



Republic of the Philippines  
**Supreme Court**  
Manila

**SECOND DIVISION**

**SITUS DEVELOPMENT  
CORPORATION, DAILY  
SUPERMARKET, INC. and  
COLOR LITHOGRAPHIC 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:

CARPIO, *J.*; Chairperson,  
DEL CASTILLO,\*  
PEREZ,  
SERENO, and  
REYES, *JJ.*

Promulgated:

JUL 25 2012 *HM Cabalag*

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**DECISION**

**SERENO, *J.*:**

The instant Rule 45 Petition assails the Decision<sup>1</sup> and Resolution<sup>2</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 80223. The CA reversed and set aside the Adjudication<sup>3</sup> of the Regional Trial Court (RTC), Branch 93, Quezon City (the Rehabilitation Court) in Civil Case No. Q-02-010, which

\* Designated as additional member in lieu of Associate Justice Arturo D. Brion per S.O. No. 1257 dated 19 July 2012.

<sup>1</sup> *Rollo*, pp. 405-428; CA Decision dated 25 April 2007, penned by Associate Justice Marina L. Buzon and concurred in by then Associate Justices Lucas P. Bersamin and Estela M. Perlas-Bernabe (the last two now members of this Court).

<sup>2</sup> *Id.* at 459-460, CA Resolution on petitioners' Motion for Reconsideration dated 9 October 2007.

<sup>3</sup> *Id.* at 396-398, Adjudication dated 14 August 2003, penned by Presiding Judge Apolinario D. Bruselas, Jr.

had approved the Second Amended Rehabilitation Plan of petitioners Situs Development Corporation, Daily Supermarket, Inc. and Color Lithographic Press, Inc. (collectively, petitioners or petitioner corporations) over the objections of respondents Asiatruster Bank (Asiatruster), Allied Banking Corporation (Allied Bank) and Metropolitan Bank and Trust Company (Metrobank). Respondent Cameron Granville II Asset Management, Inc. (Cameron), a Special Purpose Vehicle, was the transferee of Metrobank's rights, title and interest in the instant case.

The facts are not in issue, and we quote with favor the narration of the appellate court:

In 1972, the Chua Family, headed by its patriarch, Cua Yong Hu, *a.k.a.* Tony Chua, started a printing business and put up Color Lithographic Press, Inc. (COLOR). On June 6, 1995, the Chua Family ventured into real estate development/leasing by organizing Situs Development Corporation (SITUS) in order to build a shopping mall complex, known as Metrolane Complex (COMPLEX) at 20th Avenue corner P. Tuazon, Cubao, Quezon City. To finance the construction of the COMPLEX, SITUS, COLOR and Tony Chua and his wife, Siok Lu Chua, obtained several loans from (1) ALLIED secured by real estate mortgages over two lots covered by TCT Nos. RT-13620 and RT-13621; (2) ASIATRUST secured by a real estate mortgage over a lot covered by TCT No. 79915; and (3) Global Banking Corporation, now METROBANK, secured by a real estate mortgage over a lot covered by TCT No. 79916. The COMPLEX was built on said four (4) lots, all of which are registered in the names of Tony Chua and his wife, Siok Lu Chua. On March 21, 1996, the Chua Family expanded into retail merchandising and organized Daily Supermarket, Inc. (DAILY). All three (3) corporations have interlocking directors and are all housed in the COMPLEX. The Chua Family also resides in the COMPLEX, while the other units are being leased to tenants. SITUS, COLOR and DAILY obtained additional loans from ALLIED, ASIATRUST and METROBANK and their real estate mortgages were updated and/or amended. Spouses Chua likewise executed five (5) Continuing Guarantee/Comprehensive Surety in favor of ALLIED to guarantee the payment of the loans of SITUS and DAILY.

SITUS, COLOR, DAILY and the spouses Chua failed to pay their obligations as they fell due, despite demands.

On November 22, 2000, ALLIED filed with the Office of the Clerk of Court and Ex-Officio Sheriff of Quezon City an application for extrajudicial foreclosure of the mortgage on the properties of spouses Chua covered by TCT Nos. RT-13620 and RT-13621. The auction sale was scheduled on February 6, 2001. However, on February 5, 2001, SITUS, COLOR and spouses Chua filed a complaint for nullification of foreclosure proceedings, with prayer for temporary restraining

order/injunction, with the Regional Trial Court, Branch 87, Quezon City, docketed as Civil Case No. Q-01-43280. As no temporary restraining order was issued, the scheduled auction sale proceeded wherein ALLIED emerged as the highest bidder in the amount of ₱88,958,700.00. The Certificate of Sale dated March 9, 2001 in favor of ALLIED was approved by the Executive Judge of the Regional Trial Court of Quezon City on September 9, 2002 and the same was annotated on TCT Nos. RT-13620 and RT-13621 on September 23, 2002.

