



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

HOME
CORPORATION,

GUARANTY G.R. No. 168616
Petitioner,

Present:

VELASCO, JR.,*
DEL CASTILLO, *Acting Chairperson*,
MENDOZA,
REYES**, and
LEONEN, JJ.

-versus-

LA SAVOIE DEVELOPMENT
CORPORATION,

Respondent.

Promulgated:

28 JAN 2015

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DECISION

LEONEN, J.:

This is a Petition for Review on Certiorari praying that the assailed Decision¹ dated June 21, 2005 of the Court of Appeals in CA GR. CV No. 80241 be reversed and set aside. In the alternative, it prays that certain properties supposedly conveyed by respondent La Savoie Development Corporation to petitioner Home Guaranty Corporation² be excluded from the rehabilitation plan of La Savoie Development Corporation, should its Petition for Corporate Rehabilitation be given due course.

The assailed Decision of the Court of Appeals reversed and set aside

* Designated as acting member per S.O. No. 1910 dated January 12, 2015.

** Designated additional member per Raffle dated January 26, 2015.

¹ *Rollo*, pp. 49–62.

² The former Home Insurance and Guaranty Corporation was renamed as Home Guaranty Corporation as per Republic Act No. 8763.

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the Order³ dated October 1, 2003 of the Regional Trial Court, Makati City, reinstated the Stay Order issued by the Regional Trial Court on June 4, 2003, gave due course to La Savoie's Petition for Corporate Rehabilitation, and remanded the case to the Regional Trial Court for further proceedings.⁴ The Regional Trial Court's June 4, 2003 Stay Order stayed the enforcement of all claims, monetary or otherwise, and whether in court or otherwise, against La Savoie Development Corporation.

La Savoie Development Corporation (La Savoie) is a domestic corporation incorporated on April 2, 1990. It is engaged in the business of "real estate development, subdivision and brokering."⁵

With the onset of the Asian financial crisis in 1997, the devaluation of the Philippine peso and due to other factors such as lack of working capital; high interest rates, penalties, and charges; low demand for real estate properties; and poor peace and order situations in some of its project sites, La Savoie found itself unable to pay its obligations to its creditors. Thus, on April 25, 2003, La Savoie filed before the Regional Trial Court, Makati City⁶ a "petition for the declaration of state of suspension of payments with approval of proposed rehabilitation plan"⁷ under the Interim Rules of Procedure on Corporate Rehabilitation⁸ (Interim Rules).

The proceedings before the Regional Trial Court were initially held in abeyance as La Savoie failed to attach to its Petition some of the requirements under Rule 4, Section 2 of the Interim Rules.⁹ With La

³ *Rollo*, pp. 84-85.

⁴ *Id.* at 76-77.

⁵ *Id.* at 66.

⁶ Pursuant to Supreme Court Resolution dated November 21, 2000 in A.M. No. 00-11-03-SC, "Resolution Designating Certain Branches of Regional Trial Courts to Try and Decide Cases Formerly Cognizable by the Securities and Exchange Commission."

⁷ *Rollo*, pp. 65-72.

⁸ A.M. No. 00-8-10-SC (2000).

⁹ 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 petition shall be accomplished by the following documents:

- a. An audited financial statement of the debtor at the end of its last fiscal year;
- b. Interim financial statements as of the end of the month prior to the filing of the petition;
- c. Schedule of Debts and Liabilities which lists all the creditors of the debtor indicating the name and address of each creditor, the amount of each claim as to principal, interest, or penalties due as of the date of filing, the nature of the claim, and any pledge, lien, mortgage judgment, or other security given for the payment thereof;
- d. An Inventory of Assets which must list with reasonable specificity all the assets of the debtor, stating the nature of each asset, the location and condition thereof, the book value or market value of the asset, and attaching the corresponding certificate of title therefor in case of real property, or the evidence of title or ownership in case of movable property, the encumbrances, liens or claims thereon, if any, and the identities and addresses of the lienholders and claimants. The Inventory shall include a Schedule of Accounts Receivable which must indicate the amount of each, the persons from whom due, the date of maturity, and the degree of collectibility

Savoie's compliance and finding its "petition to be sufficient in form and substance,"¹⁰ then Regional Trial Court Judge Estela Perlas-Bernabe issued the Stay Order dated June 4, 2003 staying the enforcement of all claims against La Savoie. The entirety of this Order reads:

O R D E R

Finding the petition to be sufficient in form and substance, the enforcement of all claims, whether for money or otherwise, and whether such enforcement is by court action or otherwise, against petitioner La Savoie Development Corporation, its guarantors and sureties not solidarily liable with it, is stayed.

As a consequence of the stay order, petitioner is prohibited from selling, encumbering, transferring, or disposing in any manner any of its properties except in the ordinary course of business. It is further prohibited from making any payment of its liabilities outstanding as of the date of the filing of the petition on April 25, 2003. Its suppliers of goods or services are likewise prohibited from withholding supply of goods and services in the ordinary course of business for as long as it makes payments for the services and goods supplied after the issuance of the stay order.

Petitioner is directed to pay in full all administrative expenses incurred after the issuance of the stay order.

The initial hearing on the petition is set on July 22, 2003 at 8:30 o'clock in the morning at the 3rd Floor, Gusali ng Katarungan, F. Zobel St., Makati City.

All creditors and interested parties including the Securities and Exchange Commission are directed to file and serve on petitioner a verified comment on or opposition to the petition with supporting

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- categorizing them as highly collectible to remotely collectible;
 - e. A rehabilitation plan which conforms to the minimal requirements set out in section 5, Rule 4 of these Rules;
 - f. A Schedule of Payments and disposition of assets which the debtor may have effected within three (3) months immediately preceding the filing of the petition;
 - g. A Schedule of the Cash Flow of the debtor for three (3) months immediately preceding the filing of the petition, and a detailed schedule of the projected cash flow for the succeeding three (3) months;
 - h. A Statement of Possible Claims by or against the debtor which must contain a brief statement of the facts which might give rise to the claim and an estimate of the probable amount thereof;
 - i. An Affidavit of General Financial Condition which shall contain answers to the questions or matters prescribed in Annex "A" hereof;
 - j. At least three (3) nominees for the position of Rehabilitation Receiver as well as their qualifications and addresses, including but not limited to their telephone numbers, fax number and e-mail address; and
 - k. A Certificate attesting, under oath, that the (a) 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 bylaws 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 shareholders' rights.

Five (5) copies of the petition shall be filed with the court.

¹⁰ *Rollo*, p. 76.

affidavits and documents, not later than ten (10) days before the date of the initial hearing. Failure to do so will bar them from participating in the proceedings. Copies of the petition and its annexes may be secured from the court within such time as to enable them to file their comment on or opposition to the petition and to prepare for its initial hearing.

Petitioner is directed to publish this Order in a newspaper of general circulation in the Philippines once a week for two (2) consecutive weeks and to file to this Court within five (5) days before the initial hearing the publisher's affidavit showing compliance with the publication requirements.

Mr. Rito C. Manzana with address at 26B One Lafayette Condominium cor. Leviste and Cedenor Manor St., Salcedo Village, Makati City is appointed Rehabilitation Receiver of Petitioner. He may discharge his duties and functions as such after taking his oath to perform his duties and functions faithfully and posting a bond in the amount of P100,000.00 to guarantee the faithful discharge of his duties and obedience to the orders of the court.

Petitioner is directed to immediately serve a copy of this Order to Mr. Manzana who is directed to manifest his acceptance or non-acceptance of his appointment not later than ten (10) days from receipt of this order.

SO ORDERED.

Given this 4th day of June, 2003 at Makati City.

ESTELA PERLAS-BERNABE
[sgd.]
Judge¹¹

Following the issuance of the June 4, 2003 Stay Order, La Savoie's creditors — Planters Development Bank, Philippine Veterans Bank, and Robinsons Savings Bank — filed their Comments and/or Oppositions.¹²

Home Guaranty Corporation filed an Opposition¹³ even though "it [was] not a creditor of Petitioner."¹⁴ It asserted that it had a "material and beneficial interest in the . . . Petition, in relation to the interest of Philippine Veterans Bank (PVB), Planters Development Bank (PDB), and Land Bank of the Philippines (LBP), which are listed as creditors of Petitioner vis-à-vis certain properties or assets that might have been taken cognizance of, and placed under the custody of the [Regional Trial] Court and[/]or the appointed Rehabilitation Receiver."¹⁵

¹¹ Id. at 76–77.

¹² Id. at 1109–1112 and 1163–1167.

¹³ Id. at 78–81.

¹⁴ Id. at 78.

¹⁵ Id.

Home Guaranty Corporation noted that through the “La Savoie Asset Pool Formation and Trust Agreement”¹⁶ (Trust Agreement), La Savoie obtained financing for some of its projects through a securitization process in which Planters Development Bank as nominal issuer issued ₱150 million in asset participation certificates dubbed as the “La Savoie Development Certificates”¹⁷ (LSDC certificates) to be sold to investors. The projects financed by these certificates consisted of the development of real properties in General Trias, Cavite; Sto. Tomas, Batangas; Los Baños, Laguna; and Quezon City. The same properties were conveyed in trust by La Savoie, as trustor, to Planters Development Bank, as trustee, and constituted into the La Savoie Asset Pool (Asset Pool).¹⁸

The redemption of the LSDC certificates upon maturity and the interest payments on them were “backed/collateralized by the assets that were conveyed by [La Savoie] to the Trust.”¹⁹ Moreover, the LSDC certificates were covered by a guaranty extended by Home Guaranty Corporation through a “Contract of Guaranty”²⁰ entered into by Home Guaranty Corporation with La Savoie and Planters Development Bank.

Section 17 of the Contract of Guaranty designates Home Guaranty Corporation to “undertake financial controllerships of the Projects.”²¹ Thus, in its Opposition, Home Guaranty Corporation noted that it was “charged with the duty of ensuring that all funds due to the Asset Pool are collected, and that funds are disbursed for the purposes they were intended for.”²²

Home Guaranty Corporation added that in the course of its business, La Savoie collected a total amount of ₱60,569,134.30 from the buyers of some of the properties covered by the Asset Pool. This amount, however, was not remitted by La Savoie to the trust. With La Savoie’s failure to complete some of its projects and failure to remit sales collections, the Asset Pool defaulted in redeeming and paying interest on the LSDC certificates. Thus, La Savoie’s investors placed a call on the guaranty.²³ With La Savoie’s failure to remit collections, however, Home Guaranty Corporation held in abeyance the settlement of the investors’ call. This settlement was then overtaken by the filing of La Savoie’s Petition for Rehabilitation.²⁴

Home Guaranty Corporation argued that it and the investors on the

¹⁶ Id. at 1047–1062.

¹⁷ Id. at 79.

¹⁸ Id.

¹⁹ Id.

²⁰ Id. at 1091–1095.

²¹ Id. at 1095.

²² Id. at 79.

²³ Id. at 80. As supposedly shown by Planters Development Bank’s Letter dated October 12, 2001, November 13, 2001, and June 14, 2002; Annexes “C,” “D,” and “E,” respectively, of Home Guaranty Corporation’s Opposition.

²⁴ Id. at 79–80.

LSDC certificates had “preferential rights”²⁵ over the properties making up the Asset Pool as these “were conveyed as security or collaterals for the redemption of the [LSDC certificates].”²⁶ Thus, they should be excluded from the coverage of La Savoie’s Petition for Rehabilitation.

On September 1, 2003, La Savoie filed a Consolidated Answer²⁷ to the Comments/Oppositions. It argued that the assignment of assets to the Asset Pool was not absolute and subject to certain conditions. Specifically, it asserted that for the assignment to take effect, Home Guaranty Corporation had to first pay the holders of the LSDC certificates. Thus, La Savoie claimed that the properties comprising the Asset Pool remained to be its assets.²⁸

In the interim, a Verification Report on Accuracy of Petition was filed by the Rehabilitation Receiver.²⁹

On October 1, 2003, the Regional Trial Court issued an Order³⁰ denying due course to La Savoie’s Petition for Rehabilitation and lifting the June 4, 2003 Stay Order. The trial court reasoned that the “findings of sufficiency in the form and substance of the petition for which a stay order was issued has been flawed”³¹ and that “[i]t cannot countenance a situation such as this where the petitioner files a petition on the basis of inaccurate or unverifiable allegations and false representations.”³² It noted that per the Rehabilitation Receiver’s Report, there were “various inaccuracies in the material allegations of the petition and its annexes.”³³ Several documents “to verify other material statements made therein” were also lacking.³⁴ It added that La Savoie “has not presented any concrete and feasible plan on how it will be able to secure additional funds to continue with the development of its raw land and on-going joint-venture projects.”³⁵

Aggrieved, La Savoie filed an Appeal before the Court of Appeals. It filed its Appellant’s Brief on May 5, 2004.³⁶

In the meantime, Home Guaranty Corporation approved and processed the call on the guaranty for the redemption of the LSDC certificates. Thus, Home Guaranty Corporation, through Planters

²⁵ Id. at 80.

²⁶ Id.

²⁷ Id. at 1198–1205.

²⁸ Id. at 1201–1202.

²⁹ Id. at 52–53.

³⁰ Id. at 84–85.

³¹ Id. at 85.

³² Id.

³³ Id.

³⁴ Id.

³⁵ Id.

³⁶ Id. at 1288–1322.

Development Bank, paid a total of ₱128.5 million as redemption value to certificate holders. Acting on this, Planters Development Bank executed a “Deed of Assignment and Conveyance”³⁷ in favor of Home Guaranty Corporation through which, in the words of Home Guaranty Corporation, Planters Development Bank “absolutely conveyed and assigned to [Home Guaranty Corporation] the ownership and possession of the entire assets that formed part of the La Savoie Asset Pool.”³⁸ Home Guaranty Corporation claims, in addition, that, through the same Deed, Planters Development Bank “absolutely conveyed and assigned to [Home Guaranty Corporation] the right to collect from [La Savoie] cash receivables . . . representing the amount collected by [La Savoie] from sales in the course of the development of the projects which it failed to remit to the Trust.”³⁹

On August 18, 2004, Home Guaranty Corporation filed its Appellee’s Brief.⁴⁰ It argued that all of the properties comprising the Asset Pool should be excluded from the rehabilitation proceedings in view of the Deed of Assignment and Conveyance executed in its favor by Planters Development Bank.⁴¹ Attached to this Brief was a copy of the Deed of Assignment and Conveyance.⁴²

In the Decision⁴³ dated June 21, 2005, the Court of Appeals Special Twelfth Division reversed and set aside the Regional Trial Court’s October 1, 2003 Order, reinstated the Stay Order, gave due course to the Petition for Rehabilitation, and remanded the case to the trial court for further proceedings.

The Court of Appeals characterized the inaccuracies noted by the trial court as “minor” and “trivial,”⁴⁴ as well as insufficient to render as “false” the allegations made by La Savoie in its Petition for Rehabilitation. It added that La Savoie “convincingly showed that it could undertake to market its projects through [the] Pag-Ibig Overseas Program, sell the existing inventories of unsold subdivision lots and use the un-remitted collections due to HGC which will be converted as additional loan to fund its on-going projects.”⁴⁵ Regarding Home Guaranty Corporation’s payment of the guaranty call, the Court of Appeals noted that it was made after the Petition for Rehabilitation had been brought by La Savoie and after the issuance of the Stay Order; thus, Home Guaranty Corporation had no right to make such payment.

³⁷ Id. at 1491–1493.

³⁸ Id. at 25.

³⁹ Id. at 26.

⁴⁰ Id. at 26–27.

⁴¹ Id.

⁴² Id. at 1472.

⁴³ Id. at 49–62. The Decision, docketed as CA-G.R. CV. No. 80241, was penned by Associate Justice Lucenito N. Tagle and concurred in by Associate Justices, now Supreme Court Justices, Martin S. Villarama, Jr. and Lucas P. Bersamin, of the Special Twelfth (12th) Division, Court of Appeals Manila.

⁴⁴ Id. at 56.

⁴⁵ Id. at 58.

On August 12, 2005, Home Guaranty Corporation filed before this court the present Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure.⁴⁶

Home Guaranty Corporation asserts that the properties comprising the Asset Pool should be excluded from the rehabilitation proceedings as these have now been “removed from the dominion”⁴⁷ of La Savoie and have been conveyed and assigned to it. It underscores that the transfer made to it by Planters Development Bank was made after the Stay Order had been lifted, per the Regional Trial Court’s October 1, 2003 Order.

