



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

VIVA SHIPPING LINES, INC.,  
Petitioner,

G.R. No. 177382

Present:

-versus-

CARPIO, J., *Chairperson*,  
BRION,\*  
DEL CASTILLO,  
MENDOZA, and  
LEONEN, JJ.

KEPPEL PHILIPPINES MINING,  
INC., METROPOLITAN BANK &  
TRUST COMPANY, PILIPINAS  
SHELL PETROLEUM  
CORPORATION, CITY OF  
BATANGAS, CITY OF LUCENA,  
PROVINCE OF QUEZON,  
ALEJANDRO OLIT, NIDA  
MONTILLA, PIO HERNANDEZ,  
EUGENIO BACULO, and HARLAN  
BACALTOS,

Respondents.

Promulgated:

17 FEB 2018

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DECISION

LEONEN, J.:

Rule 43 of the Rules of Court prescribes the procedure to assail the final orders and decisions in corporate rehabilitation cases filed under the Interim Rules of Procedure on Corporate Rehabilitation.<sup>1</sup> Liberality in the

\* On leave.

<sup>1</sup> A.M. No. 00-8-10-SC, Resolution dated November 21, 2000.

application of the rules is not an end in itself. It must be pleaded with factual basis and must be allowed for equitable ends. There must be no indication that the violation of the rule is due to negligence or design. Liberality is an extreme exception, justifiable only when equity exists.

On October 4, 2005, Viva Shipping Lines, Inc. (Viva Shipping Lines) filed a Petition for Corporate Rehabilitation before the Regional Trial Court of Lucena City.<sup>2</sup> The Regional Trial Court initially denied the Petition for failure to comply with the requirements in Rule 4, Sections 2 and 3 of the Interim Rules of Procedure on Corporate Rehabilitation.<sup>3</sup> On October 17,

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<sup>2</sup> The case was raffled to Branch 57 of the said court.

<sup>3</sup> INTERIM CORP. REHAB. RULE, Rule 4, sec. 2 provides:

SECTION 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 accompanied 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 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 (a) the filing of the petition has been duly authorized; and (b) the directors and stockholders have irrevocably approved and/or consented to, in accordance with existing laws, all actions or matters necessary and desirable to rehabilitate the debtor including, but not limited to, amendments to the articles of incorporation and by-laws or articles of partnership; increase or decrease in the authorized capital stock; issuance of bonded indebtedness; alienation, transfer, or encumbrance of assets of the debtor; and modification of shareholders' rights.

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

Rule 4, sec. 3 provides:

SECTION 3. *Verification by Debtor.* — The petition filed by the debtor must be verified by an affidavit of a responsible officer of the debtor and shall be in a form substantially as follows:

“I, \_\_\_\_\_, (position) of (name of petitioner), do solemnly swear that the

2005, Viva Shipping Lines filed an Amended Petition.<sup>4</sup>

In the Amended Petition, Viva Shipping Lines claimed to own and operate 19 maritime vessels<sup>5</sup> and Ocean Palace Mall, a shopping mall in downtown Lucena City.<sup>6</sup> Viva Shipping Lines also declared its total properties' assessed value at about ₱45,172,790.00.<sup>7</sup> However, these allegations were contrary to the attached documents in the Amended Petition.

One of the attachments, the Property Inventory List, showed that Viva Shipping Lines owned only two (2) maritime vessels: M/V Viva Peñafrancia V and M/V Marian Queen.<sup>8</sup> The list also stated that the fair market value of all of Viva Shipping Lines' assets amounted to ₱447,860,000.00,<sup>9</sup> ₱400 million more than what was alleged in its Amended Petition. Some of the properties listed in the Property Inventory List were already marked as "encumbered" by its creditors;<sup>10</sup> hence, only ₱147,630,000.00 of real property and its vessels were marked as "free assets."<sup>11</sup>

Viva Shipping Lines also declared the following debts:

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petitioner has been duly authorized to file the petition and that the stockholders and board of directors (or governing body) have approved and/or consented to, in accordance with law, all actions or matters necessary or desirable to rehabilitate the debtor. There is no petition for insolvency filed with any other body, court, or tribunal affecting the petitioner. The Inventory of Assets and the Schedule of Debts and Liabilities contains a full, correct, and true description of all debts and liabilities and of all goods, effects, estate, and property of whatever kind or class belonging to petitioner. The Inventory also contains a full, correct, and true statement of all debts owing or due to petitioner, or to any person or persons in trust for petitioner and of all securities and contracts whereby any money may hereafter become due or payable to petitioner or by or through which any benefit or advantage may accrue to petitioner. The petition contains a concise statement of the facts giving rise, or which might give rise, to any cause of action in favor of petitioner. Petitioner has no land, money, stock, expectancy, or property of any kind, except those set forth in the Inventory of Assets. Petitioner has, in no instance, created or acknowledged a debt for a greater sum than the true and correct amount. Petitioner, its officers, directors, and stockholders have not, directly or indirectly, concealed, fraudulently sold, or otherwise fraudulently disposed of, any part of petitioner's real or personal property, estate, effects, or rights of action, and petitioner, its officers, directors, and stockholders have not in any way compounded with any of its creditors in order to give preference to such creditors, or to receive or to accept any profit or advantage therefrom, or to defraud or deceive in any manner any creditor to whom petitioner is indebted. Petitioner, its officers, directors, and stockholders have been acting in good faith and with due diligence."

<sup>4</sup> *Rollo*, pp. 45–61, Amended Petition dated October 14, 2005.

<sup>5</sup> *Id.* at 83–84, Regional Trial Court Order dated October 30, 2006. These vessels are: M/V Sto. Niño, M/V Viva Peñafrancia, M/V Viva Peñafrancia II, M/V Viva Peñafrancia III, M/V Viva Peñafrancia IV, M/V Viva Peñafrancia V, M/V Viva Peñafrancia VIII, M/V Sta. Maria, M/V Marian Queen, M/V St. Kristopher, M/V Immaculate Concepcion, M/V San Miguel de Ilijan, M/V San Agustin Reyes, M/V Viva San Jose, M/V Viva Peñafrancia IX, M/V Maria Socorro 2, M/V Sta. Ana, M/V Viva Lady of Lourdes, and M/V Our Lady of Mercy (*Id.* at 48–49).

<sup>6</sup> *Id.* at 48, Amended Petition dated October 14, 2005.

<sup>7</sup> *Id.* at 52.

<sup>8</sup> *Id.* at 70, Property Inventory List attached to the Amended Petition dated October 14, 2005.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

	<b>Name of Creditor</b>	<b>Nature of Debts</b>	<b>Amount of Obligation</b>
(1)	Metropolitan Bank & Trust Company	Loan secured by Real Estate Mortgage	₱ 176,428,745.50
(2)	Keppel Philippines Marine, Inc.	Charges for Repair of Vessels	9,000,000.00 +
(3)	Province of Quezon, Lucena City, and Province of Batangas, Batangas City	Realty Taxes and Assessments	35,000,000.00 +
		<b>TOTAL<sup>12</sup></b>	<b>₱ 220,428,745.50 +</b>

According to Viva Shipping Lines, the devaluation of the Philippine peso, increased competition, and mismanagement of its businesses made it difficult to pay its debts as they became due.<sup>13</sup> It also stated that “almost all [its] vessels were rendered unserviceable either because of age and deterioration that [it] can no longer compete with modern made vessels owned by other operators.”<sup>14</sup>

In its Company Rehabilitation Plan, Viva Shipping Lines enumerated possible sources of funding such as the sale of old vessels and commercial lots of its sister company, Sto. Domingo Shipping Lines.<sup>15</sup> It also proposed the conversion of the Ocean Palace Mall into a hotel, the acquisition of two (2) new vessels for shipping operations, and the “re-operation”<sup>16</sup> of an oil mill in Buenavista, Quezon.<sup>17</sup>

Viva Shipping Lines nominated two individuals to be appointed as rehabilitation receiver: Armando F. Ragudo, a businessman from Tayabas, Quezon, and Atty. Calixto Ferdinand B. Dauz III, a lawyer from Lucena City.<sup>18</sup> A day after filing the Amended Petition, Viva Shipping Lines submitted the name of a third nominee, Former Judge Jose F. Mendoza (Judge Mendoza).<sup>19</sup>

On October 19, 2005, the Regional Trial Court found that Viva Shipping Lines’ Amended Petition to be “sufficient in form and substance,” and issued a stay order.<sup>20</sup> It stayed the enforcement of all monetary and judicial claims against Viva Shipping Lines, and prohibited Viva Shipping Lines from selling, encumbering, transferring, or disposing of any of its

<sup>12</sup> This sum was arrived at by adding the debts declared by Viva Shipping Lines, Inc. in its Amended Petition (*rollo*, pp. 51–52), and its Schedule of Debts & Liabilities As of September 30, 2005 (*Id.* at 68). However, in the same Petition, Viva Shipping Lines, Inc. stated that its total liabilities amount to ₱220,873,700.00 (*Id.* at 52).

<sup>13</sup> *Rollo*, pp. 50–51.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 53.

<sup>16</sup> *Id.* at 72.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 79, List of Nominees for the Position of Rehabilitation Receiver, attachment to the Amended Petition dated October 14, 2005.

<sup>19</sup> *Id.* at 765, as alleged by Metropolitan Bank and Trust Company in its Memorandum.

<sup>20</sup> *Id.* at 81, Order dated October 19, 2005.

properties except in the ordinary course of business.<sup>21</sup> The Regional Trial Court also appointed Judge Mendoza as rehabilitation receiver.

Before the initial hearing scheduled on December 5, 2005, the City of Batangas, Keppel Philippines Marine, Inc., and Metropolitan Bank and Trust Company (Metrobank) filed their respective comments and oppositions to Viva Shipping Lines' Amended Petition.<sup>22</sup>

During the initial hearing, Pilipinas Shell Petroleum Corporation (Pilipinas Shell) moved for additional time to write its opposition to Viva Shipping Lines' Amended Petition.<sup>23</sup> Pilipinas Shell later filed its Comment/Opposition with Formal Notice of Claim.<sup>24</sup>

Luzviminda C. Cueto, a former employee of Viva Shipping Lines, also filed a Manifestation and Registration of Monetary Claim stating that Viva Shipping Lines owes her ₱232,000.00 as separation and 13<sup>th</sup> month pay.<sup>25</sup> The Securities and Exchange Commission filed a Comment informing the Regional Trial Court that Viva Shipping Lines violated certain laws and rules of the Commission.<sup>26</sup>

On March 24, 2006, Judge Mendoza withdrew his acceptance of appointment as rehabilitation receiver.<sup>27</sup> As replacement, Viva Shipping Lines nominated Atty. Antonio Acyatan, while Metrobank nominated Atty. Rosario S. Bernaldo.<sup>28</sup> Keppel Philippines Marine, Inc. adopted Metrobank's nomination.<sup>29</sup>

On April 4, 2006, Metrobank filed a Motion for Production or Inspection of relevant documents relating to Viva Shipping Lines' business operations such as board resolutions, tax returns, accounting ledgers, bank accounts, and contracts.<sup>30</sup> Viva Shipping Lines filed its opposition. However, the Regional Trial Court granted Metrobank's Motion.<sup>31</sup> Viva Shipping Lines failed to comply with the Order to produce the documents,<sup>32</sup> as well as with the Regional Trial Court Order to submit a memorandum.<sup>33</sup>

On September 27, 2006, Viva Shipping Lines' former employees

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<sup>21</sup> Id.

<sup>22</sup> Id. at 84, Regional Trial Court Order dated October 30, 2006.

<sup>23</sup> Id. at 85.

<sup>24</sup> Id.

<sup>25</sup> Id. at 88.

<sup>26</sup> Id. at 85.

<sup>27</sup> Id. at 86.

<sup>28</sup> Id. at 86–87.

<sup>29</sup> Id. at 87.

<sup>30</sup> Id.

<sup>31</sup> Id. at 88.

<sup>32</sup> Id.

<sup>33</sup> Id.

