



Republic of the Philippines
Supreme Court
Manila

SPECIAL SECOND DIVISION

**SITUS DEV. CORPORATION, DAILY
SUPERMARKET, INC. and COLOR
LITHOGRAPH PRESS, INC.,**

Petitioners,

- versus -

**ASIATRUST BANK, ALLIED
BANKING CORPORATION,
METROPOLITAN BANK AND TRUST
COMPANY and CAMERON
GRANVILLE II ASSET
MANAGEMENT, INC. ("CAMERON"),**

Respondents.

G. R. No. 180036

Present:

SERENO, CJ,
CARPIO, Chairperson,
BRION,
PEREZ, and
REYES, JJ.

Promulgated:

JAN 16 2013

Michael P. Garcia

x

x

RESOLUTION

SERENO, CJ:

For resolution is the Motion for Reconsideration¹ of our 25 July 2012 Decision² in the case involving petitioners herein, Situs Development Corporation, Daily Supermarket, Inc. and Color Lithographic Press, Inc.

Most of the arguments raised by petitioners are too insubstantial to merit our consideration or are merely rehashed from their previous pleadings and have already been passed upon by this Court. However, certain issues merit a brief discussion, to wit:

1. That the properties belonging to petitioner corporations' majority stockholders may be included in the rehabilitation plan pursuant to *Metropolitan Bank and Trust Company v. ASB Holdings, Inc.*³ (the *Metrobank Case*);

¹ *Rollo*, pp. 1299-1322.

² *Id.* at 1273-1293.

³ G.R. No. 166197, 27 February 2007, 517 SCRA 1.

no

2. That the subject properties should be included in the ambit of the Stay Order by virtue of the provisions of the Financial Rehabilitation and Insolvency Act of 2010 (FRIA), which should be given a retroactive effect; and
3. That Allied Bank and Metro Bank were not the owners of the mortgaged properties when the Stay Order was issued by the rehabilitation court.

On the first issue, petitioners incorrectly argue that the properties belonging to their majority stockholders may be included in the rehabilitation plan, because these properties were mortgaged to secure petitioners' loans. In support of their argument, they cite a footnote appearing in the *Metrobank Case*, which states:⁴

In their petition for rehabilitation, the corporations comprising the ASB Group of Companies alleged that their allied companies ... have joined in the said petition 'because they executed mortgages and/or pledges over their real and personal properties to secure the obligations of petitioner ASB Group of Companies. Further, (they) agreed to contribute, to the extent allowed by law, some of their specified properties and assets to help rehabilitate petitioner ASB Group of Companies.' (*Rollo*, pp. 119-120)

A reading of the footnote shows that it is not a ruling on the propriety of the joinder of parties; rather, it is a statement of the fact that the aforequoted allegation was made in the petition for rehabilitation in that case.

On the second issue, petitioners argue that the trial court was correct in including the subject properties in the ambit of the Stay Order. Under the FRIA, the Stay Order may now cover third-party or accommodation mortgages, in which the "mortgage is necessary for the rehabilitation of the debtor as determined by the court upon recommendation by the rehabilitation receiver."⁵ The FRIA likewise provides that its provisions may be applicable to further proceedings in pending cases, except to the extent that, in the opinion of the court, their application would not be feasible or would work injustice.⁶

⁴ Id. at 4.

⁵ FRIA, Sec. 18. *Exceptions to the Stay or Suspension Order*. – The Stay or Suspension Order shall not apply:

(c) to the enforcement of claims against sureties and other persons solidarily liable with the debtor, and third party or accommodation mortgagors as well as issuers of letters of credit, unless the property subject of the third party or accommodation mortgage is necessary for the rehabilitation of the debtor as determined by the court upon recommendation by the rehabilitation receiver;

⁶ Sec. 146. *Application to Pending Insolvency, Suspension of Payments and Rehabilitation Cases*. – This Act shall govern all petitions filed after it has taken effect. All further proceedings in insolvency, suspension of payments and rehabilitation cases then pending, except to the extent that in the opinion of the court their application would not be feasible or would work injustice, in which event the procedures set forth in prior laws and regulations shall apply.

Sec. 146 of the FRIA, which makes it applicable to “all further proceedings in insolvency, suspension of payments and rehabilitation cases x x x except to the extent that in the opinion of the court their application would not be feasible or would work injustice,” still presupposes a prospective application. The wording of the law clearly shows that it is applicable to all further proceedings. In no way could it be made retrospectively applicable to the Stay Order issued by the rehabilitation court back in 2002.

At the time of the issuance of the Stay Order, the rules in force were the 2000 Interim Rules of Procedure on Corporate Rehabilitation (the “Interim Rules”). Under those rules, one of the effects of a Stay Order is the stay of the “enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the debtor, its guarantors and sureties not solidarily liable with the debtor.”⁷ Nowhere in the Interim Rules is the rehabilitation court authorized to suspend foreclosure proceedings against properties of third-party mortgagors. In fact, we have expressly ruled in *Pacific Wide Realty and Development Corp. v. Puerto Azul Land, Inc.*⁸ that the issuance of a Stay Order cannot suspend the foreclosure of accommodation mortgages. Whether or not the properties subject of the third-party mortgage are used by the debtor corporation or are necessary for its operation is of no moment, as the Interim Rules do not make a distinction. To repeat, when the Stay Order was issued, the rehabilitation court was only empowered to suspend claims against the debtor, its guarantors, and sureties not solidarily liable with the debtor. Thus, it was beyond the jurisdiction of the rehabilitation court to suspend foreclosure proceedings against properties of third-party mortgagors.

The third issue, therefore, is immaterial. Whether or not respondent banks had acquired ownership of the subject properties at the time of the issuance of the Stay Order, the same conclusion will still be reached. The subject properties will still fall outside the ambit of the Stay Order issued by the rehabilitation court.

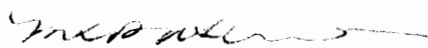
Since the subject properties are beyond the reach of the Stay Order, and since foreclosure and consolidation of title may no longer be stalled, petitioners’ rehabilitation plan is no longer feasible. We therefore affirm our earlier finding that the dismissal of the Petition for the Declaration of State of Suspension of Payments with Approval of Proposed Rehabilitation Plan is in order.

WHEREFORE, the Court resolves to **DENY WITH FINALITY** the instant Motion for Reconsideration for lack of merit. No further pleadings shall be entertained. Let entry of judgment be made in due course.

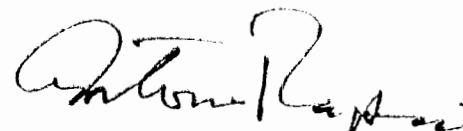
⁷ Interim Rules, Rule 4, Sec. 6.

⁸ G.R. Nos. 178768 & 180893, 25 November 2009, 605 SCRA 503, 521-522.

SO ORDERED.


MARIA LOURDES P. A. SERENO
Chief Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson

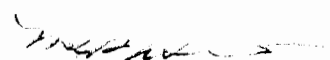

ARTURO D. BRION
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice