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FIRST DIVISION

[G.R. No. 152580. June 26, 2008]

CONSUELO METAL CORPORATION, *petitioner, vs.* **PLANTERS DEVELOPMENT BANK and ATTY. JESUSA PRADO-MANINGAS, in her capacity as *Ex-officio* Sheriff of Manila,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; CORPORATION LAW; SECURITIES AND REGULATION CODE; SECURITIES AND EXCHANGE COMMISSION RETAINS JURISDICTION OVER PENDING SUSPENSION OF PAYMENTS/ REHABILITATION CASES FILED AS OF 30 JUNE 2000 UNTIL FINALLY DISPOSED; CASE AT BAR. — Republic Act No. 8799 (RA 8799) transferred to the appropriate regional trial courts the SEC's jurisdiction defined under Section 5(d) of Presidential Decree No. 902-A. Section 5.2 of RA 8799 provides: The Commission's jurisdiction over all cases enumerated under Sec. 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: x x x **The Commission shall retain jurisdiction over pending suspension of payments/ rehabilitation cases filed as of 30 June 2000 until finally disposed**. The SEC assumed jurisdiction over CMC's petition for suspension of payment and issued a suspension order on 2 April 1996 after it found CMC's petition to be sufficient in form and substance. While CMC's petition was still pending with the SEC as of 30 June 2000, it was finally disposed of on 29 November 2000 when the SEC issued its Omnibus Order directing the dissolution of CMC and the transfer of the liquidation proceedings before the appropriate trial court. The SEC finally disposed of CMC's petition for suspension of payment when it determined that CMC could no longer be successfully rehabilitated.

2. ID.; ID.; ID.; JURISDICTION OVER LIQUIDATION OF THE CORPORATION PERTAINS TO THE APPROPRIATE REGIONAL TRIAL COURTS. — While the SEC has jurisdiction to order the dissolution of a corporation, jurisdiction

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over the liquidation of the corporation now pertains to the appropriate regional trial courts. This is the reason why the SEC, in its 29 November 2000 Omnibus Order, directed that "the proceedings on and implementation of the order of liquidation be commenced at the Regional Trial Court to which this case shall be transferred." This is the correct procedure because the liquidation of a corporation requires the settlement of claims for and against the corporation, which clearly falls under the jurisdiction of the regular courts. The trial court is in the best position to convene all the creditors of the corporation, ascertain their claims, and determine their preferences.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; ORDER OF PREFERENCE OF CREDITS; SECURED CREDITORS SHALL ENJOY PREFERENCE OVER UNSECURED CREDITORS; RIGHT TO FORECLOSE THE REAL ESTATE MORTGAGE; WHEN MAY BE EXERCISED. — In *Rizal Commercial Banking Corporation v. Intermediate Appellate Court*, we held that if rehabilitation is no longer feasible and the assets of the corporation are finally liquidated, secured creditors shall enjoy preference over unsecured creditors, subject only to the provisions of the Civil Code on concurrence and preference of credits. Creditors of secured obligations may pursue their security interest or lien, or they may choose to abandon the preference and prove their credits as ordinary claims. Moreover, Section 2248 of the Civil Code provides: Those credits which enjoy preference in relation to specific real property or real rights, exclude all others to the extent of the value of the immovable or real right to which the preference refers. In this case, Planters Bank, as a secured creditor, enjoys preference over a specific mortgaged property and has a right to foreclose the mortgage under Section 2248 of the Civil Code. The creditor-mortgagee has the right to foreclose the mortgage over a specific real property whether or not the debtor-mortgagor is under insolvency or liquidation proceedings. The right to foreclose such mortgage is merely suspended upon the appointment of a management committee or rehabilitation receiver or upon the issuance of a stay order by the trial court. However, the creditor-mortgagee may exercise his right to foreclose the mortgage upon the termination of the rehabilitation proceedings or upon the lifting of the stay order.

4. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; FORECLOSURE PROCEEDINGS PRESUMED TO HAVE BEEN REGULARLY PERFORMED; BURDEN OF EVIDENCE TO REBUT THE SAME IS ON THE PARTY THAT SEEKS TO CHALLENGE THE PROCEEDINGS. — Foreclosure proceedings have in their favor the presumption of regularity and the burden of evidence to rebut the same is on the party that seeks to challenge the proceedings. CMC's challenge to the foreclosure proceedings has no merit. The notice of sale clearly specified that the auction sale will be held "at 10:00 o'clock in the morning or soon thereafter, but not later than 2:00 o'clock in the afternoon." The Sheriff's Minutes of the Sale stated that "the foreclosure sale was actually opened at 10:00 A.M. and commenced at 2:30 P.M." There was nothing irregular about the foreclosure proceedings.