Alejandro Olit, Nida Montilla, Pio Hernandez, Eugenio Baculo, and Harlan Bacaltos<sup>34</sup> (Alejandro Olit, et al.) filed their comment on the Amended Petition, informing the Regional Trial Court of their pending complaint against Viva Shipping Lines before the National Labor Relations Commission.<sup>35</sup>

In the Order dated October 30, 2006,<sup>36</sup> the Regional Trial Court lifted the stay order and dismissed Viva Shipping Lines' Amended Petition for failure to show the company's viability and the feasibility of rehabilitation. The Regional Trial Court summarized Viva Shipping Lines' creditors and debts:<sup>37</sup>

	<b>Name of Creditor</b>	<b>Nature of Debts<sup>38</sup></b>	<b>Amount of Obligation</b>
1	Batangas City	Real Estate Taxes	₱ 264,006.52
2	Keppel Philippines Marine, Inc.	Charges for Repair of Vessels	20,054,977.84
3	Metropolitan Bank & Trust Company	Loan secured by Real Estate Mortgage	191,963,465.79
4	Pilipinas Shell Petroleum Corp.	Supply Agreement	20,546,797.74
5	Luzviminda C. Cueto	Labor	232,000.00
		<b>TOTAL</b>	<b>₱ 233,061,247.89</b>

The Regional Trial Court also noted the following as Viva Shipping Lines' free assets:<sup>39</sup>

	<b>Nature of Property</b>	<b>Assessed Value</b>	<b>Market Value</b>
1	Agricultural/Industrial Lot in San Narciso, Quezon covered by TCT No. T-155423	₱ 16,493,050.00	₱ 40,000,000.00
2	Agricultural Lot located at San Andres, Quezon covered by TCT No. T-215549	1,235,010.00	47,630,000.00
3	MV Viva Peñafrancia 5		30,000,000.00
4	MV Marian Queen <sup>40</sup>		30,000,000.00
		<b>TOTAL</b>	<b>₱ 147,630,000.00</b>

The Regional Trial Court found that Viva Shipping Lines' assets all appeared to be non-performing. Further, it noted that Viva Shipping Lines failed to show any evidence of consent to sell real properties belonging to its

<sup>34</sup> Id. at 13, Petition.

<sup>35</sup> Id. at 17.

<sup>36</sup> Id. at 83–95.

<sup>37</sup> Id. at 89.

<sup>38</sup> Id. at 68.

<sup>39</sup> Id. at 93–94.

<sup>40</sup> According to Metropolitan Bank and Trust Company, this vessel is owned and registered in the name of Besta Shipping Lines as shown in the Certificate of Ownership No. 043172. The Certificate, however, was not included in Metropolitan Bank and Trust Company's submission.

sister company.<sup>41</sup>

Aggrieved, Viva Shipping Lines filed a Petition for Review under Rule 43 of the Rules of Court before the Court of Appeals.<sup>42</sup> It only impleaded Hon. Adolfo V. Encomienda, the Presiding Judge of the trial court that rendered the assailed decision. It did not implead any of its creditors, but served copies of the Petition on counsels for Metrobank, Keppel Philippines Marine, Inc., Pilipinas Shell, City of Batangas, Province of Quezon, and City of Lucena.<sup>43</sup> Viva Shipping Lines neither impleaded nor served a copy of the Petition on its former employees or their counsels.

The Court of Appeals dismissed Viva Shipping Lines' Petition for Review in the Resolution dated January 5, 2007.<sup>44</sup> It found that Viva Shipping Lines failed to comply with procedural requirements under Rule 43.<sup>45</sup> The Court of Appeals ruled that due to the failure of Viva Shipping Lines to implead its creditors as respondents, "there are no respondents who may be required to file a comment on the petition, pursuant to Section 8 of Rule 43."<sup>46</sup>

Viva Shipping Lines moved for reconsideration.<sup>47</sup> It argued that its procedural misstep was cured when it served copies of the Petition on the Regional Trial Court and on its former employees.<sup>48</sup> In the Resolution dated March 30, 2007, the Court of Appeals denied Viva Shipping Lines' Motion for Reconsideration.<sup>49</sup>

Viva Shipping Lines filed before this court a Petition for Review on Certiorari assailing the January 5, 2007 and March 30, 2007 Court of Appeals Resolutions.<sup>50</sup> It prayed that the case be remanded to the Court of Appeals for adjudication on the merits.<sup>51</sup>

Without necessarily giving due course to the Petition, this court required respondents to comment.<sup>52</sup> Keppel Philippines Marine, Inc.,<sup>53</sup>

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<sup>41</sup> *Rollo*, p. 94, Regional Trial Court Order dated October 30, 2006.

<sup>42</sup> *CA rollo*, pp. 14–44, Petition for Review filed before the Court of Appeals.

