, petitioner filed with the SEC a petition for rehabilitation and for declaration in a state of suspension of payments.^[4] An Order^[5] dated June 20, 1996, declaring petitioner in a state of suspension of payments, was forthwith issued by the SEC.

PNB filed an Opposition^[6] to the petition for rehabilitation, alleging that the rehabilitation applied for was no longer feasible. To determine the feasibility of petitioner's rehabilitation plan, an Interim Management Committee was formed, composed of representatives from petitioner, PNB, and PBCom.

In 1998, petitioner submitted a Revised and Combined Rehabilitation Plan, which included Coco Manila Food Corp.^[7] Petitioner subsequently filed an urgent motion for consolidation^[8] with Coco Manila Food Corp.'s petition for rehabilitation and for declaration in a state of suspension of payments. Finding no merit in the said motion, the SEC denied it.^[9]

Thereafter, the Interim Management Committee submitted its report^[10] recommending approval of the aforesaid Revised and Combined Rehabilitation Plan. However, only petitioner and PNB signed the said report because PBCom objected to the consolidated rehabilitation of petitioner and Coco Manila Food Corp.^[11] Nonetheless, about three years later, PBCom filed a Manifestation^[12] conforming to

the said consolidated rehabilitation.

In the interim, petitioner filed a motion^[13] to transfer the case to the Regional Trial Court (RTC) claiming that the newly enacted Securities Regulation Code^[14] transferred SEC jurisdiction over rehabilitation cases to the RTC.

Petitioner also submitted a Second Revised Rehabilitation Plan, but PNB objected to the said plan.^[15] On May 27, 2002, petitioner submitted a Third Revised Rehabilitation Plan.^[16] However, the SEC found the said plan incomplete and unfeasible.^[17] Thus, the SEC, in its impugned Order, dismissed the petition for rehabilitation. In the same Order, the SEC denied petitioner's motion to transfer the case to the RTC explaining that the Securities Regulation Code provides that the SEC shall retain jurisdiction over pending rehabilitation cases filed as of June 30, 2000.

Petitioner filed a motion for reconsideration^[18] of the said Order, which it subsequently withdrew^[19] explaining that it intended to elevate the matter to the Court of Appeals. However, upon review, the appellate court affirmed the SEC Order. Petitioner's motion for reconsideration was likewise denied for lack of merit.

Hence, the instant petition raising the following issues:

I.

WHETHER OR NOT THE COURT OF APPEALS ERRED, AND ITS ERROR WAS COMMITTED IN GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OR LACK OF JURISDICTION, IN ITS AFFIRMANCE OF THE RESPONDENT COMMISSION'S ORDER DATED 16 JULY 2002, DISMISSING THE PETITION FOR REHABILITATION WHEN THE LATTER UNREASONABLY SAT ON THE PETITION BEFORE IT, AND AFTER ALMOST SEVEN (7) YEARS OF INORDINATE DELAY, IT RULED THAT IT COULD NO LONGER BE REHABILITATED.

II.

WHETHER OR NOT THE COURT OF APPEALS ERRED AND ITS ERROR WAS COMMITTED IN GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OR LACK OF JURISDICTION WHEN IT DISMISSED THE PETITION FOR REHABILITATION SOLELY ON THE BASIS OF A MEMORANDUM REPORT WHICH WAS NOT MADE KNOWN TO THE PETITIONER NOR WAS THE LATTER PROVIDED A COPY THEREOF IN VIOLATION OF THE PETITIONER'S RIGHT TO DUE PROCESS.^[20]

Simply stated, the issue is whether or not the Court of Appeals committed reversible error in affirming the SEC Order dismissing the petition for rehabilitation.

Petitioner contends that the SEC committed gross dereliction of public duty when it sat for seven years on the petition for rehabilitation despite numerous motions for speedy resolution of said petition. Petitioner argues the long lapse of time reckoned from the submission of the original rehabilitation plan up to the dismissal of the petition for rehabilitation diminished, if not extinguished, petitioner's chance to rehabilitate the company as favorably endorsed by the Interim Management

Committee. Petitioner also alleges its right to due process was violated when the SEC referred the rehabilitation plan to the Financial Analysis and Audit Division without notice to petitioner.

On the other hand, the SEC counters that the delay, if any, was attributable to petitioner's own fault. The SEC further claims that petitioner's Third Revised Rehabilitation Plan was not feasible; hence, the dismissal of the petition for rehabilitation was but proper. The SEC maintains that petitioner was duly afforded the right to due process.

For its part, PNB argues that the SEC correctly dismissed the petition for rehabilitation for being unfeasible. As for the alleged breach of petitioner's right to due process, PNB points out that the SEC's referral of the petition to its Financial Analysis and Audit Division was just a regular internal matter and did not constitute a violation of petitioner's rights.

PBCom, on the other hand, explained that it had no participation in the extrajudicial foreclosure proceeding initiated by PNB against petitioner, the circumstance giving rise to the principal issue in this case. Thus, it neither joins nor opposes petitioner or any of the other respondents.

After a careful study of the records of the case and the parties' submissions, we find the petition bereft of merit.

Petitioner's claim that the SEC sat for seven long years on its petition for rehabilitation is inaccurate and misleading. Records show that while the petition for rehabilitation and for declaration in a state of suspension of payments was filed as early as 1996, petitioner had revised its rehabilitation plan several times since. In 1998, it revised its original rehabilitation plan. In 2001, petitioner again revised its rehabilitation plan. Finally, on May 27, 2002, petitioner submitted its Third Revised Rehabilitation Plan. Therefore, the SEC Order of July 16, 2002 cannot be said to be unreasonably overdue. If at all, the said Order, issued less than two months from the submission of the third and final rehabilitation plan, was timely.

As for the SEC's dismissal of the petition for rehabilitation, we see no error or abuse of discretion. On the contrary, we find supported by facts on record the SEC finding that the rehabilitation plan was not viable, thus:

First, based on petitioner's performance for the last three years, petitioner appears to be not financially sound. It has high current ratios and beyond standard debt-equity ratios....

Second, petitioner's audited financial statements for the same period do not reflect the company's true financial condition. The reported total liabilities averaged only about thirty-one percent (31%) of the alleged outstanding loan balances of P201.365 million with six banks. Should the said total loan balances be included, petitioner will appear insolvent and financially unsound.

Third, petitioner's bulk of current assets consists of inventories and supplies averaging about 86% of the total current assets. This casts doubt on the marketability of the company's merchandise especially