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FIRST DIVISION

[G.R. No. 151925. February 6, 2003]

CHAS REALTY AND DEVELOPMENT CORPORATION, *petitioner, vs.* **HON. TOMAS B. TALAVERA, in his capacity as Presiding Judge of the Regional Trial Court of Cabanatuan City, Branch 28, and ANGEL D. CONCEPCION, SR.,** *respondents.*

SYNOPSIS

Petitioner Chas Realty and Development Corporation (CRDC) is the owner and developer of a three-hectare shopping complex, also known as the Megacenter Mall (Megacenter), in Cabanatuan City. Purportedly on account of factors beyond the control of CRDC, such as high interest rates on its loans, unpaid rentals of tenants, low occupancy rate, sluggishness of the economy and the freezing of its bank account by its main creditor, the Land Bank of the Philippines, CRDC encountered difficulty in paying its obligations as and when they fell due and had to contend with collection suits and related cases. CRDC filed a petition with the Regional Trial Court, Branch 28, of Cabanatuan City, for rehabilitation attaching thereto a proposed rehabilitation plan. Prior to the filing of the petition for rehabilitation, a special meeting of its stockholders was held, during which the majority of the outstanding capital stock of CRDC approved the resolution authorizing the filing of a petition for rehabilitation. Private respondent Angel D. Concepcion, Sr., moved to dismiss and/or to deny the petition for rehabilitation on the ground that there was no approval by the stockholders representing at least two-thirds (2/3) of the outstanding capital stock which, according to him, would be essential under paragraph 2(k), Section 2, Rule 4, of the Interim Rules on Corporate Rehabilitation. Concepcion further asserted that the supposed approval by the directors of the filing of the petition for rehabilitation was inaccurate considering that the membership of petitioner CRDC's board of directors was still then being contested and pending final resolution. The trial court issued an order directing petitioner within a period of 15 days from receipt of a copy of this order to secure from

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its directors and stockholders the desired certification and submit the same in accordance with the provision of the Interim Rules of Procedure on Corporate Rehabilitation. On petition for *certiorari,* the Court of Appeals denied the petition for lack of merit. Hence, the present petition for review on *certiorari.*

The Supreme Court reversed and set aside the decision of the Court of Appeals and that of the Regional Trial Court of Cabanatuan City. Nowhere in Section 2, Rule 4(k) of the Interim Rules of Procedure on Corporate Rehabilitation can it be inferred that an affirmative vote of stockholders representing at least two-thirds (2/3) of the outstanding stock is invariably necessary for the filing of a petition for rehabilitation regardless of the corporate action that the plan envisions. Just to the contrary, it only requires in the filing of the petition that the corporate actions therein proposed have been duly approved or consented to by the directors and stockholders "in consonance with existing laws." The Court stressed that the said requirement is designed to avoid a situation where a rehabilitation plan, after being developed and judicially sanctioned, cannot ultimately be seen through because of the refusal of directors or stockholders to cooperate in the full implementation of the plan. The rehabilitation plan submitted by petitioner merely consists of a repayment or re-structuring scheme of CRDC's bank loans to Land Bank of the Philippines and Equitable-PCI Bank and of leasing out most of the available spaces in the Megacenter, including the completion of the construction of the fourth floor, to increase rental revenues. None of the proposed corporate actions would require a vote of approval by the stockholders representing at least two-thirds (2/3) of the outstanding capital stock.

SYLLABUS

1. MERCANTILE LAW; PRIVATE CORPORATIONS; INTERIM RULES ON CORPORATE REHABILITATION; CONTENTS OF PETITION FOR REHABILITATION; EXPLAINED.— Rule 4, Section 2(k), distinctly provides that, *first*, under letter (a), the filing of the petition has been duly authorized; and, *second*, under letter (b), the directors and stockholders have irrevocably approved and/or consented to, in accordance with existing laws, all actions or matters necessary and desirable to rehabilitate the debtor including, but not limited to, amendments to the articles of