<sup>43</sup> *Id.*, Affidavit of Service dated December 7, 2006.

<sup>44</sup> *Rollo*, pp. 39–41, Court of Appeals Resolution dated January 5, 2007. The Resolution was penned by Associate Justice Marina L. Buzon and concurred in by Associate Justices Edgardo F. Sundiam and Monina Arevalo-Zenarosa of the Fifth Division.

<sup>45</sup> *Id.* at 40.

<sup>46</sup> *Id.*

<sup>47</sup> *CA rollo*, pp. 267–277, Motion for Reconsideration.

<sup>48</sup> *Id.* at 278–279, Affidavits of Service to Hon. Judge Adolfo V. Encomienda of Branch 57 of the Regional Trial Court, Lucena City, and Alejandro Olit c/o Atty. Bonifacio Aranquez, Jr.

<sup>49</sup> *Rollo*, p. 42, Resolution dated March 30, 2007.

<sup>50</sup> *Id.* at 9–38, Petition for Review on Certiorari.

<sup>51</sup> *Id.* at 30.

<sup>52</sup> *Id.* at 142.

<sup>53</sup> *Id.* at 150–168.

Pilipinas Shell,<sup>54</sup> Metrobank,<sup>55</sup> former employees Alejandro Olit et al.,<sup>56</sup> the City of Batangas,<sup>57</sup> the City Treasurer of Lucena,<sup>58</sup> and the Provincial Treasurer of Quezon<sup>59</sup> filed their respective Comments.

On September 17, 2008,<sup>60</sup> December 10, 2008,<sup>61</sup> and July 20, 2009,<sup>62</sup> this court required Viva Shipping Lines to file replies to respondents' comments. Viva Shipping Lines' counsel, Abesamis Law Office, withdrew its representation, which was accepted by this court.<sup>63</sup> Viva Shipping Lines was unable to file its consolidated reply; hence, this court resolved that Viva Shipping Lines' right to file a consolidated reply was deemed waived.<sup>64</sup>

On September 1, 2011, Atty. Vicente M. Joyas (Atty. Joyas) entered his appearance as Viva Shipping Lines' new counsel.<sup>65</sup> Atty. Joyas moved for several extensions of time to comply with this court's order to file a consolidated reply. This court allowed Atty. Joyas' Motions, and Viva Shipping Lines' consolidated reply was noted in our Resolution dated December 7, 2011.<sup>66</sup> This court then ordered the parties to submit their respective memoranda.<sup>67</sup>

Viva Shipping Lines, Inc.<sup>68</sup> and respondents Pilipinas Shell,<sup>69</sup> Keppel Philippines Marine, Inc.,<sup>70</sup> and Metrobank<sup>71</sup> submitted their respective memoranda. This court dispensed with the filing of the other respondents' memoranda.<sup>72</sup>

We resolve the following issues:

First, whether the Court of Appeals erred in dismissing petitioner Viva Shipping Lines' Petition for Review on procedural grounds; and

Second, whether petitioner was denied substantial justice when the

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<sup>54</sup> Id. at 185–235.

<sup>55</sup> Id. at 454–473.

<sup>56</sup> Id. at 479–485.

<sup>57</sup> Id. at 500–509.

<sup>58</sup> Id. at 513–516.

<sup>59</sup> Id. at 531–538.

<sup>60</sup> Id. at 511.

<sup>61</sup> Id. at 522.

<sup>62</sup> Id. at 543.

<sup>63</sup> Id. at 553.

<sup>64</sup> Id. at 566.

<sup>65</sup> Id. at 589.

<sup>66</sup> Id. at 617.

<sup>67</sup> Id. at 622.

<sup>68</sup> Id. at 720.

<sup>69</sup> Id. at 630.

<sup>70</sup> Id. at 677.

<sup>71</sup> Id. at 746.

<sup>72</sup> Id. at 798.



Court of Appeals did not give due course to its petition.

