

FIRST DIVISION

[G.R. No. 175163, October 19, 2007]

LAND BANK OF THE PHILIPPINES, PETITIONER, VS. ASCOT HOLDINGS AND EQUITIES, INC., CUBE FACTOR HOLDINGS, INC., SIERRA HOLDINGS & EQUITIES, INC. AND POL HOLDINGS, INC., RESPONDENTS.

DECISION

GARCIA, J.:

Before the Court is this petition for *certiorari* and mandamus filed by petitioner Land Bank of the Philippines (Land Bank) to annul and set aside the following issuances of the Court of Appeals (CA) in CA G.R. SP No. 95390, to wit:

1. Resolution^[1] dated July 31, 2006 denying Land Bank's motion for extension of time within which to file a petition for review under Rule 43 of the Rules of Court to annul the judgment of the Makati Regional Trial Court (RTC) in Civil Case No. 02-843; and
2. Resolution dated September 11, 2006, denying Land Bank's motion for reconsideration of the July 31, 2006 resolution.

The ultimate facts:

Sometime in March 1992, after the Philippine Airlines (PAL) was privatized, Land Bank purchased from the National Government some 75,000,000 PAL shares at P14.3925 per share or for a total consideration of P1,079,437,485.01.

Meanwhile, respondents, together with the Philippine National Bank (PNB), the Development Bank of the Philippines (DBP), the AFP Retirement and Separation Benefits System (AFP-RSBS), all stockholders of PAL, and several other parties, formed a consortium in order to purchase 67% of PAL's capital stocks which were then being sold by public bidding. For this purpose, the aforesaid consortium organized a holding company – the PR Holdings Inc. (PR Holdings) – to hold the PAL shares of stock.

As it were, Land Bank, with the Government Service Insurance System (GSIS) and the National Government, owned 33% of the issued and outstanding shares of stock of PAL, while respondents and other stockholders of PR Holdings owned the other 67%.

On March 29, 1995, the minority stockholders in PR Holdings filed a case with the Securities and Exchange Commission (SEC), docketed as SEC Case No. 03-95-5019, seeking the distribution of PR Holdings' shares of stock in PAL to its stockholders in proportion to their equity.

While the aforementioned SEC case was pending, the said minority stockholders of PR Holdings agreed to dissolve the latter and distribute its assets, consisting of PAL shares, to its stockholders by way of liquidating dividends. However, the majority group composed of the respondents, joined by Land Bank, PNB, DBP, AFP-RSBS and GSIS, voted in favor of respondents' proposal to increase PAL's capital stocks from Five Billion Pesos (P5,000,000,000.00) to Ten Billion Pesos (P10,000,000,000.00). Land Bank, along with PNB, DBP, AFP-RSBS and GSIS, however, have the so-called *put-option* to sell their PAL shares of stock to respondents and the latter are obligated to buy the same at Five Pesos (P5.00) per share on the sixth year after the effectivity of the Stockholders' Agreement executed by and among respondents, PNB and GSIS in 2002. It was also stipulated in said agreement that respondents' obligation under the *put-option* shall be guaranteed by Fortune Tobacco Corporation and Asia Brewery Inc., the two (2) flagship corporations of Mr. Lucio Tan, as joint and solidary co-obligors of respondents.

Pursuant to the aforementioned Stockholders' Agreement, Asia Brewery Inc. and Fortune Tobacco Corporation, as joint and solidary co-obligors of the respondents, executed a Guaranty Agreement in favor of Land Bank, DBP, PNB, GSIS, AFP-RSBS, and the National Government. Thereunder, Asia Brewery Inc. and Fortune Tobacco Corporation undertook, in firm and unqualified commitment, to buy-back the PAL shares of stock at P5.00 per share, should the respondents be unable to perform their obligation to buy the same. The pertinent portions of the Guaranty Agreement read:

WHEREAS, in a Stockholders' Agreement (the 'Agreement') executed by and among ASCOT HOLDINGS & EQUITIES, INC., CUBE FACTORS HOLDINGS, INC., SIERRA HOLDINGS & EQUITIES, INC., NETWORK HOLDINGS & EQUITIES, INC. and POL HOLDINGS, INC. (as party of the First Part); PHILIPPINE NATIONAL BANK, DEVELOPMENT BANK OF THE PHILIPPINES and AFP-RETIREMENT AND SEPARATION BENEFITS SYSTEM (as Party of the Second Part); GOVERNMENT SERVICE INSURANCE SYSTEM, LAND BANK OF THE PHILIPPINES and the REPUBLIC OF THE PHILIPPINES (as a party of the Third Part), which is made and integral part hereof by reference, the Party of the First Part agreed, in par. 4 thereof, as follows:

4. The Parties of the Second and Third Part shall have the option to sell their existing PAL shares, inclusive of the PAL shares acquired as a result of the dissolution of PRHI, to the Party of the First Part, at P5.00 per share plus premium paid as provided in par. 1.b of this Agreement, if any, which may be exercised on the sixth year after the effectivity of this agreement, provided that if on the fifth year, the net book value of PAL is more than P10 billion and had a net income of the preceding twelve (12) months, the option may be exercised on the fifth year. The obligation of the Party of the First Part under this provision shall be guaranteed by Asia Brewery, Inc. and Fortune Tobacco Corporation.

NOW THEREFORE, for valuable consideration, the GUARANTORS hereby jointly and severally guarantee the performance by the Party of the First Part of its obligation to purchase the PAL shares of the Parties of the

Second and Third Part at ₱5.00 per shares plus premium paid as provided in par. 1.b of the Agreement as and when required in par. 4 thereof. In the event that the Party of the First Part is unable to perform its aforesaid obligation, GUARANTORS hereby undertake irrevocably and unconditionally to purchase from the Parties of the Second and Third Part all of their PAL shares as provided in par. 4 of the Agreement.

On July 23, 2002, instead of honoring the Stockholders' Agreement, respondents filed with the RTC of Makati a complaint against Land Bank, PNB, DBP, GSIS, AFP-RSBS and the Republic of the Philippines, praying that they be released from the obligation to buy the PAL shares of petitioner and other defendants therein at ₱5.00 per share, as earlier agreed upon under the Stockholders' Agreement, on ground of alleged radical change in the conditions prevailing at the time the said agreement was entered and the present. In their complaint, docketed as Civil Case No. 02-843, respondents, as plaintiffs, argued that under the doctrine of "*rebus sic stantibus*" embodied in Article 1267, in relation to Article 1174, of the New Civil Code, the occurrence of unforeseen events alleged in the complaint (such as "*fleet expansion and re-equipment of PAL, the pilot strike, the Asian economic downturn, the devaluation of the peso and the purported reduced demand for air travel*") released them from complying with their obligation to purchase the PAL shares of stock from the defendants.

Land Bank and the other defendants in Civil Case No. 02-843 contended that the events or circumstances cited by the respondents were not valid grounds for the latter to be released from their obligation under the doctrine of *rebus sic stantibus*. According to the defendants, when the parties entered into the said Stockholders' Agreement, they have assumed the risk of deterioration and/or improvement of the business of PAL, and that the parties made sure that respondents' obligations to buy the PAL shares at ₱5.00 per share will be fulfilled exactly under the terms of the same Stockholders' Agreement, as in fact respondents expressly stipulated that their obligation thereunder shall be assumed irrevocably and unconditionally by Fortune Tobacco Corporation and Asia Brewery Inc. per the Guaranty Agreement dated August 5, 1996. Additionally, Land Bank argued that the case was not an intra-corporate dispute inasmuch as PAL is not at all a party to the suit.

In a "Judgment" dated March 15, 2006, the trial court ruled in favor of the respondents, thus:

FOR THE REASONS GIVEN, judgment is rendered in favor of the plaintiffs and against the defendants, declaring plaintiffs released from the obligation to comply with defendants' option to sell their shares in Philippine Airlines, Inc. under Article IV (4) of the Stockholders Agreement (Annex A, Complaint) executed in May 1996. The counterclaims interposed by all defendants are dismissed.

No pronouncement as to costs.

SO ORDERED.

On July 4, 2006, the trial court denied Land Bank's motion for reconsideration. Therefrom, Land Bank decided to go to the CA on a petition for review. For the purpose, it filed with the CA, on July 25, 2006, a motion for extension of time to file the intended petition for review.