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incorporation and by-laws or articles of partnership; increase or decrease in the authorized capital stock; issuance of bonded indebtedness, alienation, transfer, or encumbrance of assets of the debtor; and modification of shareholder's rights. Observe that Rule 4, Section 2(k), prescribes the need for a certification; *one,* to state that the filing of the petition has been duly authorized, and *two,* to confirm that the directors and stockholders have irrevocably approved and/or consented to, *in accordance with existing laws*, all actions or matters necessary and desirable to rehabilitate the corporate debtor, including, as and when called for, such extraordinary corporate actions as may be marked out. The phrase, "in accordance with existing laws," obviously would refer to that which is, or to those that are, intended to be done by the corporation in the pursuit of its plan for rehabilitation. Thus, if any extraordinary corporate action (mentioned in Rule 4, Section 2(k), of the Interim Rules on Corporate Rehabilitation) are to be done under the proposed rehabilitation plan, the petitioner would be bound to make it known that it has received the approval of a majority of the directors and the affirmative votes of stockholders representing at least two-thirds (2/3) of the outstanding capital stock of the corporation. Where no such extraordinary corporate acts (or one that under the law would call for a two-thirds (2/3) vote) are contemplated to be done in carrying out the proposed rehabilitation plan, then the approval of stockholders would only be by a majority, not necessarily a two-thirds (2/3), vote, as long as, of course, there is a quorum a fact which is not here being disputed.

2. ID.; ID.; ID.; ID.; PROPOSED CORPORATE ACTIONS IN CASE AT BAR DOES NOT REQUIRE A VOTE OF APPROVAL BY THE STOCKHOLDERS REPRESENTING AT LEAST TWO THIRDS (2/3) OF THE OUTSTANDING CAPITAL STOCKS.— The trial court and appellate court, unfortunately, have taken an inaccurate understanding of the memorandum to the Supreme Court of Justice Reynato S. Puno, the committee chair on the draft of the rules on corporate rehabilitation, still then being proposed; the memorandum reads, in part, thusly: "3. Rule 4. – Rehabilitation "The following are the principal deviation from the SEC Rules: "a) The proposed Rules now require, as an attachment to the petition, a Certificate attesting, among others, that the governing body and owners of the petitioning debtor

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have approved and consented to whatever is necessary or desirable (including but not limited to increasing or decreasing the authorized capital stock of the company and modification of stockholders' right) to rehabilitate the debtor (Sec. 2, par. (k), Rule 4). This is to avoid a situation where a rehabilitation plan, after being developed for years, cannot be implemented because of the refusal of shareholders to approve the arrangements necessary for its implementation." Nowhere in the aforequoted paragraph can it be inferred that an affirmative vote of stockholders representing at least two-thirds (2/3) of the outstanding stock is invariably necessary for the filing of a petition for rehabilitation regardless of the corporate action that the plan envisions. Just to the contrary, it only requires in the filing of the petition that the corporate actions therein proposed have been duly approved or consented to by the directors and stockholders "in consonance with existing laws." The requirement is designed to avoid a situation where a rehabilitation plan, after being developed and judicially sanctioned, cannot ultimately be seen through because of the refusal of directors or stockholders to cooperate in the full implementation of the plan. In fine, a certification on the approval of stockholders is required but the question, whether such approval should be by a majority or by a two-thirds (2/3) vote of the outstanding capital stock, would depend on the existing law *vis-à-vis* the corporate act or acts proposed to be done in the rehabilitation of the distressed corporation. The rehabilitation plan submitted by petitioner merely consists of a repayment or re-structuring scheme of CRDC's bank loans to Land Bank of the Philippines and Equitable-PCI Bank and of leasing out most of the available spaces in the Megacenter, including the completion of the construction of the fourth floor, to increase rental revenues. None of the proposed corporate actions would require a vote of approval by the stockholders representing at least two-thirds (2/3) of the outstanding capital stock.

APPEARANCES OF COUNSEL

Abello Concepcion Regala and *Cruz* for petitioner.
R.A.S. Dizon Law Office for private respondent.