Petitioner argues that the Court of Appeals should have given due course to its Petition and excused its non-compliance with procedural rules.<sup>73</sup> For petitioner, the Interim Rules of Procedure on Corporate Rehabilitation mandates a liberal construction of procedural rules, which must prevail over the strict application of Rule 43 of the Rules of Court.<sup>74</sup>

According to petitioner, this court disfavors dismissals based on pure technicalities and adopts a policy stating that rules on appeal are “not iron-clad and must yield to loftier demands of substantial [j]ustice and equity.”<sup>75</sup> For petitioner, the immediate dismissal of its Petition for Review is contrary to the purpose of corporate rehabilitation to rescue and rehabilitate financially distressed companies.<sup>76</sup>

Respondents, on the other hand, argue that the dismissal of petitioner’s Petition for Review was proper for its failure to implead any of its creditors. Petitioner’s procedural misstep resulted in the denial of the creditors’ right to due process as they could not file a comment on the Petition.<sup>77</sup> Respondent Pilipinas Shell points out that petitioner did not even try to explain why it failed to implead its creditors in its Petition.<sup>78</sup>

Respondents cite Rule 43, Section 7, which states that non-compliance with any of the requirements of proof of service of the Petition, and the required contents, shall be sufficient ground for the dismissal of the Petition.<sup>79</sup> Compliance with Rule 43 is required under the Interim Rules of Procedure on Corporate Rehabilitation because it is the prescribed mode of appealing trial court decisions and final orders in corporate rehabilitation cases.<sup>80</sup> According to respondent Metrobank, contrary to the views of petitioner, the policy of liberality in construction of the Interim Rules of Procedure on Corporate Rehabilitation are limited to proceedings in the Regional Trial Court, and not with respect to procedural rules in elevating appeals relating to corporate rehabilitation.<sup>81</sup>

Respondents note that because petitioner repeatedly defied procedural rules, it therefore was no longer entitled to the relaxation of these rules.<sup>82</sup> Respondent Pilipinas Shell also points out the defects in the verification,

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<sup>73</sup> Id. at 724.

<sup>74</sup> Id. at 724–727.

<sup>75</sup> Id. at 724–725, petitioner’s Memorandum, citing *Remulla v. Manlongat*, 484 Phil. 832 (2004) [Per J. Panganiban, Third Division].

<sup>76</sup> Id. at 726.

<sup>77</sup> Id. at 686, 760 and 643.

<sup>78</sup> Id. at 648.

<sup>79</sup> Id. at 479–480, 687–688 and 750.

<sup>80</sup> Id. at 504–505.

<sup>81</sup> Id. at 758–760.

<sup>82</sup> Id. at 757, 648–649.

certification of non-forum shopping, and attachments of petitioner in its Petition before this court.<sup>83</sup>

Respondent City of Batangas emphasizes that the Rules of Court are promulgated to facilitate the adjudication of cases. It argues that petitioner should not be afforded equitable considerations as it acted in bad faith by concealing material information during the rehabilitation proceedings.<sup>84</sup>

Respondents further argue that even if the Court of Appeals gave due course to the Petition, it would still have dismissed the case on the merits. Respondents cite petitioner's failure to provide material facts with sufficient particularity in its Amended Petition for Corporate Rehabilitation.<sup>85</sup> Petitioner also failed to disclose some of its creditors, as well as the several pending cases relating to its financial liabilities.<sup>86</sup> It failed to describe with specificity the cause of its inability to pay its debts.<sup>87</sup> It also failed to clarify which vessels were still under its ownership, and which vessels had maritime liens.<sup>88</sup> Petitioner merely estimated its liabilities against its creditors.<sup>89</sup> Respondents also allege that petitioner nominated rehabilitators who are professionally connected with its counsel despite the existence of conflict of interest.<sup>90</sup>

Respondents point out that petitioner's admission that almost all its vessels are rendered unseaworthy suggests that rehabilitation is no longer viable.<sup>91</sup> Former employees also mention that despite petitioner's desire to rehabilitate, after the Regional Trial Court's final order, petitioner began disposing of some of its assets.<sup>92</sup> Respondents also cannot rely on the plan to sell some of petitioner's sister company's properties. They also express doubts regarding petitioner's plan of converting its mall to a hotel/restaurant because it had no such experience. Respondents thus characterize Viva Shipping Lines' rehabilitation plan as "unrealistic, untested, and improbable."<sup>93</sup>

We deny the Petition.

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<sup>83</sup> Id. at 658–663.

<sup>84</sup> Id. at 500–501.

<sup>85</sup> Id. at 690, 532 and 787.