APPEARANCES OF COUNSEL

Yngson & Associates for petitioner.
Raymundo Santos Senga & Associates for Planters Dev't. Bank.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] seeking to reverse the 14 December 2001 Decision[2] and the 6 March 2002 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 65069. In its 14 December 2001 Decision, the Court of Appeals dismissed petitioner Consuelo Metal Corporation's (CMC) petition for *certiorari* and affirmed the 25 April 2001 Order[4] of the Regional Trial Court, Branch

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 49-56. Penned by Associate Justice Alicia L. Santos, with Associate Justices Buenaventura J. Guerrero and Marina L. Buzon, concurring.

[3] *Id.* at 57-59.

[4] CA *rollo*, pp. 32-35. Penned by Judge Artemio S. Tipon.

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46, Manila (trial court). In its 6 March 2002 Resolution, the Court of Appeals partially granted CMC's motion for reconsideration and remanded the case to the Securities and Exchange Commission (SEC) for further proceedings.

The Facts

On 1 April 1996, CMC filed before the SEC a petition to be declared in a state of suspension of payment, for rehabilitation, and for the appointment of a rehabilitation receiver or management committee under Section 5(d) of Presidential Decree No. 902-A.[5] On 2 April 1996, the SEC, finding the petition sufficient in form and substance, declared that "all actions for claims against CMC pending before any court, tribunal, office, board, body and/or commission are deemed suspended immediately until further order" from the SEC.[6]

In an Order dated 13 September 1999, the SEC directed the creation of a management committee to undertake CMC's rehabilitation and reiterated the suspension of all actions for claims against CMC.[7]

On 29 November 2000, upon the management committee's recommendation,[8] the SEC issued an Omnibus Order directing

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[5] Section 5(d) of Presidential Decree No. 902-A provides:

Sec. 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving x x x

(d) Petitions of corporations, partnerships or associations to be declared in a state of suspension of payments in cases where the corporation, partnership or association possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due or in cases where the corporation, partnership or association has no sufficient assets to cover its liabilities but is under the management of a Rehabilitation Receiver or Management Committee.

[6] CA *rollo*, p. 61.

[7] *Rollo*, pp. 102-107.

[8] CA *rollo*, pp. 68-70.

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the dissolution and liquidation of CMC.[9] The SEC also directed that "the proceedings on and implementation of the order of liquidation be commenced at the Regional Trial Court to which this case shall be transferred."[10]

Thereafter, respondent Planters Development Bank (Planters Bank), one of CMC's creditors, commenced the extra-judicial foreclosure of CMC's real estate mortgage. Public auctions were scheduled on 30 January 2001 and 6 February 2001.

CMC filed a motion for the issuance of a temporary restraining order and a writ of preliminary injunction with the SEC to enjoin the foreclosure of the real estate mortgage. On 29 January 2001, the SEC issued a temporary restraining order to maintain the status quo and ordered the immediate transfer of the case records to the trial court.[11]

The case was then transferred to the trial court. In its 25 April 2001 Order, the trial court denied CMC's motion for issuance of a temporary restraining order. The trial court ruled that since the SEC had already terminated and decided on the merits CMC's petition for suspension of payment, the trial court no longer had legal basis to act on CMC's motion.

On 28 May 2001, the trial court denied CMC's motion for reconsideration.[12] The trial court ruled that CMC's petition for suspension of payment could not be converted into a petition for dissolution and liquidation because they covered different subject matters and were governed by different rules. The trial court stated that CMC's remedy was to file a new petition for dissolution and liquidation either with the SEC or the trial court.

CMC filed a petition for *certiorari* with the Court of Appeals. CMC alleged that the trial court acted with grave abuse of discretion amounting to lack of jurisdiction when it required

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[9] *Rollo*, pp. 108-113.

[10] *Id.* at 113.

[11] *Id.* at 114-116.

[12] CA *rollo*, pp. 36-37.

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CMC to file a new petition for dissolution and liquidation with either the SEC or the trial court when the SEC clearly retained jurisdiction over the case.

On 13 June 2001, Planters Bank extra-judicially foreclosed the real estate mortgage.[13]

The Ruling of the Court of Appeals

On 14 December 2001, the Court of Appeals dismissed the petition and upheld the 25 April 2001 Order of the trial court. The Court of Appeals held that the trial court correctly denied CMC's motion for the issuance of a temporary restraining order because it was only an ancillary remedy to the petition for suspension of payment which was already terminated. The Court of Appeals added that, under Section 121 of the Corporation Code,[14] the SEC has jurisdiction to hear CMC's petition for dissolution and liquidation.