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DECISION

VITUG, *J.*:

Petitioner Chas Realty and Development Corporation (CRDC) is a domestic corporation engaged in property development and management. It is the owner and developer of a three-hectare shopping complex, also known as the Megacenter Mall (Megacenter), in Cabanatuan City.

The construction of Megacenter commenced in January 1996, but by the time of its so-called "soft opening" in July 1998, it was only partly completed due to lack of funds, said to have been brought about by construction overages due to the massive devaluation of the peso during the economic crisis in 1997, low occupancy, and rental arrearages of tenants. The opening of the upper ground floor and the second floor of the building followed, respectively, in August 1998 and towards the end of 1998. Eventually, Megacenter opened its third floor in 1999.

Purportedly on account of factors beyond the control of CRDC, such as high interest rates on its loans, unpaid rentals of tenants, low occupancy rate, sluggishness of the economy and the freezing of its bank account by its main creditor, the Land Bank of the Philippines, CRDC encountered difficulty in paying its obligations as and when they fell due and had to contend with collection suits and related cases.

On 04 June 2001, CRDC filed a petition for rehabilitation attaching thereto a proposed rehabilitation plan, accompanied by a secretary's certificate, consonantly with paragraph 2(k), Section 2, Rule 4, of the Interim Rules of Procedure on Corporate Rehabilitation. CRDC claimed that it had sufficient assets and a workable rehabilitation plan both of which showed that the continuance of its business was still feasible. It alleged that, prior to the filing of the petition for rehabilitation, a special meeting of its stockholders was held on 18 April 2001 during which the majority of the outstanding capital stock of CRDC approved the resolution authorizing the filing of a petition for rehabilitation.

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On 08 June 2001, the Regional Trial Court, Branch 28, of Cabanatuan City, to which the petition was assigned, issued an order staying all claims against CRDC and prohibited it from making any payment on its outstanding obligations and selling, or otherwise disposing or encumbering, its property. Forthwith, the court appointed a rehabilitation receiver.

On 20 July 2001, Angel D. Concepcion, Sr., herein private respondent, filed a complaint in intervention opposing the appointment of CRDC's nominee for the post of rehabilitation receiver. He belied CRDC's factual allegations and claimed that the predicament of the corporation was due to serious "mismanagement, fraud, embezzlement, misappropriation and gross/evident violation of the fiduciary duties of CHAS officers." Concepcion moved to dismiss and/or to deny the petition for rehabilitation on the ground that there was no approval by the stockholders representing at least two-thirds (2/3) of the outstanding capital stock which, according to him, would be essential under paragraph 2(k), Section 2, Rule 4, of the Interim Rules on Corporate Rehabilitation. Concepcion further asserted that the supposed approval of the directors of the filing of the petition for rehabilitation was inaccurate considering that the membership of petitioner CRDC's board of directors was still then being contested and pending final resolution.

On 10 August 2001, CRDC submitted its opposition *ex abundante cautelam* contending that the complaint in intervention was a prohibited pleading and that there was no need for it to secure the irrevocable consent and approval of its stockholders representing at least two-thirds (2/3) of its outstanding capital stock because the petition did not include in its plan for rehabilitation acts that would need any amendment of its articles of incorporation and/or by-laws, increase or decrease in the authorized capital stock, issuance of bonded indebtedness, or the like, where such two-thirds (2/3) vote would be required.

The trial court issued an order, dated 15 October 2001, the decretal portion of which was to the following effect; *viz*:

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"WHEREFORE, premises considered, in the absence of any showing that the petitioner has complied with the certification required under Section 2, Rule 4(K) of the Interim Rules of Procedure on Corporate Rehabilitation, the petitioner is hereby given a period of 15 days from receipt of a copy of this order to secure from its directors and stockholders the desired certification and submit the same to this Court in accordance with the above-mentioned provision of the Interim Rules of Procedure on Corporate Rehabilitation.