On October 28, 2005, La Savoie filed its Comment.⁴⁸ It claimed that the supposed assignment and conveyance to Home Guaranty Corporation was ineffectual considering that “at the time of the guaranty call, the Stay Order dated 04 June 2003 was admittedly in effect.”⁴⁹ La Savoie faulted Home Guaranty Corporation for supposedly not adducing proof of the transfer effected to it by Planters Development Bank on the strength of its payment on the guaranty. It added that, even assuming there was full payment and that the Deed of Assignment and Conveyance was executed, “the Subject Properties remained within the jurisdiction of the [Regional Trial Court] even after the lifting of the Stay Order dated 04 June 2003”⁵⁰ and that, as a result, “any contract or document affecting title to the Subject Properties is also subject to the rehabilitation proceedings pending with the [trial court].”⁵¹ It also asserted that by paying the guaranty, Home Guaranty Corporation effectively became its creditor. Excluding the properties comprising the Asset Pool from the rehabilitation proceedings would then be tantamount to giving preference to one creditor, something which is prohibited in rehabilitation proceedings.

Apart from these, La Savoie ascribes procedural infirmities against Home Guaranty Corporation’s Petition. First, it claimed that Atty. Danilo C. Javier, the officer who signed the Petition’s verification and certification of non-forum shopping was not authorized to do so. Second, it claimed that Home Guaranty Corporation engaged in forum shopping.

On February 6, 2006, Home Guaranty Corporation filed its Reply to La Savoie’s Comment.⁵² In response to La Savoie’s allegation that there was no proof of its payment of the redemption value of the LSDC certificates and

⁴⁶ Id. at 13–44.

⁴⁷ Id. at 37.

⁴⁸ Id. at 161–202.

⁴⁹ Id. at 194.

⁵⁰ Id. at 196.

⁵¹ Id.

⁵² Id. at 1453–1477.

the resultant transfer to it of the Asset Pool, Home Guaranty Corporation noted that the following documents were already attached to its Appellee's Brief and were re-attached to its Reply: the Deed of Assignment and Conveyance; the Trust Agreement; the Contract of Guaranty; and certificates of title covering each of the properties comprising the Asset Pool.

For resolution is the central issue of whether the properties comprising the Asset Pool should be excluded from the proceedings on La Savoie Development Corporation's Petition for Rehabilitation. The resolution of this issue hinges on whether the conveyance to Home Guaranty Corporation of the properties comprising the Asset Pool was valid and effectual. The resolution of this is, in turn, contingent on the following:

First, whether following the issuance of the Regional Trial Court's October 1, 2003 Order and pending La Savoie's Appeal, Home Guaranty Corporation was barred from making payment on the guaranty call, and Planters Development Bank, concomitantly barred from conveying the properties comprising the Asset Pool to Home Guaranty Corporation; and

Second, whether the payment by Home Guaranty Corporation and the conveyance of the properties by Planters Development Bank made Home Guaranty Corporation a creditor of La Savoie and whether recognizing the validity of the transfer made to Home Guaranty Corporation was tantamount to giving it inordinate preference as a creditor.

Apart from these are the procedural errors ascribed by La Savoie to Home Guaranty Corporation and thus the following issues:

First, whether Atty. Danilo C. Javier was authorized to sign the verification and certificate of non-forum shopping of Home Guaranty Corporation's Petition; and

Second, whether Home Guaranty Corporation engaged in forum shopping.

I

Atty. Danilo C. Javier was authorized to sign the verification and certificate of non-forum shopping on behalf of Home Guaranty Corporation.

As pointed out by Home Guaranty Corporation, its board of directors issued Board Resolution No. 30, Series of 2001, "specifically authorizing the President of petitioner to designate the officer to institute the appropriate

legal actions[.]”⁵³ It was pursuant to this resolution that Atty. Danilo C. Javier, Home Guaranty Corporation’s then Officer-in-Charge and Vice President for Legal, was made signatory to the present Petition’s verification and certification of non-forum shopping.

The relevant portion of this Resolution reads:

The request for authority for the HGC President, Executive Vice-President and Vice Presidents as the President may designate or authorize, to institute appropriate legal actions as the President may deem proper or necessary to protect the interest of the corporation be, as it is hereby approved.

Resolved Further That, the said authority shall include but not be limited to, the verification of Complaints, Petitions, Answer, Reply and other initiatory or responsive pleadings as the circumstances may warrant. . . .⁵⁴

II

La Savoie pointed out that (as of the time of the filing of its Comment) another case between Home Guaranty Corporation and La Savoie, docketed as Civil Case No. 05314, was pending before the Makati City Regional Trial Court.⁵⁵

In its reply, Home Guaranty Corporation acknowledged the pendency of Civil Case No. 05314. It, however, pointed out that it could not have been guilty of forum shopping as the present case is an offshoot of a Petition for Corporate Rehabilitation while Civil Case No. 05314 is an action for injunction, mandamus, specific performance, and sum of money with application for temporary restraining order and/or preliminary prohibitory and mandatory injunction.⁵⁶ Home Guaranty Corporation claimed that it had to file Civil Case No. 05314 to compel La Savoie to remit to it payments collected from the buyers of La Savoie’s real estate development projects and which La Savoie was supposedly wrongly withholding from it considering that Home Guaranty Corporation was now the owner of the properties comprising the Asset Pool.

*Aboitiz Equity Ventures v. Chiongbian*⁵⁷ discussed forum shopping:

⁵³ Id. at 1455.

⁵⁴ Id.

⁵⁵ Id. at 186.

⁵⁶ Id. at 1461.

⁵⁷ G.R. No. 197530, July 9, 2014

<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/july2014/197530.pdf>> [Per J. Leonen, Third Division].

The concept of and rationale against forum shopping were explained by this court in *Top Rate Construction & General Services, Inc. v. Paxton Development Corporation*.⁵⁸

FORUM SHOPPING is committed by a party who institutes two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes or to grant the same or substantially the same reliefs, on the supposition that one or the other court would make a favorable disposition or increase a party's chances of obtaining a favorable decision or action. It is an act of malpractice for it trifles with the courts, abuses their processes, degrades the administration of justice and adds to the already congested court dockets. What is critical is the vexation brought upon the courts and the litigants by a party who asks different courts to rule on the same or related causes and grant the same or substantially the same reliefs and in the process creates the possibility of conflicting decisions being rendered by the different fora upon the same issues, regardless of whether the court in which one of the suits was brought has no jurisdiction over the action.⁵⁹

Equally settled is the test for determining forum shopping. As this court explained in *Yap v. Chua*:⁶⁰

To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another; otherwise stated, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought.⁶¹

Litis pendentia “refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious.”⁶² It requires the concurrence of three (3) requisites: “(1) the identity of parties, or at least such as representing the same interests in both actions; (2) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (3) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.”⁶³

⁵⁸ 457 Phil. 740 (2003) [Per J. Bellosillo, Second Division].

⁵⁹ Id. at 747–748, citing *Santos v. Commission on Elections*, 447 Phil. 760 (2003) [Per J. Ynares-Santiago, En Banc]; *Young v. Keng Seng*, 446 Phil. 823 (2003) [Per J. Panganiban, Third Division]; *Executive Secretary v. Gordon*, 359 Phil. 266 (1998) [Per J. Mendoza, En Banc]; *Joy Mart Consolidated Corp. v. Court of Appeals*, G.R. No. 88705, June 11, 1992, 209 SCRA 738 [Per J. Griño-Aquino, First Division]; *Villanueva v. Adre*, 254 Phil. 882 (1989) [Per J. Sarmiento, Second Division].

⁶⁰ G.R. No. 186730, June 13, 2012, 672 SCRA 419 [Per J. Reyes, Second Division], citing *Young v. Keng Seng*, 446 Phil. 823, 833 (2003) [Per J. Panganiban, Third Division].

⁶¹ *Yap v. Chua*, G.R. No. 186730, June 13, 2012, 672 SCRA 419, 428 [Per J. Reyes, Second Division].

⁶² Id.

⁶³ Id. at 429, citing *Villarica Pawnshop, Inc. v. Gernale*, 601 Phil. 66, 78 (2009) [Per J. Austria-Martinez, Third Division].

In turn, prior judgment or *res judicata* bars a subsequent case when the following requisites concur: “(1) the former judgment is final; (2) it is rendered by a court having jurisdiction over the subject matter and the parties; (3) it is a judgment or an order on the merits; (4) there is — between the first and the second actions — identity of parties, of subject matter, and of causes of action.”⁶⁴

It is not disputed that there is identity of parties in the present Petition and in Civil Case No. 05314. Home Guaranty Corporation, however, argues that it could not have been guilty of forum shopping as the relief it sought via Civil Case No. 05314 (i.e., the restraining of collections and remission to it of funds collected by La Savoie) is different from the relief it is seeking in the present Appeal from the Court of Appeals’ Decision giving due course to La Savoie’s Petition for Corporate Rehabilitation.