On July 26, 2001, METROBANK likewise filed an application for extrajudicial foreclosure of the mortgage on the property of spouses Chua covered by TCT No. 79916. The auction sale was conducted on September 18, 2001, with METROBANK as the highest bidder in the amount of ₱95,282,563.86.

On May 16, 2002, ASIATRUST sent a demand letter to DAILY and COLOR for the payment of their outstanding obligations.

On June 11, 2002, SITUS, DAILY and COLOR, herein petitioners, filed a petition for the declaration of state of suspension of payments with approval of proposed rehabilitation plan, docketed as Civil Case No. Q-02-010, with the Regional Trial Court, Branch 93, Quezon City. Petitioners alleged that due to the 1997 Asian financial crisis, peso devaluation and high interest rate, their loan obligations ballooned and they foresee their inability to meet their obligations as they fall due; that their loan obligations are secured by the real properties of their major stockholder, Tony Chua; that ALLIED has already initiated foreclosure proceedings; that Global Banking Corporation, now METROBANK, and ASIATRUST made final demands for payment of their obligations; that they foresee a very good future ahead of them if they would be given a “breathing spell” from their obligations as they fall due; and that their assets are more than sufficient to pay off their debts. Petitioners submitted a program of rehabilitation for the approval of creditors and the court *a quo*.

A Stay Order dated June 17, 2002, was issued by the court *a quo* directing as follows:

- a.) a stay in the enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the petitioners Situs Development Corporation, Daily Supermarket, Inc., & Color Lithographic Press, Inc., their guarantors and sureties not solidarily liable with them;
- b.) prohibiting Situs Development Corporation, Daily Supermarket, Inc., & Color Lithographic Press, Inc., from selling, encumbering, transferring or disposing in any manner any of their properties except in the ordinary course of business;
- c.) prohibiting Situs Development Corporation, Daily Supermarket, Inc. & Color Lithographic Press, Inc., from making any payment of their liabilities outstanding as of the filing of the instant petition;

- d.) prohibiting Situs Development Corporation, Daily Supermarket, Inc. and Color Lithographic Press, Inc.'s suppliers of goods and services from withholding supply of goods and services in the ordinary course of business for as long as Situs Development Corporation, Daily Supermarket, Inc. & Color Lithographic Press, Inc., make payments for the goods and services supplied after the issuance of this stay order; and
- e.) directing the payment in full of all administrative expenses incurred after the issuance of this stay order.

The court *a quo* appointed Mr. Antonio B. Garcia as the Rehabilitation Receiver, set the initial hearing on the petition on August 2, 2002 and directed all creditors and interested parties, including the Securities and Exchange Commission (SEC), to file their comment on or opposition to the petition.

ALLIED filed its opposition and comment praying for the dismissal of the petition and the lifting of the Stay Order on the grounds that it is defective in form and substance; that it contains substantial inaccuracies and inconsistencies; and that it does not contain a viable rehabilitation plan.

ASIATRUST filed its comment with partial opposition praying likewise for the dismissal of the petition on the grounds that it is not in due form and lacks substantial allegations on its debt obligations with its various creditors; that petitioners do not have a viable rehabilitation plan; and that petitioners do not have a clear source of repayment of their obligations.

No comment or opposition was filed by SEC.

In an Order dated August 2, 2002, the court *a quo* found *prima facie* merit in the petition and gave due course thereto. The Rehabilitation Receiver was given forty-five (45) days within which to submit his report on the proposed rehabilitation plan.

On October 15, 2002, METROBANK filed a Manifestation stating that it was participating in the proceedings as a mere observer inasmuch as the mortgage executed in its favor by spouses Chua on the property covered by TCT No. 79916 was foreclosed by it on September 18, 2001, so that it ceased to be a creditor of COLOR as its claim was already fully satisfied.

On October 9, 2002, petitioners filed a motion for the cancellation of the certificate of sale approved on September 9, 2002 by the Executive Judge of the RTC of Quezon City and the annotation thereof on TCT Nos. RT-13620 and RT-13621, as the same were done in violation of the Stay Order dated June 17, 2002. A vehement opposition was filed by ALLIED arguing that the foreclosure proceedings cannot be considered as a "claim", as understood under Section 1, Rule 2 of the Interim Rules of Procedure on Corporate Rehabilitation, since the issuance of the Certificate of Sale and annotation thereof on the certificates of titles do not constitute demands for payment of debt or enforcement of pecuniary liabilities; that the auction sale was conducted more than one year before

the filing of the petition for rehabilitation; and that TCT Nos. RT-13620 and RT-13621 are registered in the names of “Cua Yong Hu/Tony Chua and Siok Lu Chua”, hence, should not have been included in the Inventory of Assets of petitioners.