"With respect to the other oppositions to the petition for rehabilitation including the opposition to the appointment of the rehabilitation receiver, opposition filed by the land bank and the EEI, Inc., the resolution of the same is hereby held in abeyance till after the period given to the petitioner to comply with this order as it may become moot and academic after the expiration of the period given to the petitioner."[1]

On 29 October 2001, CRDC filed before the Court of Appeals a petition for *certiorari,* with prayer for temporary restraining order and/or preliminary injunction, which sought to have the 15th October 2001 order of the trial court set aside.

The Court of Appeals rendered a decision on 18 January 2002 and held:

"WHEREFORE, the foregoing premises considered, the petition for *certiorari,* with prayer for temporary restraining order and/or writ of preliminary injunction, is DENIED for lack of merit."[2]

Hence, the instant petition on the following grounds:

"I

"Public respondent acted with grave abuse of discretion amounting to lack and/or excess of jurisdiction in issuing the assailed order considering that:

"A. The petition for rehabilitation and the proposed rehabilitation plan do not require extraordinary corporate actions.

"B. Since no extraordinary corporate actions are required or even contemplated as necessary and desirable for the rehabilitation

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[1] *Rollo*, p. 73.

[2] *Rollo*, p. 44.

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of CRDC, the requirements of the corporation code for the approval of such actions cannot be complied with.

"C. The rehab rules and the corporation code do not allow or intend blind blanket approvals of extraordinary corporate actions.

"D. To require 2/3 stockholders' approval for corporate actions requiring only a majority violates the right of the majority stockholders.

"II

"Public respondent acted with grave abuse of discretion amounting to lack and/or excess of jurisdiction in requiring CRDC's compliance with paragraph 2(k), Section 2, Rule 4 of the Rehab rules when CRDC already complied therewith."[3]

Rule 4, Section 2(k), of the Interim Rules on Corporate Rehabilitation provides:

"Sec. 2. Contents of the Petition. — The petition filed by the debtor must be verified and must set forth with sufficient particularity all the following material facts: (a) the name and business of the debtor; (b) the nature of the business of the debtor; (c) the history of the debtor; (d) the cause of its inability to pay its debts; (e) all the pending actions or proceedings known to the debtor and the courts or tribunals where they are pending; (f) threats or demands to enforce claims or liens against the debtor; and (g) the manner by which the debtor may be rehabilitated and how such rehabilitation may benefit the general body of creditors, employees, and stockholders.

"The petitioner shall be accompanied by the following documents:

"xxx xxx xxx.

"k. A Certificate attesting, under oath, that (a) the filing of the petition has been duly authorized; and (b) the directors and stockholders have irrevocably approved and/or consented to, in accordance with existing laws, all actions or matters necessary and desirable to rehabilitate the debtor including, but not limited to, amendments to the articles of incorporation and by-laws or articles of partnership; increase or decrease in the authorized capital stock;

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[3] *Rollo*, pp. 37-38.

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issuance of bonded indebtedness; alienation, transfer, or encumbrance of assets of the debtor; and modification of shareholders' rights."[4]

Rule 4, Section 2(k), distinctly provides that, *first,* under letter (a), the filing of the petition has been duly authorized; and, *second,* under letter (b), the directors and stockholders have irrevocably approved and/or consented to, in accordance with existing laws, all actions or matters necessary and desirable to rehabilitate the debtor including, but not limited to, amendments to the articles of incorporation and by-laws or articles of partnership; increase or decrease in the authorized capital stock; issuance of bonded indebtedness, alienation, transfer, or encumbrance of assets of the debtor; and modification of shareholder's rights.

Observe that Rule 4, Section 2(k), prescribes the need for a certification; *one,* to state that the filing of the petition has been duly authorized, and *two*, to confirm that the directors and stockholders have irrevocably approved and/or consented to, *in accordance with existing laws,* all actions or matters necessary and desirable to rehabilitate the corporate debtor, including, as and when called for, such extraordinary corporate actions as may be marked out. The phrase, "in accordance with existing laws," obviously would refer to that which is, or to those that are, intended to be done by the corporation in the pursuit of its plan for rehabilitation. Thus, if any extraordinary corporate action (mentioned in Rule 4, Section 2(k), of the Interim Rules on Corporate Rehabilitation) are to be done under the proposed rehabilitation plan, the petitioner would be bound to make it known that it has received the approval of a majority of the directors and the affirmative votes of stockholders representing at least two-thirds (2/3) of the outstanding capital stock of the corporation. Where no such extraordinary corporate acts (or one that under the law would call for a two-thirds (2/3) vote) are contemplated to be done in carrying out the proposed rehabilitation plan, then the approval of stockholders would only be by a majority, not necessarily a two-thirds (2/3), vote, as long

[4] A.M. No. 00-8-10-SC.