<sup>86</sup> Id. at 761, 637–638 and 651.

<sup>87</sup> Id. at 651.

<sup>88</sup> Id. at 692–693, 762–763.

<sup>89</sup> Id. at 694.

<sup>90</sup> Id. at 656–658.

<sup>91</sup> Id. at 691.

<sup>92</sup> Id. at 482, 486–487.

<sup>93</sup> Id. at 652.

Corporate rehabilitation is a remedy for corporations, partnerships, and associations “who [foresee] the impossibility of meeting [their] debts when they respectively fall due.”<sup>94</sup> A corporation under rehabilitation continues with its corporate life and activities to achieve solvency,<sup>95</sup> or a position where the corporation is able to pay its obligations as they fall due in the ordinary course of business. Solvency is a state where the businesses’ liabilities are less than its assets.<sup>96</sup>

Corporate rehabilitation is a type of proceeding available to a business that is insolvent. In general, insolvency proceedings provide for predictability that commercial obligations will be met despite business downturns. Stability in the economy results when there is assurance to the investing public that obligations will be reasonably paid. It is considered state policy

to encourage debtors, both juridical and natural persons, and their creditors to *collectively and realistically resolve* and adjust competing claims and property rights[.] . . . [R]ehabilitation or liquidation shall be made with a view to ensure or maintain certainty and predictability in commercial affairs, preserve and maximize the value of the assets of these debtors, recognize creditor rights and respect priority of claims, and ensure equitable treatment of creditors who are similarly situated. When rehabilitation is not feasible, it is in the interest of the State to facilitate a speedy and orderly liquidation of these debtors’ assets and the settlement of their obligations.<sup>97</sup> (Emphasis supplied)

The rationale in corporate rehabilitation is to resuscitate businesses in financial distress because “assets . . . are often more valuable when so maintained than they would be when liquidated.”<sup>98</sup> Rehabilitation assumes that assets are still serviceable to meet the purposes of the business. The corporation receives assistance from the court and a disinterested rehabilitation receiver to balance the interest to recover and continue ordinary business, all the while attending to the interest of its creditors to be paid equitably. These interests are also referred to as the *rehabilitative* and the *equitable* purposes of corporate rehabilitation.<sup>99</sup>

The nature of corporate rehabilitation was thoroughly discussed in

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<sup>94</sup> INTERIM CORP. REHAB. RULE, Rule 4, sec. 1.

<sup>95</sup> *Ruby Industrial Corporation v. Court of Appeals*, 348 Phil. 480, 497 (1998) [Per J. Puno, Second Division].

<sup>96</sup> Rep. Act. No. 10142 (2010), sec. 4(p) defines solvency as: “the financial condition of a debtor that is generally unable to pay its or his liabilities as they fall due in the ordinary course of business or has liabilities that are greater than its or his assets.” This definition is derived from the definition of insolvency under the Financial Rehabilitation and Insolvency Act.

<sup>97</sup> Rep. Act No. 10142 (2010), sec. 2.

<sup>98</sup> *Bank of the Philippine Islands v. Securities and Exchange Commission*, 565 Phil. 588, 595–596 (2007) [Per J. Tinga, En Banc].

<sup>99</sup> *Id.* at 595.

*Pryce Corporation v. China Banking Corporation*:<sup>100</sup>

Corporate rehabilitation is one of many statutorily provided remedies for businesses that experience a downturn. Rather than leave the various creditors unprotected, legislation now provides for an orderly procedure of equitably and fairly addressing their concerns. Corporate rehabilitation allows a court-supervised process to rejuvenate a corporation. . . . It provides a corporation’s owners a sound chance to re-engage the market, hopefully with more vigor and enlightened services, having learned from a painful experience.

Necessarily, a business in the red and about to incur tremendous losses may not be able to pay all its creditors. Rather than leave it to the strongest or most resourceful amongst all of them, the state steps in to equitably distribute the corporation’s limited resources.

. . . .