On October 21, 2002, ASIATRUST filed an urgent manifestation praying for the outright dismissal of the petition inasmuch as METROBANK and ALLIED had already foreclosed the mortgages on the properties that stood as securities for petitioners’ obligations, as well as the lifting of the Stay Order.

On October 19, 2002, the Rehabilitation Receiver submitted his Report on petitioners’ proposed Rehabilitation Plan, to which oppositions were filed by ALLIED and METROBANK.

On November 21, 2002, petitioners proposed to amend their Rehabilitation Plan. On December 2, 2002, petitioners filed and submitted an Amended Rehabilitation Plan, which was opposed by ALLIED and ASIATRUST.

On January 8, 2003, petitioners filed a motion to admit Second Amended Rehabilitation Program of Situs Development Corporation, the pertinent provisions of which read:

1. Situs will assume the outstanding obligations of its non-profitting affiliate companies: Daily Supermarket, Inc. and Color Lithographic Press, Inc.;
2. Situs will convert all its debts to equity;
3. Situs will lease the properties from the new owners at ₱50.00 per square meter for a period of 25 years or at ₱555,200.00 a month, with a yearly escalation of 5%;
4. The annual lease income will be distributed among the new owners according to their percentage ownership and, in the event that the property is sold, any profit will be shared accordingly;
5. The new owners are Asiatruster with 21% ownership, Metrobank with 17% ownership, Allied with 30% ownership, and Tony Chua with 32% ownership;
6. The two properties in Cavite which were mortgaged to ASIATRUST will be returned to its registered owner since the properties where the Complex sits is enough to cover the loan obligations; and
7. All unpaid interests, penalties and other charges are waived.

Comments on and oppositions to the Second Amended Rehabilitation Plan were filed by ALLIED, ASIATRUST and METROBANK.

On August 15, 2003, ALLIED filed a motion praying for the dismissal of the petition as no Rehabilitation Plan was approved upon the lapse of 180 days from the date of the initial hearing on August 2, 2002, as mandated in Section 11 of the Interim Rules of Procedure on Corporate Rehabilitation.

On August 14, 2003, the court *a quo* rendered an ADJUDICATION approving the Second Amended Rehabilitation Program as SITUS deserves a sporting chance at rehabilitation, subject to the following conditions:

1. The first phase of implementation shall cover immediately the payment of the appurtenant shares to the creditors/new owners out of the monthly rental income of ₱555,200.00 as outlined in paragraph D.1 of the plan;
2. An automatic review of the progress of implementation shall be undertaken six (6) months from and after the initial payment described in condition no. 1 above;
3. The rehabilitation receiver, petitioner and creditors/new owners to file written reports on the sixth month of implementation and to seasonably prompt the court to set up the matter for a monitoring hearing thereon;
4. At the end of one year from and after the initial implementation of the plan, the court shall undertake a review of the entire rehabilitation program for the purpose of determining the desirability of terminating or continuing with the rehabilitation;
5. The rehabilitation receiver, petitioner and creditors/new owners to file written reports conformably with condition no. 4 above and to seasonably prompt the court accordingly.

In approving the Second Amended Rehabilitation Program, the court *a quo* held:

From the original rehabilitation proposal which simply involved a condoning and restructuring of the loan obligations, the petitioners came out with an amended rehabilitation plan that calls for, among others, a concentration into the business of commercial leasing coupled with the consolidation of the debts of Daily and Color with that of Situs; a conversion of debt to equity in proportionate terms; a reduction of the principal stockholder's control of Situs Development; a proportionate share in the monthly rental income of Situs by creditors/new owners.

The creditor banks have consistently opposed the rehabilitation plans submitted by the petitioners. To the creditor banks, they would be [better-off] if the businesses of the petitioners would be simply liquidated. A most

simple view indeed, except that such a view totally ignores the susceptibility of petitioner Situs to rehabilitation. The creditor banks are fully aware that the real property on which the building structure of Situs Development [sits] is more than sufficient to answer for all the outstanding obligations of petitioners. This fact alone should be enough to afford the petitioners a sporting chance at business resuscitation. That the realties are titled in the name of Mr. Tony Chua is of no moment insofar as the rehabilitation is concerned, after all, the creditor banks were fully aware of the real facts when they willingly extended loans to the petitioners.

To the court the 2nd Amended Rehabilitation Program of Situs Development Corporation Inc., a copy of which is enclosed and made an integral part of this adjudication, deserves due consideration. Although said plan is opposed by the creditor banks, the court notes that it bears the approval of the rehabilitation receiver who had the opportunity to peruse it. Moreover, under the plan, the shareholders of Situs Development will lose controlling interest in the corporation. There is also no clear showing that the properties of the debtor will be readily sold by a liquidator within a three-month period from termination of the herein proceedings and that the creditors would get more from said sale than what they would get under the plan. The court thus considers the creditors' opposition to be unreasonable.

In an Order dated August 25, 2003, the court *a quo* declared that the motion to dismiss filed by ALLIED was mooted with the issuance of the Adjudication.