The divergence in specific reliefs sought notwithstanding, Home Guaranty Corporation’s bases for these reliefs are the same. In Civil Case No. 05314, Home Guaranty Corporation asked that La Savoie cease collecting payments and that collected payments be remitted to it *because it supposedly now owns the real estate development projects of La Savoie that form part of the Asset Pool*. In the present Appeal, Home Guaranty Corporation asks that the properties forming part of the Asset Pool be excluded from corporate rehabilitation proceedings *because it, and no longer La Savoie, is the owner of these properties*.

Thus, in both cases, Home Guaranty Corporation is invoking the same right and is proceeding from the same cause of action, i.e., its supposed ownership. True, there is divergence in the details of the specific reliefs it is seeking, but Home Guaranty Corporation is seeking the same *basic* relief, i.e., the recognition of its alleged ownership. The exclusion of the properties from corporate rehabilitation proceedings and the remittance to it of payments are mere incidents of this basic relief. Accordingly, in simultaneously pursuing the present case and Civil Case No. 05314, Home Guaranty Corporation engaged in forum shopping.

It is worth emphasizing that the present Petition or Appeal, being a mere offshoot of La Savoie’s original Petition for Rehabilitation, is *not* the act constitutive of forum shopping. Forum shopping was committed not through the filing of this Appeal but through the filing of Civil Case No. 05314 before the Regional Trial Court. In any case, apart from this procedural lapse, we find the transfer of the Asset Pool to Home Guaranty Corporation, without going through foreclosure proceedings, to be in violation of the rule against *pactum commissorium*. It is ineffectual and does not divest La Savoie of ownership. Thus, even if valid payment was made

⁶⁴ *Luzon Development Bank v. Conquilla*, 507 Phil. 509, 523 (2005) [Per J. Panganiban, Third Division], citing *Allied Banking Corporation v. Court of Appeals*, G.R. No. 108089, January 10, 1994, 229 SCRA 252, 258 [Per J. Davide, Jr., First Division].

by Home Guaranty Corporation on its guaranty, ownership of the properties comprising the Asset Pool was not vested in it. Accordingly, Home Guaranty Corporation must await the disposition of La Savoie's Petition for Rehabilitation in order that a resolution may be had on how La Savoie's obligations to it shall be settled.

III

A necessary step in resolving this Petition is a consideration of the parties and the rights and obligations they have as against each other, as borne by the agreements they entered into and which now bind them.

The Trust Agreement⁶⁵ stated that La Savoie, as "landowner/developer," had subdivision and housing projects in several areas that were collectively referred to as the "La Savoie Project" or simply as the "Project." Its first preambular clause reads:

WHEREAS, the LANDOWNER/DEVELOPER, has subdivision and housing projects located in San Rafael, Bulacan; Banlat, Quezon City; Gen. Trias, Cavite[;] Sto. Tomas, Batangas; and Los Baños, Laguna, totalling 37 hectares, more or less, collectively called the La Savoie Project (the PROJECT)[.]⁶⁶

On how the project was to be financed, the Trust Agreement added that "the development and implementation of the PROJECT [was to be] funded through the issuance and sale of asset participation certificates known as La Savoie Development Certificates." Planters Development Bank was specified to be the "nominal issuer" of these certificates. The Trust Agreement's second and fourth preambular clauses as well as its Section 4.5 read:

WHEREAS, the development and implementation of the PROJECT will be funded through the issuance and sale of asset participation certificates known as La Savoie Development Certificates (the LSDCs) backed by the asset pool consisting of said real estate properties and the products and results of their planned development;⁶⁷

....

WHEREAS, the LANDOWNER/DEVELOPER has appointed the Planters Development Bank as TRUSTEE and nominal issuer and Planters Development Bank through its Trust Department has agreed to perform the functions and responsibilities of a TRUSTEE as defined hereunder;⁶⁸

⁶⁵ *Rollo*, pp. 1047–1062.

⁶⁶ *Id.* at 1047.

⁶⁷ *Id.*

⁶⁸ *Id.*

....

Section 4.5. Nominal Issuer. The TRUSTEE shall act as nominal issuer only of all LSDCs. In no case shall the TRUSTEE be liable for the payment of any amount due to the holder of the LSDC. The TRUSTEE shall be free from any liability in the event that the Asset Pool is not sufficient for the redemption of all the LSDCs. In the event of the non-payment of the LSDC, the LSDC holder's exclusive recourse shall be to claim against the HIGC guarantee. The TRUSTEE shall not be responsible for the failure of HIGC to pay any amount due to any holder of the LSDC.⁶⁹

These LSDC certificates were “backed” or secured by “real estate properties and the products and results of their planned development.” More specifically, Section 3.1 of the Trust Agreement provides for the establishment of the Asset Pool in which La Savoie “convey[ed], assign[ed], deliver[ed] all its rights and interests in the real estate properties . . . to the TRUSTEE for the present and future holders of LSDCs.” The third preambular clause and Section 3.1 of the Trust Agreement read:

WHEREAS, the LANDOWNER/DEVELOPER has agreed to convey the real estate properties of the PROJECT to a TRUSTEE to form the La Savoie Project (LSP) Asset Pool which shall be held by the TRUSTEE for the pro rata and pro indiviso benefit of the holders of the LSDCs to the extent defined in this Agreement and, residually for the benefit of the LANDOWNER/DEVELOPER;⁷⁰

....

Section 3.1. Establishment of Starting Asset Pool. The LANDOWNER/DEVELOPER hereby establishes a trust, for purposes of this securitization and formation of the corresponding Asset pool, out of the properties pertaining to the PROJECT development and operation, and accordingly does hereby convey, assign and deliver all its rights and interests in the real estate properties identified and described through their respective transfer certificates of title (TCTs) listed in Annex B through B-1 covering properties for Las Palmas Village in Sto. Tomas, Batangas[;] Buenavista Park in San Rafael, Bulacan; Gen. Trias Homes in Gen. Trias, Cavite; and La Chesa Heights in Tandang Sora, Q.C.; Annex C through C-2 covering properties for La Chesa Valley Estate owned by MHC Realty under a Joint-Venture Agreement with [La Savoie Development Corporation]; Annex D covering properties owned by Lenard Lopez under a Joint Venture Agreement with [La Savoie Development Corporation]; together with Annexes E and F the Joint Venture Agreements with MHC Realty Corporation and Lenard Lopez together with the Supplemental Agreements, attached as integral parts hereof, together with all present and future improvements thereon and the corresponding muniments of ownership of the properties, subject to the reservations concerning the interests of joint-venturers defined hereunder, to the TRUSTEE for the benefit of the present and future holders of the LSDCs, in accordance with the terms and conditions provided herein.

⁶⁹ Id. at 1054.

⁷⁰ Id. at 1047.

The reservations above-stated refer to the interests of the joint-venturers of the LANDOWNER/DEVELOPER as follows: . . .⁷¹

Per the Trust Agreement's fourth preambular clause, Planters Development Bank was named trustee of the Asset Pool. The same clause specified that it held the Asset Pool "for the pro rata and pro indiviso benefit of the holders of the LSDCs . . . and, residually for the benefit of the [landowner/developer, i.e., La Savoie]." Moreover, in Section 3.2 of the Trust Agreement:

Section 3.2. Acceptance by the TRUSTEE. The TRUSTEE hereby acknowledges and accepts the documents delivered by the LANDOWNER/DEVELOPER and signed for by the TRUSTEE and the property interests and rights conveyed in Section 3.1, as well as those which may from time to time be conveyed and intended to form part of the Asset Pool, and declares that the said TRUSTEE holds and will hold the said documents and assets, including properties and values yet to be received by it as TRUSTEE under this Agreement, for the benefit of all present and future holders of the LSDCs, as well as the ultimate owner(s) of the residual assets and values of the Asset Pool, all in accordance with the terms and conditions of this Trust Agreement.⁷²

Apart from the Asset Pool, the LSDC certificates were also secured by a guaranty. The guaranty was referenced in the Trust Agreement in the following provisions:

ARTICLE I DEFINITION OF TERMS

The following words and phrases used in this Agreement shall have the respective meanings hereunder indicated unless the contrary clearly appears from the context:

. . . .

4. Contract of Guaranty – shall refer to the Contract of Guaranty executed by and among the TRUSTEE, HIGC and the LANDOWNER/DEVELOPER dated _____, a copy of which is hereto attached as Annex A including any amendment/revision and modification, thereof.

. . . .

6. Guarantor – shall refer to the Home Insurance and Guaranty Corporation (HIGC).⁷³

⁷¹ Id. at 1051–1052.

⁷² Id. at 1052.

⁷³ Id. at 1048.

....