CMC filed a motion for reconsideration. CMC argued that it does not have to file a new petition for dissolution and liquidation with the SEC but that the case should just be remanded to the SEC as a continuation of its jurisdiction over the petition for suspension of payment. CMC also asked that Planters Bank's foreclosure of the real estate mortgage be declared void.

In its 6 March 2002 Resolution, the Court of Appeals partially granted CMC's motion for reconsideration and ordered that the case be remanded to the SEC under Section 121 of the Corporation Code. The Court of Appeals also ruled that since the SEC already ordered CMC's dissolution and liquidation, Planters Bank's foreclosure of the real estate mortgage was in order.

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[13] *Id.* at 130-132.

[14] Section 121 of the Corporation Code provides:

Sec. 121. *Involuntary dissolution.* — A corporation may be dissolved by the Securities and Exchange Commission upon the filing of a verified complaint and after proper notice and hearing on grounds provided by existing laws, rules and regulations.

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Planters Bank filed a motion for reconsideration questioning the remand of the case to the SEC. In a resolution dated 19 July 2002, the Court of Appeals denied the motion for reconsideration.

Not satisfied with the 6 March 2002 Resolution, CMC filed this petition for review on *certiorari*.

The Issues

CMC raises the following issues:

1. Whether the present case falls under Section 121 of the Corporation Code, which refers to the SEC's jurisdiction over CMC's dissolution and liquidation, or is only a continuation of the SEC's jurisdiction over CMC's petition for suspension of payment; and
2. Whether Planters Bank's foreclosure of the real estate mortgage is valid.

The Court's Ruling

The petition has no merit.

The SEC has jurisdiction to order CMC's dissolution but the trial court has jurisdiction over CMC's liquidation.

While CMC agrees with the ruling of the Court of Appeals that the SEC has jurisdiction over CMC's dissolution and liquidation, CMC argues that the Court of Appeals remanded the case to the SEC on the wrong premise that the applicable law is Section 121 of the Corporation Code. CMC maintains that the SEC retained jurisdiction over its dissolution and liquidation because it is only a continuation of the SEC's jurisdiction over CMC's original petition for suspension of payment which had not been "finally disposed of as of 30 June 2000."

On the other hand, Planters Bank insists that the trial court has jurisdiction over CMC's dissolution and liquidation. Planters Bank argues that dissolution and liquidation are entirely new proceedings for the termination of the existence of the corporation which are incompatible with a petition for suspension of payment which seeks to preserve corporate existence.

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Republic Act No. 8799 (RA 8799)[15] transferred to the appropriate regional trial courts the SEC's jurisdiction defined under Section 5(d) of Presidential Decree No. 902-A. Section 5.2 of RA 8799 provides:

> The Commission's jurisdiction over all cases enumerated under Sec. 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: *Provided*, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. **The Commission shall retain jurisdiction over pending suspension of payments/ rehabilitation cases filed as of 30 June 2000 until finally disposed.** (Emphasis supplied)

The SEC assumed jurisdiction over CMC's petition for suspension of payment and issued a suspension order on 2 April 1996 after it found CMC's petition to be sufficient in form and substance. While CMC's petition was still pending with the SEC as of 30 June 2000, it was finally disposed of on 29 November 2000 when the SEC issued its Omnibus Order directing the dissolution of CMC and the transfer of the liquidation proceedings before the appropriate trial court. The SEC finally disposed of CMC's petition for suspension of payment when it determined that CMC could no longer be successfully rehabilitated.

However, the SEC's jurisdiction does not extend to the liquidation of a corporation. While the SEC has jurisdiction to order the dissolution of a corporation,[16] jurisdiction over the liquidation of the corporation now pertains to the appropriate regional trial courts. This is the reason why the SEC, in its 29 November 2000 Omnibus Order, directed that "the proceedings on and implementation of the order of liquidation be commenced

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[15] Also known as "The Securities Regulation Code" which took effect on 8 August 2000.

[16] Sections 119 and 121 of the Corporation Code.

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at the Regional Trial Court to which this case shall be transferred." This is the correct procedure because the liquidation of a corporation requires the settlement of claims for and against the corporation, which clearly falls under the jurisdiction of the regular courts. The trial court is in the best position to convene all the creditors of the corporation, ascertain their claims, and determine their preferences.

Foreclosure of real estate mortgage is valid.