Aggrieved, ALLIED, ASIATRUST and METROBANK filed their separate notices of appeal.

On November 10, 2003, petitioners filed with the court *a quo* a motion for declaration of nullity of the certificate of sale in favor of ALLIED alleging that the issuance thereof was in violation of the Stay Order, as well as a motion to direct the Register of Deeds to annotate the Adjudication on TCT Nos. RT-13620, RT-13621, TCT Nos. 79915 and 79916. Said motions were opposed by ALLIED on the grounds that the properties foreclosed by it belonged to spouses Chua and not to petitioners; that the auction sale was conducted on February 6, 2001, or more than a year prior to the filing of the petition for rehabilitation; and that the issuance of the Certificate of Sale and its annotation on the certificates of title are merely incidental to the foreclosure proceedings; and that the Stay Order does not cover the issuance of the Certificate of Sale and the registration thereof on the certificates of title as they do not in any way refer to its enforcement of a monetary claim against petitioners.

In Separate Orders dated January 9, 2004, the court *a quo* granted both motions of petitioners. The court *a quo* held that while the foreclosure was conducted prior to the issuance of the Stay Order, however, the foreclosure does not fully and effectively terminate until after the issuance of the title in the name of the creditor, such that until a

new title is issued, any action in the interregnum, judicial or not, is deemed an enforcement of the claim arising from such foreclosure, which in this case will be in patent violation of the Stay Order.<sup>4</sup>

On 25 April 2007, the appellate court rendered the assailed Decision, the dispositive portion of which reads:

**WHEREFORE**, the appeals are **GRANTED**. The **ADJUDICATION** dated August 14, 2003 is **REVERSED** and **SET ASIDE**, the petition for the declaration of state of suspension of payments with approval of proposed rehabilitation plan is **DISMISSED** and the Stay Order dated June 17, 2002 is **LIFTED**.

The twin Orders dated January 9, 2004 declaring the Certificate of Sale issued in favor of Allied Banking Corporation null and void, with respect to the properties covered by TCT No. RT-13620 and RT-13621, and directing the Register of Deeds of Quezon City to cancel the annotation of the Certificate of Sale on said titles, as well as to annotate said **ADJUDICATION** thereon, are likewise **REVERSED** and **SET ASIDE**.

**SO ORDERED.**<sup>5</sup>

In so concluding, the CA reasoned that the Stay Order did not affect the claims of Allied Bank and Metrobank, because these claims were not directed against the properties of petitioners, but against those of spouses Chua.

The CA also reasoned that when the Stay Order was issued, Allied Bank and Metrobank were already the owners of the foreclosed properties, subject only to the right of redemption of Spouses Tony and Siok Lu Chua (spouses Chua), because the extrajudicial foreclosure proceedings had taken place prior to the filing of the Petition for Rehabilitation and the issuance of the Stay Order.

Furthermore, the CA agreed with the contention of respondents that the Petition was insufficient in form and in substance. Among the reasons

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<sup>4</sup> Id at 406-416.

<sup>5</sup> Id. at 427.



cited by the appellate court was the fact that the inventory of assets of petitioner corporations included properties that were not owned by them, but registered in the names of spouses Chua and already acquired by Allied Bank and Metrobank; and that the financial statements submitted by petitioner corporations showed that their total liabilities exceeded their total assets.

Finally, the CA ruled that the Petition for Rehabilitation should be dismissed, because the rehabilitation plan was approved by the court more than 180 days from the date of the initial hearing, contrary to the directive of Section 11, Rule 4 of the Interim Rules on Corporate Rehabilitation.<sup>6</sup>

Aggrieved by the ruling of the appellate court, petitioners then filed the instant Rule 45 Petition before this court and prayed for the issuance of a *status quo* order.

On 10 December 2007, we resolved to direct the parties to maintain the *status quo* as of the date of the issuance of the Stay Order of the trial court.

On 17 March 2008, petitioners filed a “Manifestation and Motion to Substitute Metro Bank with Cameron Granville II Asset Management, Inc.,”<sup>7</sup> alleging that since Metrobank had sold, transferred and conveyed all its rights, title and interest over the loans of petitioners to Cameron, Metrobank was no longer a real party-in-interest in this case. Furthermore, petitioners prayed that Metrobank and Cameron be directed to disclose the transfer price or discounted value of the sale allegedly because, under Art.

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<sup>6</sup> Sec. 11. *Period of the Stay Order.* – The stay order shall be effective from the date of its issuance until the dismissal of the petition or the termination of the rehabilitation proceedings.

The petition shall be dismissed if no rehabilitation plan is approved by the court upon the lapse of one hundred eighty (180) days from the date of the initial hearing. The court may grant an extension beyond this period only if it appears by convincing and compelling evidence that the debtor may successfully be rehabilitated. In no instance, however, shall the period for approving or disapproving a rehabilitation plan exceed eighteen (18) months from the date of filing of the petition.