Section 2.4. The Home Insurance and Guaranty Corporation. The roles and responsibilities of the HIGC shall be as follows:

- 2.4.1 Provide guaranty coverage for the LSDCs in accordance with its policies and as provided for in its Contract of Guaranty executed by the parties.
- 2.4.2 Act as the Financial Controller in the implementation of the PROJECTS involved in accordance with the Operations and Accounting Manual as approved by the Governing Board.
- 2.4.3 Designate its representative in the Governing Board who shall act as the Chairman thereof.⁷⁴

Section 3.4 of the Trust Agreement provides that in the event that a call is made on Home Guaranty Corporation for its guaranty, Planters Development Bank shall convey to the former the Asset Pool:

Section 3.4. Conveyance to HIGC. Express authority is hereby granted by the LANDOWNER/DEVELOPER to the TRUSTEE that in the event of call upon the HIGC guaranty for unredeemed LSDCs and in order to effect the redemption of the same by the latter, to make the absolute conveyance to HIGC of the entire Asset Pool, subject to the reservations regarding joint-venturers [sic] interests as defined in Section 3.1, a and b above and subject further to the provision of the aforementioned Contract of Guaranty.⁷⁵

This conveyance shall be on the strength of the special power of attorney executed by La Savoie in favor of Planters Development Bank, in accordance with Section 2.1.6 of the Trust Agreement:

Section 2.1. – The LANDOWNER/DEVELOPER shall:

....

- 2.1.6 Execute and deliver to the TRUSTEE an irrevocable Special Power of Attorney a Secretary's Certificate per enclosed Annex G giving the TRUSTEE the full power and authority to make the absolute conveyance of the entire LSP Asset Pool in favor of the HIGC in the event of call upon the

⁷⁴ Id. at 1051.

⁷⁵ Id. at 1053.

HIGC guaranty for unredeemed LSDCs and in order to effect the redemption of the same by the HIGC in accordance with the provisions of the Contract of Guaranty.⁷⁶

In sum, these contractual provisions evince the following relations:

1. A trust relation, with respect to the Asset Pool, in which La Savoie is the trustor, Planters Development Bank is the trustee, and the holders of the LSDC certificates are the beneficiaries;
2. A credit relation, with respect to the LSDC certificates, in which La Savoie is the debtor (Planters Development Bank being a mere nominal issuer), the holders of the LSDC certificates are the creditors, and Home Guaranty Corporation is the guarantor. (It will be recalled that Home Guaranty Corporation itself acknowledged, in the Opposition it filed before the Regional Trial Court, that it was not a creditor of La Savoie.); and
3. An agency relation, with respect to the transfer of the real properties in the Asset Pool should the guarantor pay for the LSDC certificates, in which La Savoie is the principal and Planters Development Bank is the agent. In this event, Home Guaranty Corporation is the transferee.

On Home Guaranty Corporation's guaranty, Section 12 of the Contract of Guaranty entered into by Home Guaranty Corporation, La Savoie and Planters Development Bank provide for the events in which Home Guaranty Corporation may be called to pay for the LSDC certificates:

12. Events guaranteed against – For the purpose of enforcing the benefit of guaranty herein provided[,] any of the following events must occur:
 - 12.1. Failure to pay the interest due on the LSDCs on their payment dates from the Asset Pool; or
 - 12.2 Failure to redeem or pay all or some of the LSDCs upon maturity from the Asset Pool; or
 - 12.3 Declaration of an off-mark liquidation of the Asset Pool. An off-mark liquidation shall be declared by the Trustee upon

⁷⁶ Id. at 1049–1050.

written advice of HIGC that there is:

(a) a twenty-five percent (25%) slippage on each of the following:

1. construction time table/cost/quality;
2. marketing in terms of units sold;
3. cash inflows of equity payments and/or buyers' take-outs; or

(b) if the slippage items above reach a total of fifty percent (50%) whichever comes first.⁷⁷

Section 13 of the Contract of Guaranty provides for how guaranty claims are to be processed and paid by Home Guaranty Corporation. Likewise, it echoes Section 3.4 of the Trust Agreement in providing for transfer of the Asset Pool in the event of a call on the guaranty:

13. Payment of Guaranty Claim – Should any of the events mentioned in Sec. 12 hereof occur, the Trustee, on behalf of the Certificate holders, shall file its guaranty claim with HIGC within sixty (60) working days from the occurrence of the event.
 - 13.1. Upon receipt of the guaranty claim filed by the Trustee, HIGC shall have thirty (30) working days to evaluate the guaranty claim. Within such period, HIGC shall acknowledge the guaranty claim and require from the Trustee submission of the required documents, as follows:
 - a. Deed of Assignment and Conveyance to HIGC of the entire Asset Pool pursuant to the Trust Agreement;
 - b. All tax declarations, transfer certificates of title, original certificates of title and official receipts of payments of real estate taxes covering properties comprising the Asset Pool; and,
 - c. All other documents and papers in the Asset Pool, as defined in the Trust Agreement.
 - 13.2 Upon receipt of the acknowledgment by HIGC of the guaranty claim, the Trustee shall submit the documents and make a prompt assignment and conveyance to HIGC of all the corresponding properties in the Asset Pool pursuant to the Trust Agreement.

⁷⁷ Id. at 1093–1094.

13.[3] Within fifteen (15) calendar days from receipt of the conveyance of the entire Asset Pool from the Trustee, HIGC shall release on behalf of the Certificate Holders the payment of the guaranty claim.⁷⁸

As against these contractual delimitations were the contingencies that arose in the course of the rehabilitation proceedings. These, along with the bounds set by law and established by the parties' contractual relations, defined the competencies of the parties and determined the validity of their actions.

It is not disputed that La Savoie defaulted in the redemption and in the payment of interest on the LSDC certificates. It is also settled that a call was made on Home Guaranty Corporation to pay for the LSDC certificates, pursuant to the provisions of the Trust Agreement and the Contract of Guaranty. However, as acknowledged by Home Guaranty Corporation, any payment that it could have made was "overtaken"⁷⁹ by the filing of La Savoie's Petition for Rehabilitation.

Thereafter, the Regional Trial Court issued its June 4, 2003 Stay Order staying "the enforcement of all claims, whether for money or otherwise, and whether such enforcement is by court action or otherwise, against [La Savoie], its guarantors and sureties not solidarily liable with it."⁸⁰ It also "prohibited [La Savoie] from making any payment of its liabilities outstanding as of the date of the filing of the petition on April 25, 2003."⁸¹

The issuance of the June 4, 2003 Stay Order was in accordance with Rule 4, Section 6 of this court's November 21, 2000 Resolution in A.M. No. 00-8-10-SC, otherwise known as the Interim Rules of Procedure on Corporate Rehabilitation (Interim Rules). Though subsequently replaced in 2013 by the Financial Rehabilitation Rules of Procedure,⁸² the Interim Rules was in effect at the time of the incidents relevant to this case and which then governed "petitions for rehabilitation filed by corporations, partnerships, and associations pursuant to Presidential Decree No. 902-A, as amended."

Rule 4, Section 6 of the Interim Rules reads:

Sec. 6. Stay Order. - If the court finds the petition to be sufficient in form and substance, it shall, not later than five (5) days from the filing of the petition, issue an Order (a) appointing a Rehabilitation

⁷⁸ Id. at 1094.

⁷⁹ Id. at 80.

⁸⁰ Id. at 76.

⁸¹ Id.

⁸² A.M. No. 12-12-11-SC (2013), Financial Rehabilitation Rules of Procedure. This was promulgated pursuant to Republic Act No. 10142, otherwise known as the Financial Rehabilitation and Insolvency Act (FRIA) of 2010.