CMC maintains that the foreclosure is void because it was undertaken without the knowledge and previous consent of the liquidator and other lien holders. CMC adds that the rules on concurrence and preference of credits should apply in foreclosure proceedings. Assuming that Planters Bank can foreclose the mortgage, CMC argues that the foreclosure is still void because it was conducted in violation of Section 15, Rule 39 of the Rules of Court which states that the sale "should not be earlier than nine o'clock in the morning and not later than two o'clock in the afternoon."

On the other hand, Planters Bank argues that it has the right to foreclose the real estate mortgage because of non-payment of the loan obligation. Planters Bank adds that the rules on concurrence and preference of credits and the rules on insolvency are not applicable in this case because CMC has been not been declared insolvent and there are no insolvency proceedings against CMC.

In *Rizal Commercial Banking Corporation v. Intermediate Appellate Court*,[17] we held that if rehabilitation is no longer feasible and the assets of the corporation are finally liquidated, secured creditors shall enjoy preference over unsecured creditors, subject only to the provisions of the Civil Code on concurrence and preference of credits. Creditors of secured obligations may pursue their security interest or lien, or they may choose to abandon the preference and prove their credits as ordinary claims.[18]

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[17] 378 Phil. 10 (1999).

[18] Vitug, *J.*, *COMMERCIAL LAWS AND JURISPRUDENCE*, 557 (Volume 1, ed. 2006).

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Moreover, Article 2248 of the Civil Code provides:

> Those credits which enjoy preference in relation to specific real property or real rights, exclude all others to the extent of the value of the immovable or real right to which the preference refers.

In this case, Planters Bank, as a secured creditor, enjoys preference over a specific mortgaged property and has a right to foreclose the mortgage under Article 2248 of the Civil Code. The creditor-mortgagee has the right to foreclose the mortgage over a specific real property whether or not the debtor-mortgagor is under insolvency or liquidation proceedings. The right to foreclose such mortgage is merely suspended upon the appointment of a management committee or rehabilitation receiver[19] or upon the issuance of a stay order by the trial court.[20] However, the creditor-mortgagee may exercise his right to foreclose the mortgage upon the termination of the rehabilitation proceedings or upon the lifting of the stay order.[21]

Foreclosure proceedings have in their favor the presumption of regularity and the burden of evidence to rebut the same is on the party that seeks to challenge the proceedings.[22] CMC's challenge to the foreclosure proceedings has no merit. The notice of sale clearly specified that the auction sale will be held "at 10:00 o'clock in the morning or soon thereafter, but not later than 2:00 o'clock in the afternoon."[23] The Sheriff's Minutes of the Sale stated that "the foreclosure sale was actually opened at 10:00 A.M. and commenced at 2:30 P.M."[24] There was nothing irregular about the foreclosure proceedings.

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[19] Section 6(c) of Presidential Decree No. 902-A.

[20] Section 6, Rule 4 of the Interim Rules of Procedure on Corporate Rehabilitation.

[21] Section 12, Rule 4 of the Interim Rules of Procedure on Corporate Rehabilitation.

[22] *Union Bank of the Philippines v. Court of Appeals*, G.R. No. 164910, 30 September 2005, 471 SCRA 751.

[23] CA *rollo*, p. 130.

[24] *Rollo*, p. 62.

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WHEREFORE, we *DENY* the petition. We ***REINSTATE*** the 29 November 2000 Omnibus Order of the Securities and Exchange Commission directing the Regional Trial Court, Branch 46, Manila to immediately undertake the liquidation of Consuelo Metal Corporation. We *AFFIRM* the ruling of the Court of Appeals that Planters Development Bank's extra-judicial foreclosure of the real estate mortgage is valid.

SO ORDERED.

Puno, C.J. (Chairperson), Corona, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

FIRST DIVISION

[G.R. No. 154953. June 26, 2008]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **T.A.N. PROPERTIES, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND TITLES AND DEEDS; LAND REGISTRATION; BURDEN OF PROOF TO OVERTURN BY INCONTROVERTIBLE EVIDENCE THE PRESUMPTION THAT THE LAND SUBJECT OF AN APPLICATION FOR REGISTRATION IS ALIENABLE AND DISPOSABLE RESTS WITH THE APPLICANT. — The well-entrenched rule is that all lands not appearing to be clearly of private dominion presumably belong to the State. The *onus* to overturn, by incontrovertible evidence, the presumption that the land subject of an application for registration is alienable and disposable rests with the applicant.

2. ID.; ID.; ID.; ID.; PRESUMPTION NOT OVERTURNED BY INCONTROVERTIBLE EVIDENCE IN CASE AT BAR. —