<sup>7</sup> *Rollo*, pp. 725-734.

1634 of the Civil Code, they had the right of redemption of the sold credits by paying only the transfer price to the transferee.

### **THE ISSUES**

The resolution of this case hinges on the following issues:

1. Whether the dismissal of the Petition for Rehabilitation is in order;
2. Whether the Stay Order affects foreclosure proceedings involving properties mortgaged by stockholders to secure corporate debts; and
3. Whether petitioners can redeem the credit transferred by Metrobank to Cameron by paying only the price paid by the transferee.

### **THE COURT’S RULING**

We lift the *status quo* order and affirm the Decision of the appellate court.

#### **I**

#### **The dismissal of the Petition for Rehabilitation is in order**

We find no reversible error on the part of the appellate court when it dismissed the Petition for Rehabilitation.

The Rules provide that “[t]he petition shall be dismissed if no rehabilitation plan is approved by the court upon the lapse of one hundred eighty (180) days from the date of the initial hearing.”<sup>8</sup> While the Rules

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<sup>8</sup> 2000 Interim Rules of Procedure on Corporate Rehabilitation, Rule 4, Sec. 11.

expressly provide that the 180-day period may be extended, such extension may be granted only “if it appears by convincing and compelling evidence that the debtor may successfully be rehabilitated.”<sup>9</sup>

In this case, the Second Amended Rehabilitation Program was approved by the trial court beyond the 180-day period counted from the date of the initial hearing. However, the evidence on record does not support the lower court’s finding that the debtor corporations may still be successfully rehabilitated.

The trial court’s only justification for approving the Second Amended Rehabilitation Program is that “[t]he creditor banks are fully aware that the real property on which the building structure of Situs Development [sits] is more than sufficient to answer for all the outstanding obligations of the petitioners.”<sup>10</sup> It then went on to conclude that “[t]his fact alone should be enough to afford the petitioners a sporting chance at business resuscitation.”<sup>11</sup>

We do not agree.

It is a fundamental principle in corporate law that a corporation is a juridical entity with a legal personality separate and distinct from the people comprising it.<sup>12</sup> Hence, the rule is that assets of stockholders may not be considered as assets of the corporation, and vice-versa. The mere fact that one is a majority stockholder of a corporation does not make one’s property that of the corporation, since the stockholder and the corporation are separate entities.<sup>13</sup>

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<sup>9</sup> Id.

<sup>10</sup> *Rollo*, p. 397.

<sup>11</sup> Id.

<sup>12</sup> *Siochi Fishery Enterprises, Inc. v. Bank of the Philippine Islands*, G.R. No. 193872, 19 October 2011, 659 SCRA 817.

<sup>13</sup> *Traders Royal Bank v. Court of Appeals*, 258 Phil. 584 (1989); *Cruz v. Dalisay*, 236 Phil. 520 (1987).

In this case, the parcels of land mortgaged to respondent banks are owned not by petitioners, but by spouses Chua.<sup>14</sup> Applying the doctrine of separate juridical personality, these properties cannot be considered as part of the corporate assets. Even if spouses Chua are the majority stockholders in petitioner corporations, they own these properties in their individual capacities. Thus, the parcels of land in question cannot be included in the inventory of assets of petitioner corporations.

The fact that these properties were mortgaged to secure corporate debts is of no moment. A mortgage is an accessory undertaking to secure the fulfillment of a principal obligation.<sup>15</sup> In a third-party mortgage, the mortgaged property stands as security for the loan obtained by the principal debtor; but until the mortgaged property is foreclosed, ownership thereof remains with the third-party mortgagor.

Here, the properties owned by spouses Chua were mortgaged as security for the debts contracted by petitioner corporations. However, ownership of these properties remained with the spouses notwithstanding the fact that these were mortgaged to secure corporate debts. We have ruled that “when a debtor mortgages his property, he merely subjects it to a lien but ownership thereof is not parted with.”<sup>16</sup> This leads to no other conclusion than that, notwithstanding the mortgage, the real properties in question belong to spouses Chua; hence, these properties should not be considered as assets of petitioner corporations.

Since the real properties in question cannot be considered as corporate assets, the trial court’s pronouncement that petitioners were susceptible of rehabilitation was bereft of any basis. Based on the rehabilitation court’s narration of facts, Situs Development Corporation has total assets of

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<sup>14</sup> *Rollo*, pp. 177-180. TCT Nos. 79915 and 79916 are registered in the name of Tony Chua, married to Siok Lu Chua; TCT No. RT-13620, in the name of Chua Yong Hu/Tony Chua, married to Siok Lu Cu Chua; and TCT No. RT-13621, in the name of Chua Yong Hu & Tony Chua, married to Siok Lu Cu Chua.