Receiver and fixing his bond; (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 sureties not solidarily liable with the debtor*; (c) prohibiting the debtor from selling, encumbering, transferring, or disposing in any manner any of its properties except in the ordinary course of business; (d) *prohibiting the debtor from making any payment of its liabilities outstanding as at the date of filing of the petition*; (e) prohibiting the debtor's suppliers of goods or services from withholding supply of goods and services in the ordinary course of business for as long as the debtor makes payments for the services and goods supplied after the issuance of the stay order; (f) directing the payment in full of all administrative expenses incurred after the issuance of the stay order; (g) fixing the initial hearing on the petition not earlier than forty five (45) days but not later than sixty (60) days from the filing thereof; (h) directing the petitioner to publish the Order in a newspaper of general circulation in the Philippines once a week for two (2) consecutive weeks; (i) directing all creditors and all interested parties (including the Securities and Exchange Commission) to file and serve on the debtor a verified comment on or opposition to the petition, with supporting affidavits and documents, not later than ten (10) days before the date of the initial hearing and putting them on notice that their failure to do so will bar them from participating in the proceedings; and (j) directing the creditors and interested parties to secure from the court copies of the petition and its annexes within such time as to enable themselves to file their comment on or opposition to the petition and to prepare for the initial hearing of the petition. (Emphasis supplied)

With the issuance of this Stay Order, the claims of La Savoie's creditors, including those of the holders of the LSDC certificates, were barred from being enforced. From the point of view of La Savoie and "its guarantors and sureties not solidarily liable with it,"⁸³ no payment could have been made by them. Thus, *for as long as the Stay Order was in effect*, certificate holders were barred from insisting on and receiving payment, whether from the principal debtor, La Savoie, or from the guarantor, Home Guaranty Corporation. Conversely, La Savoie and Home Guaranty Corporation were barred from paying certificate holders *for as long as the Stay Order was in effect*.

On October 1, 2003, the Regional Trial Court issued another Order denying due course to La Savoie's Petition for Rehabilitation and lifting the June 4, 2003 Stay Order. Aggrieved, La Savoie filed a Notice of Appeal and thereafter filed before the Court of Appeals its Appellant's Brief on May 5, 2004. Home Guaranty Corporation filed its Appellee's Brief on August 18, 2004. On June 21, 2005, the Court of Appeals rendered a Decision reversing and setting aside the Regional Trial Court's October 1, 2003 Order and reinstating the June 4, 2003 Stay Order.

⁸³ Rollo, p. 76.

What is notable, however, is what transpired in the interim. Sometime between La Savoie's filing of its Appellant's Brief and Home Guaranty Corporation's filing of its Appellee's Brief, Home Guaranty Corporation approved and processed the call that was made, prior to the commencement of rehabilitation proceedings, on its guaranty and proceeded to pay the holders of LSDC certificates a total amount of □128.5 million as redemption value. In consideration of this and pursuant to Section 13.2 of the Contract of Guaranty, Planters Development Bank executed in favor of Home Guaranty Corporation a Deed of Assignment and Conveyance⁸⁴ in which Planters Development Bank "absolutely assign[ed], transferred[ed], convey[ed] and deliver[ed] to the HGC, its successor and assigns the possession and ownership over the entire Asset Pool Project."⁸⁵

Home Guaranty Corporation asserts that the execution of this Deed effectively removed the properties comprising the Asset Pool from the dominion of La Savoie and, thus, beyond the reach of La Savoie's rehabilitation proceedings. La Savoie contends that this transfer was ineffectual as the Stay Order was in effect at the time of the execution of the Deed and as affirming Home Guaranty Corporation's ownership is supposedly tantamount to giving it undue preference as a creditor.

Rule 3, Section 5 of the Interim Rules governs the effectivity of orders issued in proceedings relating to the rehabilitation of corporations, partnerships, and associations under Presidential Decree No. 902-A, as amended.

Sec. 5. Executory Nature of Orders. - ***Any order issued by the court under these Rules is immediately executory.*** A petition for review or *an appeal therefrom shall not stay the execution of the order unless restrained or enjoined by the appellate court.* The review of any order or decision of the court or an appeal therefrom shall be in accordance with the Rules of Court: Provided, however, that the reliefs ordered by the trial or appellate courts shall take into account the need for resolution of proceedings in a just, equitable, and speedy manner. (Emphasis supplied)

Rule 3, Section 5 is definite and unambiguous: Any order issued by the trial court in rehabilitation proceedings is immediately executory. Rule 3, Section 5 makes no distinction as to the kinds of orders (e.g., final or interlocutory and stay orders) that may be issued by a trial court. Nowhere from its text can it be gleaned that it does not cover orders such as those issued by the trial court on October 1, 2003. If at all, its second sentence, which explicitly makes reference to orders on appeal, affirms that it is

⁸⁴ Id. at 1492–1493.

⁸⁵ Id. at 1492.

equally applicable to final orders. *We entertain no doubt that Rule 3, Section 5 of the Interim Rules covered the trial court's October 1, 2003 Order dismissing the Petition for Rehabilitation and lifting the Stay Order. The same Order was thus immediately executory.*

The filing of La Savoie's Appeal did not restrain the effectivity of the October 1, 2003 Order. It is true that generally, an appeal stays the judgment or final order appealed from.⁸⁶ Rehabilitation proceedings, however, are not bound by procedural rules spelled out in the Rules of Court. The Interim Rules, not the Rules of Court, was the procedural law, which (at the time of the pivotal incidents in this case) governed rehabilitation proceedings. In Rule 3, Section 5, the Interim Rules explicitly carved an exception to the general principle that an appeal stays the judgment or final order appealed from. It explicitly requires the issuance by the appellate court of an order enjoining or restraining the order appealed from.

Per the records, the Court of Appeals did not issue an injunctive writ or a temporary restraining order. Neither did La Savoie specifically pray for its issuance in the Appellant's Brief it filed before the Court of Appeals. The prayer of this Brief reads:

WHEREFORE, Petitioner-Appellant most respectfully pray [sic] that the Order dated October 1, 2003, dismissing the Petition BE SET ASIDE and after due consideration a judgment be rendered giving due course to the Petition for rehabilitation and declaring the herein petitioner-appellant in a state of suspension of payments, and reinstating the Stay Order and finally, approving the Proposed Rehabilitation Plan.

Other relief and remedies are deemed just and equitable under the premises are likewise prayed for.

RESPECTFULLY SUBMITTED.⁸⁷

Thus, the October 1, 2003 Order, lifting the restrictions on the payment of claims against La Savoie, remained in effect. La Savoie's creditors were then free to enforce their claims. Conversely, La Savoie and "its guarantors and sureties not solidarily liable with it"⁸⁸ were no longer restrained from effecting payment.

⁸⁶ Rules of Court, Rule 34, sec. 4 provides:

Section 4. Judgments not stayed by appeal. — Judgments in actions for injunction, receivership, accounting and support, and such other judgments as are now or may hereafter be declared to be immediately executory, shall be enforceable after their rendition and shall not, be stayed by an appeal taken therefrom, unless otherwise ordered by the trial court. On appeal therefrom, the appellate court in its discretion may make an order suspending, modifying, restoring or granting the injunction, receivership, accounting, or award of support.

The stay of execution shall be upon such terms as to bond or otherwise as may be considered proper for the security or protection of the rights of the adverse party.

⁸⁷ *Rollo*, p. 120.

⁸⁸ *Id.* at 76.

Specifically, Home Guaranty Corporation as guarantor was capacitated, in accordance with Sections 12 and 13 of the Contract of Guaranty to effect payment to the holders of the LSDC certificates.

Per Sections 13.1 and 13.2 of the Contract of Guaranty, the consequence of this payment was the execution by Planters Development Bank, as trustee of the Asset Pool, of a Deed of Conveyance in favor of Home Guaranty Corporation. Ostensibly, all formal and substantive requisites for the execution of this Deed, as per the Trust Agreement and the Contract of Guaranty, were fulfilled. Notably, La Savoie failed to intimate that any such condition or requisite was not satisfied. It assails the conveyance on only these points: first, the supposed continuing effectivity of the June 4, 2003 Stay Order; second, that the Asset Pool remained under the jurisdiction of the Makati City Regional Trial Court; and third, the supposed violation of the rule against preference among creditors.

Having established that the Stay Order was lifted and that this lifting remained in force and was not restrained, we turn to La Savoie's contention that the conveyance to Home Guaranty Corporation of the Asset Pool is in violation of the rule against preference of creditors.

La Savoie cites Article 2067⁸⁹ of the Civil Code and argues that with Home Guaranty Corporation's payment of the LSDC certificates' redemption value, Home Guaranty Corporation was subrogated into the rights of La Savoie's creditors (i.e., the certificate holders). It asserts that "effectively, petitioner HGC is already the creditor of respondent La Savoie"⁹⁰ and that as creditor, it cannot be given a preference over the assets of La Savoie, something that is "prohibited in rehabilitation proceedings."⁹¹

In support of its contentions, La Savoie cites the following portion of this court's discussion in *Araneta v. Court of Appeals*:⁹²

This Court in *Aleamar's Sibal & Sons, Inc. vs. Elbinias* explained the rationale behind a SEC order for suspension of payments and of placing a corporation under receivership thus:

It must be stressed that the SEC had earlier ordered the suspension of all actions for claims against Alemar's in order that all the assets of said petitioner could be inventoried and kept intact for the purpose of ascertaining an equitable scheme of distribution among its creditors.