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as, of course, there is a quorum[5] a fact which is not here being disputed.

The trial court and appellate court, unfortunately, have taken an inaccurate understanding of the memorandum to the Supreme Court of Justice Reynato S. Puno, the committee chair on the draft of the rules on corporate rehabilitation, still then being proposed; the memorandum reads, in part, thusly:

"3. Rule 4. — Rehabilitation

"The following are the principal deviation from the SEC Rules:

"a) The proposed Rules now require, as an attachment to the petition, a Certificate attesting, among others, that the governing body and owners of the petitioning debtor have approved and consented to whatever is necessary or desirable (including but not limited to increasing or decreasing the authorized capital stock of the company and modification of stockholders' right) to rehabilitate the debtor (Sec. 2, par. (k), Rule 4). This is to avoid a situation where a rehabilitation plan, after being developed for years, cannot be implemented because of the refusal of shareholders to approve the arrangements necessary for its implementation."[6]

Nowhere in the aforequoted paragraph can it be inferred that an affirmative vote of stockholders representing at least two-thirds (2/3) of the outstanding stock is invariably necessary for the filing of a petition for rehabilitation regardless of the corporate action that the plan envisions. Just to the contrary, it only requires in the filing of the petition that the corporate actions therein proposed have been duly approved or consented to by the directors and stockholders "in consonance with existing laws." The requirement is designed to avoid a situation where a rehabilitation plan, after being developed and judicially sanctioned, cannot ultimately be seen through because of the refusal of directors or stockholders to cooperate in the full implementation of the plan. In fine, a certification on the approval of stockholders

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[5] Jose C. Campos, Maria Clara L. Campos, *The Corporation Code Comments, Notes and Selected Cases*, 1990 Ed., p. 419.

[6] *Rollo*, p. 72.

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is required but the question, whether such approval should be by a majority or by a two-thirds (2/3) vote of the outstanding capital stock, would depend on the existing law *vis-a-vis* the corporate act or acts proposed to be done in the rehabilitation of the distressed corporation.

The rehabilitation plan[7] submitted by petitioner merely consists of a repayment or re-structuring scheme of CRDC's bank loans to Land Bank of the Philippines and Equitable-PCI Bank and of leasing out most of the available spaces in the Megacenter, including the completion of the construction of the fourth floor, to increase rental revenues. None of the proposed corporate actions would require a vote of approval by the stockholders representing at least two-thirds (2/3) of the outstanding capital stock.

Relative to the contention that a motion for reconsideration is required prior to bringing up the petition for *certiorari* (with the Court of Appeals), it should suffice to say that the filing of a motion for reconsideration before availing of the remedy of *certiorari* is not always *sine qua non* such as when the issue raised is one purely of law, or where the error is patent or the questions raised on *certiorari* are exactly the same as those already squarely presented to and passed upon by the court *a quo*.[8]

WHEREFORE, the instant petition is GRANTED and the questioned decision of the Court of Appeals, dated 18 January 2002, and the order of the Regional Trial Court, Branch 28, Cabanatuan City, dated 15 October 2001, in Civil Case No. 4036-AF, are REVERSED and SET ASIDE. The Regional Trial Court is directed to give due course to the Petition for Rehabilitation and conduct with dispatch the necessary proceedings still required thereon. No costs

SO ORDERED.

Davide, Jr., C.J.(Chairman), Ynares-Santiago, Carpio, and *Azcuna, JJ.*, concur.

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[7] *Rollo*, pp. 94-122.

[8] *Progressive Development Corp. vs. Court of Appeals*, 301 SCRA 637.