<sup>15</sup> *Isaguirre v. De Lara*, 388 Phil. 607 (2000).

<sup>16</sup> *Sps. Lee v. Bangkok Bank Public Co., Ltd.*, G.R. No. 173349, 9 February 2011, 642 SCRA 447.

₱54,176,149.22 with total liabilities of ₱74,304,188.01; Daily Supermarket, Inc. has total assets of ₱43,986,412.33 with total liabilities of ₱114,219,462.00; and Color Lithographic Press, Inc. has total assets of ₱7,618,006.69 and total liabilities of ₱6,588,534.99.<sup>17</sup> Clearly, the aggregate total liabilities of petitioner corporations far exceed their aggregate total assets.

We take this opportunity to point out that rehabilitation contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency.<sup>18</sup> However, if the continued existence of the corporation is no longer viable, rehabilitation can no longer be an option. The purpose of rehabilitation proceedings is to enable the company to gain a new lease on life,<sup>19</sup> and not to prolong its inevitable demise.

## II

### **The Stay Order does not suspend the foreclosure of a mortgage constituted over the property of a third-party mortgagor**

Petitioners insist that the Stay Order covers the mortgaged properties, citing the Interim Rules on Corporate Rehabilitation (the Rules). Under the 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.**”<sup>20</sup>

Based on a reading of the Rules, we rule that the Stay Order cannot suspend foreclosure proceedings already commenced over properties belonging to spouses Chua. The Stay Order can only cover those claims

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<sup>17</sup>Rollo, p. 396.

<sup>18</sup> *Pacific Wide Realty and Development Corp. v. Puerto Azul Land, Inc.*, G.R. Nos. 178768 & 180893, 25 November 2009, 605 SCRA 503.

<sup>19</sup> *Id.*

<sup>20</sup> 2000 Interim Rules of Procedure on Corporate Rehabilitation, Rule 4, Sec. 6.

directed against petitioner corporations or their properties, against petitioners' guarantors, or against petitioners' sureties who are not solidarily liable with them.

Spouses Chua may not be considered as "debtors." The Interim Rules on Corporate Rehabilitation (the Rules) define the term "debtor" as follows:

**"Debtor"** shall mean any corporation, partnership, or association, whether supervised or regulated by the Securities and Exchange Commission or other government agencies, on whose behalf a petition for rehabilitation has been filed under these Rules.

Likewise, the enforcement of the mortgage lien cannot be considered as a claim against a guarantor or a surety not solidarily liable with the debtor corporations. While spouses Chua executed Continuing Guaranty and Comprehensive Surety undertakings in favor of Allied Bank, the bank did not proceed against them as individual guarantors or sureties. Rather, by initiating extrajudicial foreclosure proceedings, the bank was directly proceeding against the property mortgaged to them by the spouses as security. The Civil Code provides that the property upon which a mortgage is imposed directly and immediately subjected to the fulfillment of the obligation for whose security the mortgage was constituted.<sup>21</sup> As such, a real estate mortgage is a lien on the property itself, inseparable from the property upon which it was constituted.

In this case, we find that the undertaking of spouses Chua with respect to the loans of petitioner corporations is the sale at public auction of certain real properties belonging to them to satisfy the indebtedness of petitioner corporations in case of a default by the latter. This undertaking is properly that of a third-party mortgagor or an accommodation mortgagor, whereby one mortgages one's property to stand as security for the indebtedness of another.<sup>22</sup>

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<sup>21</sup> CIVIL CODE, Art. 2126.

<sup>22</sup> See *New Sampaguita Builders Construction v. Philippine National Bank*, 479 Phil. 483 (2004).

In *Pacific Wide Realty and Development Corporation v. Puerto Azul Land, Inc.*,<sup>23</sup> we ruled that the issuance of a Stay Order cannot suspend the foreclosure of accommodation mortgages, because the Stay Order may only cover the suspension of the enforcement of all claims against the debtor, its guarantors, and sureties not solidarily liable with the debtor.<sup>24</sup> Thus, the suspension of enforcement of claims does not extend to the foreclosure of accommodation mortgages.

Moreover, the intent of the Rules is to exclude from the scope of the Stay Order the foreclosure of properties owned by accommodation mortgagors. The newly adopted Rules of Procedure on Corporate Rehabilitation provides for one of the effects of a Stay Order:

SEC. 7. Stay Order. –

(b) staying 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 persons not solidarily liable with the debtor; provided, that the stay order shall not cover claims against letters of credit and similar security arrangements issued by a third party to secure the payment of the debtor's obligations; **provided, further, that the stay order shall not cover foreclosure by a creditor of property not belonging to a debtor under corporate rehabilitation;** provided, however, that where the owner of such property sought to be foreclosed is also a guarantor or one who is not solidarily liable, said owner shall be entitled to the benefit of excussion as such guarantor[.]<sup>25</sup> (Emphasis supplied)

From the foregoing, we therefore hold that foreclosure proceedings over the properties in question are not suspended by the trial court's issuance of the Stay Order.