⁸⁹ Article 2067. The guarantor who pays is subrogated by virtue thereof to all the rights which the creditor had against the debtor.

If the guarantor has compromised with the creditor, he cannot demand of the debtor more than what he has really paid.

⁹⁰ *Rollo*, p. 197.

⁹¹ *Id.*

⁹² G.R. No. 95253, July 10, 1992, 211 SCRA 390 [Per J. Nocon, Second Division].

During rehabilitation receivership, the assets are held in trust for the equal benefit of all creditors to preclude one from obtaining an advantage or preference over another by the expediency of an attachment, execution or otherwise. For what would prevent an alert creditor, upon learning of the receivership, from rushing posthaste to the courts to secure judgments for the satisfaction of its claims to the prejudice of the less alert creditors.

As between creditors, the key phrase is "equality is equity (Central Bank vs. Morfe, 63 SCRA 114, citing Ramisch vs. Fulton, 41 Ohio App. 443, 180 N.E. 735)." When a corporation threatened by bankruptcy is taken over by a receiver, all the creditors should stand on an equal footing. Not anyone of them should be given any preference by paying one or some of them ahead of the others. This is precisely the reason for the suspension of all pending claims against the corporation under receivership. Instead of creditors vexing the courts with suits against the distressed firm, they are directed to file their claims with the receiver who is a duly appointed officer of the SEC.⁹³

It is true, as La Savoie asserts, that the suspension of the enforcement of claims against corporations *under receivership* is intended "to prevent a creditor from obtaining an advantage or preference over another."⁹⁴ This is "intended to give enough breathing space for the management committee or rehabilitation receiver to make the business viable again, without having to divert attention and resources to litigations in various fora."⁹⁵ In *Spouses Sobrejuanite v. ASB Development Corporation*:⁹⁶

The suspension would enable the management committee or rehabilitation receiver to effectively exercise its/his powers free from any judicial or extra-judicial interference that might unduly hinder or prevent the "rescue" of the debtor company. To allow such other action to continue would only add to the burden of the management committee or rehabilitation receiver, whose time, effort and resources would be wasted in defending claims against the corporation instead of being directed toward its restructuring and rehabilitation.⁹⁷

As is evident from these discussions, however, the intention of "prevent[ing] a creditor from obtaining an advantage" is applicable in the

⁹³ Id. at 398–399.

⁹⁴ *Spouses Sobrejuanite v. ASB Development Corporation*, 508 Phil. 715, 721 (2005) [Per J. Ynares-Santiago, First Division], citing *Finasia Investments and Finance Corp. v. Court of Appeals*, G.R. No. 107002, October 7, 1994, 237 SCRA 446, 450–451 [Per J. Kapunan, First Division].

⁹⁵ Id., citing *Rubberworld (Phils.), Inc. v. NLRC*, 365 Phil. 273, 276–277 (1999) [Per J. Panganiban, Third Division].

⁹⁶ 508 Phil. 715 (2005) [Per J. Ynares-Santiago, First Division].

⁹⁷ Id. at 721, citing *BF Homes, Incorporated v. Court of Appeals*, G.R. Nos. 76879 and 77143, October 3, 1990, 190 SCRA 262, 269 [Per J. Cruz, First Division].

context of an *ongoing* receivership. The prevention of a creditor's obtaining an advantage is not an end in itself but further serves the purpose of "giv[ing] enough breathing space for the . . . rehabilitation receiver." Thus, it applies only to corporations *under* receivership. Plainly, it does not apply to corporations who have sought to put themselves under receivership but, for lack of judicial sanction, have not been put under or are *no longer* under receivership.

The trial court's October 1, 2003 Order denied due course to and dismissed La Savoie's Petition for Rehabilitation. It superseded the trial court's June 4, 2003 Stay Order appointing Rito C. Manzana as rehabilitation receiver and thereby relieving him of his duties and removing La Savoie from receivership.

Apart from these, the trial court's October 1, 2003 Order lifted the June 4, 2003 Stay Order. This was significant not only with respect to the freedom it afforded to La Savoie's creditors to (in the meantime that the lifting of the Stay Order was not restrained) enforce their claims *but similarly because it established a context that removed this case from the strict applicability of the rule being cited by La Savoie.*

The portions cited by La Savoie in *Araneta* and *Aleamar's Sibal & Sons* referred to a specific context:

It must be stressed that *the SEC had earlier ordered the suspension of all actions* for claims against Alemar's in order that all the assets of said petitioner could be inventoried and kept intact for the purpose of ascertaining an equitable scheme of distribution among its creditors.⁹⁸ (Emphasis supplied)

The pronouncements in *Araneta* and *Aleamar's Sibal & Sons* thus pertained to instances in which *there was an outstanding order suspending the enforcement of creditors' claims.* Here, the Stay Order was lifted, and its lifting was not enjoined or otherwise restrained. There was thus no Stay Order to speak of in those critical intervening moments when Home Guaranty Corporation acted pursuant to the guaranty call and paid the holders of the LSDC certificates.

If, following this payment *and* while La Savoie remained to be *not* under receivership, a valid transfer of the properties comprising the Asset Pool was made in favor of Home Guaranty Corporation, the properties would then no longer be under the dominion of La Savoie. They would thus be beyond the reach of rehabilitation proceedings and no longer susceptible

⁹⁸ *Araneta v. Court of Appeals*, G.R. No. 95253, July 10, 1992, 211 SCRA 390, 398–399 [Per J. Nocon, Second Division].

to the rule against preference of creditors. However, we find that the transfer made to Home Guaranty Corporation was ineffectual.

Viewed solely through the lens of the Trust Agreement and the Contract of Guaranty, the transfer made to Home Guaranty Corporation on the strength of the Deed of Conveyance appears valid and binding. However, we find that its execution is in violation of a fundamental principle in the law governing credit transactions. We find the execution of a Deed of Conveyance without resorting to foreclosure to be indicative of *pactum commissorium*. Hence, it is void and ineffectual and does not serve to vest ownership in Home Guaranty Corporation.

Articles 2088 and 2137 of the Civil Code provide:

Art. 2088. The creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them. Any stipulation to the contrary is null and void.

Art. 2137. The creditor does not acquire the ownership of the real estate for non-payment of the debt within the period agreed upon.

Every stipulation to the contrary shall be void. But the creditor may petition the court for the payment of the debt or the sale of the real property. In this case, the Rules of Court on the foreclosure of mortgages shall apply.

In *Garcia v. Villar*,⁹⁹ this court discussed the elements of *pactum commissorium*:

The following are the elements of *pactum commissorium*:

- (1) There should be a property mortgaged by way of security for the payment of the principal obligation; and
- (2) There should be a stipulation for automatic appropriation by the creditor of the thing mortgaged in case of non-payment of the principal obligation within the stipulated period.¹⁰⁰

*Nakpil v. Intermediate Appellate Court*¹⁰¹ discussed a similar situation where there was automatic appropriation on account of failure to pay:

⁹⁹ G.R. No. 158891, June 27, 2012, 675 SCRA 80 [Per J. Leonardo-De Castro, First Division].

¹⁰⁰ Id. at 90–91, citing *Development Bank of the Philippines v. Court of Appeals*, 348 Phil. 15, 31 (1998) [Per J. Davide, Jr., First Division].

¹⁰¹ G.R. No. 74449, August 20, 1993, 225 SCRA 456 [Per J. Bellosillo, First Division].

The arrangement entered into between the parties, whereby Pulong Maulap was to be "considered sold to him (respondent) . . . in case petitioner fails to reimburse Valdes, must then be construed as tantamount to a pactum commissorium which is expressly prohibited by Art. 2088 of the Civil Code. For, there was to be automatic appropriation of the property by Valdes in the event of failure of petitioner to pay the value of the advances. Thus, contrary to respondent's manifestations, all the elements of a pactum commissorium were present: there was a creditor-debtor relationship between the parties; the property was used as security for the loan; and, there was automatic appropriation by respondent of Pulong Maulap in case of default of petitioner.¹⁰²

In this case, Sections 13.1 and 13.2 of the Contract of Guaranty call for the "prompt assignment and conveyance to [Home Guaranty Corporation] of all the corresponding properties in the Asset Pool" that are held as security in favor of the guarantor. Moreover, Sections 13.1 and 13.2 dispense with the need of conducting foreclosure proceedings, judicial or otherwise. Albeit requiring the intervention of the trustee of the Asset Pool, Sections 13.1 and 13.2 spell out what is, for all intents and purposes, the automatic appropriation by the paying guarantor of the properties held as security. This is thus a clear case of *pactum commissorium*. It is null and void. Accordingly, whatever conveyance was made by Planters Development Bank to Home Guaranty Corporation in view of this illicit stipulation is ineffectual. It did not vest ownership in Home Guaranty Corporation.