Furthermore, even assuming that the properties in question fall under the ambit of the Stay Order, the issuance thereof should not affect the execution of the Certificate of Sale.

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<sup>23</sup> Supra note 18.

<sup>24</sup> Id.

<sup>25</sup> A.M. No. 00-8-10-SC, Rules of Procedure on Corporate Rehabilitation, 2 December 2008.

In *Rizal Commercial Banking Corporation v. Intermediate Appellate Court and BF Homes, Inc.*,<sup>26</sup> the debtor corporation filed a Petition for Rehabilitation and Declaration of Suspension of Payments before the Securities and Exchange Commission (SEC). Prior to the SEC's appointment of a management committee and during the pendency of the case, the mortgagee-bank foreclosed on the real estate mortgage over some of the corporation's mortgaged properties. An auction sale was conducted, and the mortgagee-bank emerged as the highest bidder. However, because of the pendency of the rehabilitation case before the SEC, the Sheriff withheld the delivery of the Certificate of Sale. Ruling on the validity of the foreclosure proceedings, we held that the conduct of the foreclosure sale was valid, because it was carried out prior to the issuance of the SEC's order appointing a management committee. We held that the appointment of a management committee, rehabilitation receiver, board or body pursuant to Presidential Decree No. 902-A is the operative act that suspends all actions or claims against a distressed corporation.

In the case at bar, the auction sale for the parcels of land covered by TCT Nos. RT-13620 and RT-13621 and mortgaged to respondent Allied Bank was conducted on 6 February 2001, while the foreclosure sale for the parcel of land covered by TCT No. 79916 and mortgaged to Metrobank was conducted on 18 September 2001. Clearly, the foreclosure proceedings commenced and the auction sale was conducted before the issuance of the Stay Order and the appointment of the Rehabilitation Receiver on 17 June 2002. In fact, the public auctions took place almost a year before petitioner corporations filed the Petition for Rehabilitation with the court *a quo* on 11 June 2002. Therefore, the execution of the Certificate of Sale may no longer be suspended by the trial court's issuance of the Stay Order, even if the questioned properties are assumed to fall under the ambit of the Stay Order,

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<sup>26</sup> 378 Phil. 10 (1999).



since the foreclosure proceedings and the auction sale were conducted prior to the appointment of the Rehabilitation Receiver.

### III

#### **Petitioners cannot redeem the credit transferred by Metrobank to Cameron by reimbursing the transferee**

Petitioners claim that, based on Republic Act (R.A.) No. 9182 or the Special Purpose Vehicle (SPV) Act of 2002, they have the right of legal redemption by paying Cameron the transfer price plus the cost of money up to the time of redemption and the judicial costs in case of sale or transfer of Non-Performing Loans (NPLs) under litigation.<sup>27</sup>

Petitioners' claim is anchored on Section 13 of the SPV Act, which provides:

Sec. 13. *Nature of Transfer.* – All sales or transfers of [Non-Performing Assets] to an SPV shall be in the nature of a true sale after proper notice in accordance with the procedures as provided for in section 12: *Provided*, That GFIs and GOCCs shall be subject to existing law on the disposition of assets: *Provided, further*, That in the transfer of the NPLs, the provisions on subrogation and assignment of credits under the New Civil Code shall apply.

In turn, Art. 1634 of the Civil Code on Assignment of Credits and Other Incorporeal Rights provides:

Art. 1634. When a credit or other incorporeal right in litigation is sold, the debtor shall have a right to extinguish it by reimbursing the assignee for the price the latter paid therefor, the judicial costs incurred by him, and the interest on the price from the day on which the same was paid.

A credit or other incorporeal right shall be considered in litigation from the time the complaint concerning the same is answered.

The debtor may exercise his right within thirty days from the date the assignee demands payment from him.

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<sup>27</sup> *Rollo*, p. 727.

At the outset, we find that the issue is only belatedly raised in the instant Petition<sup>28</sup> and was never threshed out in the proceedings below. Fundamental considerations of fair play, justice and due process dictate that this Court should not pass upon this question.<sup>29</sup> “Questions raised on appeal must be within the issues framed by the parties; consequently, issues not raised before the trial court cannot be raised for the first time on appeal.”<sup>30</sup>

As early as 21 December 2005, Metrobank notified petitioners that the credit had been transferred to Cameron. However, petitioners only raised the issue of their alleged equitable right of redemption in their “Manifestation and Motion to Substitute Metro Bank with Cameron Granville II Asset Management, Inc.” dated 17 March 2008.<sup>31</sup> They have not even raised this issue in the instant Petition for Review filed on 26 November 2007. This being so, the argument should not be considered, having been belatedly raised on appeal.

Moreover, even if we were to consider the foregoing issue, petitioners cannot take refuge in the provisions of the SPV Act of 2004 in conjunction with Art. 1634 of the Civil Code.

For the debtor to be entitled to extinguish his credit by reimbursing the assignee under Art. 1634, the following requisites must concur:

- (a) there must be a credit or other incorporeal right;
- (b) the credit or other incorporeal right must be in litigation;
- (c) the credit or other incorporeal right must be sold to an assignee pending litigation;
- (d) the assignee must have demanded payment from the debtor;

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<sup>28</sup> Id. at 987-989.

<sup>29</sup> *Department of Health v. HTMC Engineers Company*, 516 Phil. 94 (2006).

<sup>30</sup> Id. at 108-109.

<sup>31</sup> *Rollo*, pp. 725-734.

- (e) the debtor must reimburse the assignee for the price paid by the latter, the judicial costs incurred by the latter and the interest on the price from the day on which the same was paid; and
- (f) the reimbursement must be done within 30 days from the date of the assignee's demand.

In this case, the credit owed by petitioner corporations to Metrobank had already been extinguished when the bank foreclosed upon the parcel of land mortgaged to it by the spouses Chua as security for petitioners' debts, in full satisfaction of the loan the bank had extended. Therefore, during the pendency of these proceedings, what was transferred by Metrobank to Cameron was ownership over the foreclosed property, subject only to the right of redemption by the proper party within one year reckoned from the date of registration of the Certificate of Sale.

Moreover, the provisions of the Civil Code on subrogation and assignment of credits are only applicable to NPLs,<sup>32</sup> defined in the SPV Act of 2002 as follows:

“Non-Performing Loans or NPLs” refers to loans and receivables such as mortgage loans, unsecured loans, consumption loans, trade receivables, lease receivables, credit card receivables and all registered and unregistered security and collateral instruments, including but not limited to, real estate mortgages, chattel mortgages, pledges, and antichresis, whose principal and/or interest have remained unpaid for at least one hundred eighty (180) days after they have become past due or any of the events of default under the loan agreement has occurred.<sup>33</sup>

What is involved in this case is more properly a real property acquired by a financial institution in settlement of a loan (ROPOA). Under the law, ROPOAs are defined in this manner:

“ROPOAs” refers to real and other properties owned or acquired by an [financial institution] in settlement of loans and receivables, including real

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<sup>32</sup> R.A. No. 9182, Sec. 13.

<sup>33</sup> Id. at Sec. 3 (h).

properties, shares of stocks, and chattels formerly constituting collaterals for secured loans which have been acquired by way of dation in payment (dacion en pago) or judicial or extra-judicial foreclosure or execution of judgment.<sup>34</sup>

May the subject property be considered as one acquired by Metrobank pursuant to an extrajudicial foreclosure sale?

The Implementing Rules and Regulations of the SPV Act of 2002 provide that, in case of extrajudicial foreclosure, a property is deemed acquired by a financial institution on the date of notarization of the Sheriff's Certificate.<sup>35</sup>

In this case, a Certificate of Sale has not been executed in favor of Metrobank in deference to the Stay Order issued by the rehabilitation court. However, we reiterate that the rehabilitation court has no jurisdiction to suspend foreclosure proceedings over a third-party mortgage. Much less can it restrain the issuance of a Certificate of Sale after the subject properties have been sold at public auction more than a year before the Petition for Rehabilitation was filed. The property foreclosed by Metrobank was clearly beyond the ambit of the Stay Order. Consequently, there was no valid ground for the Sheriff to withhold the issuance and execution of the Certificate of Sale.

The parcel of land mortgaged to Metrobank and subsequently transferred to Cameron should be treated as a ROPOA as provided for by law. Hence, the application of Art. 1634 finds no basis in law.

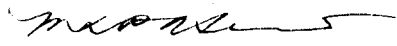
**WHEREFORE**, in view of the foregoing, the instant Rule 45 Petition for Review is **DENIED**. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 80223 are **AFFIRMED**. The *Status Quo* Order issued by this Court on 10 December 2007 is **LIFTED**.

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<sup>34</sup> Id. at Sec. 3 (i).

<sup>35</sup> Implementing Rules and Regulations of the Special Purpose Vehicle Act of 2002, Rule 3 (r).


**SO ORDERED.**

  
**MARIA LOURDES P. A. SERENO**  
Associate Justice

**WE CONCUR:**

  
**ANTONIO T. CARPIO**  
Senior Associate Justice  
Chairperson


  
**MARIANO C. DEL CASTILLO**  
Associate Justice

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

  
**BIENVENIDO L. REYES**  
Associate Justice

**CERTIFICATION**

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ANTONIO T. CARPIO**  
Senior Associate Justice  
(Per Section 12, R.A. 296,  
The Judiciary Act of 1948, as amended)