All that this transfer engendered is a constructive trust in which the properties comprising the Asset Pool are held in trust by Home Guaranty Corporation, as trustee, for the trustor, La Savoie.

*Buan Vda. De Esconde v. Court of Appeals*¹⁰³ exhaustively discussed the concept of a trust and its classification into express and implied trusts, as well as resulting and constructive trusts:

Trust is the legal relationship between one person having an equitable ownership in property and another person owning the legal title to such property, the equitable ownership of the former entitling him to the performance of certain duties and the exercise of certain powers by the latter. Trusts are either express or implied. An express trust is created by the direct and positive acts of the parties, by some writing or deed or will or by words evidencing an intention to create a trust. No particular words are required for the creation of an express trust, it being sufficient that a trust is clearly intended.

On the other hand, implied trusts are those which, without being expressed, are deducible from the nature of the transaction as matters of intent or which are superinduced on the transaction by operation of law as

¹⁰² Id. at 467-468.

¹⁰³ 323 Phil. 81 (1996) [Per J. Romero, Second Division].

matters of equity, independently of the particular intention of the parties. In turn, implied trusts are either resulting or constructive trusts. These two are differentiated from each other as follows:

Resulting trusts are based on the equitable doctrine that valuable consideration and not legal title determines the equitable title or interest and are presumed always to have been contemplated by the parties. They arise from the nature or circumstances of the consideration involved in a transaction whereby one person thereby becomes invested with legal title but is obligated in equity to hold his legal title for the benefit of another. On the other hand, *constructive trusts are created by the construction of equity in order to satisfy the demands of justice and prevent unjust enrichment. They arise contrary to intention against one who, by fraud, duress or abuse of confidence, obtains or holds the legal right to property which he ought not, in equity and good conscience, to hold.*¹⁰⁴ (Emphasis supplied)

Articles 1450, 1454, 1455, and 1456 of the Civil Code provide examples of constructive trusts:

Art. 1450. If the price of a sale of property is loaned or paid by one person for the benefit of another and the conveyance is made to the lender or payor to secure the payment of the debt, a trust arises by operation of law in favor of the person to whom the money is loaned or for whom it is paid. The latter may redeem the property and compel a conveyance thereof to him.

Art. 1454. If an absolute conveyance of property is made in order to secure the performance of an obligation of the grantor toward the grantee, a trust by virtue of law is established. If the fulfillment of the obligation is offered by the grantor when it becomes due, he may demand the reconveyance of the property to him.

Art. 1455. When any trustee, guardian or other person holding a fiduciary relationship uses trust funds for the purchase of property and causes the conveyance to be made to him or to a third person, a trust is established by operation of law in favor of the person to whom the funds belong.

Art. 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property

¹⁰⁴ Id. at 88–89, *citing* IV ARTURO TOLENTINO, CIVIL CODE OF THE PHILIPPINES, 669 (1991), *citing* 54 Am. Jur. 21; *Sotto v. Teves*, 175 Phil. 343 (1978) [Per J. Guerrero, First Division], *citing* *Cuaycong, et al. v. Cuaycong, et al.*, 129 Phil. 439 (1967) [Per J. Bengzon, J.P., En Banc]; CIVIL CODE, art. 1443; *Heirs of Maria de la Cruz y Gutierrez v. Court of Appeals*, 261 Phil. 771 [Per J. Paras, Second Division], *citing* *Vda. de Mapa v. Court of Appeals*, G.R. No. L-38972, September 28, 1987, 154 SCRA 294, 300 [Per J. Fernan, Third Division]; *Philippine National Bank v. Court of Appeals*, G.R. No. 97995, January 21, 1993, 217 SCRA 347, 35 [Per J. Romero, Third Division]; and *O'Laco v. Co Cho Chit*, G.R. No. 58010, March 31, 1993, 220 SCRA 656, 663 [Per J. Bellosillo, First Division].

comes.

In *Rodrigo v. Arcilla*,¹⁰⁵ this court held that a constructive trust was created when petitioners' predecessor-in-interest, Vicente Sauza, got respondent's parents, Ramon Daomilas and Lucia Nagac, "to sign a document which he represented to them as a deed 'evidencing their status as adjoining landowners' but was actually a document disclaiming their ownership over [the subject lot] and transferring the same to [Sauza]." ¹⁰⁶

In *Lopez v. Court of Appeals*,¹⁰⁷ properties intended to be for the benefit of "a trust fund for [the testatrix's] paraphernal properties, denominated as *Fideicomiso de Juliana Lopez Manzano (Fideicomiso)*,"¹⁰⁸ were mistakenly adjudicated by a probate court in favor of respondents' predecessor-in-interest, Jose Lopez Manzano. These properties were then registered by him, and transfer certificates of title were issued in his name. This court held that "[t]he apparent mistake in the adjudication of the disputed properties to Jose created a mere implied trust of the constructive variety in favor of the beneficiaries of the *Fideicomiso*."¹⁰⁹

In *Lopez*, this court held that the factual milieu of that case placed it within the contemplation of Article 1456 of the Civil Code:

The provision on implied trust governing the factual milieu of this case is provided in Article 1456 of the Civil Code, which states:

ART. 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

. . . .

The disputed properties were excluded from the *Fideicomiso* at the outset. Jose registered the disputed properties in his name partly as his conjugal share and partly as his inheritance from his wife Juliana, which is the complete reverse of the claim of the petitioner, as the new trustee, that the properties are intended for the beneficiaries of the *Fideicomiso*. Furthermore, the exclusion of the disputed properties from the *Fideicomiso* was approved by the probate court and, subsequently, by the trial court having jurisdiction over the *Fideicomiso*. The registration of the disputed properties in the name of Jose was actually pursuant to a court order. The apparent mistake in the adjudication of the disputed properties to Jose created a mere implied trust of the constructive variety in favor of the beneficiaries of the *Fideicomiso*.¹¹⁰

¹⁰⁵ 525 Phil. 590 (2006) [Per J. Corona, Second Division].

¹⁰⁶ Id. at 593.

¹⁰⁷ 594 Phil. 436 (2008) [Per J. Tinga, Second Division].

¹⁰⁸ Id. at 439.

¹⁰⁹ Id. at 449.

¹¹⁰ Id. at 446–449.

So, too, this case falls squarely under Article 1456 of the Civil Code. Home Guaranty Corporation acquired the properties comprising the Asset Pool by mistake or through the ineffectual transfer (i.e., for being *pactum commissorium*) made by the original trustee, Planters Development Bank.

Two key points are established from the preceding discussions. First, the Court of Appeals' June 21, 2005 Decision restored La Savoie's status as a corporation under receivership. Second, with all but a constructive trust created between Home Guaranty Corporation and La Savoie, the properties comprising the Asset Pool remain within the dominion of La Savoie.

On the first point, the restoration of La Savoie's status as a corporation under receivership brings into operation the rule against preference of creditors. On the second point, La Savoie's continuing ownership entails the continuing competence of the court having jurisdiction over the rehabilitation proceedings to rule on how the properties comprising the Asset Pool shall be disposed, managed, or administered in order to satisfy La Savoie's obligations and/or effect its rehabilitation.

The cumulative effect of these is that Home Guaranty Corporation must submit itself, like La Savoie's other creditors, to how La Savoie's Petition for Rehabilitation shall be resolved. As a paying guarantor, Home Guaranty Corporation was subrogated into the rights of La Savoie's creditors and now stands as the latter's own creditor. It remains so pending the satisfaction of La Savoie's obligation and as the void conveyance made to it by Planters Development Bank failed to terminate in the creditor-debtor relationship with La Savoie.


WHEREFORE, the Petition is **DENIED**. The Regional Trial Court, Branch 142, Makati City is directed to proceed with dispatch in resolving the Petition for Rehabilitation filed by respondent La Savoie Development Corporation.

SO ORDERED.



MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

**MARIANO C. DEL CASTILLO**Associate Justice
Acting Chairperson**PRESBITERO J. VELASCO, JR.**


Associate Justice

**JOSE CATRAL MENDOZA**

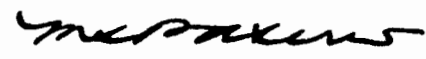
Associate Justice

**BIENVENIDO L. REYES**
Associate Justice**ATTESTATION**

I attest 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.

**MARIANO C. DEL CASTILLO**
Associate Justice
Acting Chairperson**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, 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.

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