Rather than let struggling corporations slip and vanish, the better option is to allow commercial courts to come in and apply the process for corporate rehabilitation.<sup>101</sup>

*Philippine Bank of Communications v. Basic Polyprinters and Packaging Corporation*<sup>102</sup> reiterates that courts “must endeavor to balance the interests of all the parties that had a stake in the success of rehabilitating the debtors.”<sup>103</sup> These parties include the corporation seeking rehabilitation, its creditors, and the public in general.<sup>104</sup>

The public’s interest lies in the court’s ability to effectively ensure that the obligations of the debtor, who has experienced severe economic difficulties, are fairly and equitably served. The alternative might be a chaotic rush by all creditors to file separate cases with the possibility of different trial courts issuing various writs competing for the same assets. Rehabilitation is a means to temper the effect of a business downturn experienced for whatever reason. In the process, it gives entrepreneurs a second chance. Not only is it a humane and equitable relief, it encourages efficiency and maximizes welfare in the economy.

Clearly then, there are instances when corporate rehabilitation can no longer be achieved. When rehabilitation will not result in a better present value recovery for the creditors,<sup>105</sup> the more appropriate remedy is

<sup>100</sup> G.R. No. 172302, February 18, 2014, 716 SCRA 207 [Per J. Leonen, En Banc].

<sup>101</sup> Id. at 233–234.

<sup>102</sup> G.R. No. 187581, October 20, 2014  
<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/october2014/187581.pdf>>  
[Per J. Bersamin, First Division].

<sup>103</sup> Id. at 10.

<sup>104</sup> *Bank of the Philippine Islands v. Sarabia Manor Hotel Corp.*, G.R. No. 175844, July 29, 2013, 702 SCRA 432 [Per J. Perlas-Bernabe, Second Division].

<sup>105</sup> *Umale v. ASB Realty Corporation*, 667 Phil. 351 (2011) [Per J. Del Castillo, First Division].

liquidation.<sup>106</sup>

It does not make sense to hold, suspend, or continue to devalue outstanding credits of a business that has no chance of recovery. In such cases, the optimum economic welfare will be achieved if the corporation is allowed to wind up its affairs in an orderly manner. Liquidation allows the corporation to wind up its affairs and equitably distribute its assets among its creditors.<sup>107</sup>

Liquidation is diametrically opposed to rehabilitation. Both cannot be undertaken at the same time.<sup>108</sup> In rehabilitation, corporations have to maintain their assets to continue business operations. In liquidation, on the other hand, corporations preserve their assets in order to sell them. Without these assets, business operations are effectively discontinued. The proceeds of the sale are distributed equitably among creditors, and surplus is divided or losses are re-allocated.<sup>109</sup>

Proceedings in case of insolvency are not limited to rehabilitation. Our laws have evolved to provide for different procedures where a debtor can undergo judicially supervised reorganization or liquidation of its assets.<sup>110</sup>

Corporate rehabilitation traces its roots to Act No. 1956, otherwise known as the Insolvency Law of 1909. Under the Insolvency Law, a debtor in possession of sufficient properties to cover all its debts but foresees the impossibility of meeting them when they fall due may file a petition before the court to be declared in a state of suspension of payments.<sup>111</sup> This allows time for the debtor to organize its affairs in order to achieve a state where it can comply with its obligations.

The relief was also provided in the amendatory provisions of Presidential Decree No. 902-A. Section 5 of Presidential Decree No. 902-A states that the Securities and Exchange Commission has jurisdiction to decide:

d) Petitions of corporations, partnerships or associations to be declared in the state of suspension of payments in cases where the corporation, partnership or association *possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due* or in cases where the corporation, partnership or

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<sup>106</sup> 2 STEPHANIE V. GOMEZ-SOMERA, CREDIT TRANSACTIONS: NOTES AND CASES 862 (2011).

<sup>107</sup> *Philippine Veterans Bank Employees Union-NUBE v. Vega*, 412 Phil. 449 (2001) [Per J. Kapunan, First Division].

<sup>108</sup> Id.

<sup>109</sup> 2 STEPHANIE V. GOMEZ-SOMERA, CREDIT TRANSACTIONS; NOTES AND CASES 926 (2015).

<sup>110</sup> 2 STEPHANIE V. GOMEZ-SOMERA, CREDIT TRANSACTIONS; NOTES AND CASES 737 (2015).

<sup>111</sup> Act No. 1956 (1909), Sec. 2.

association has *no sufficient assets to cover its liabilities*, but is under the management of a Rehabilitation Receiver or Management Committee created pursuant to this Decree.<sup>112</sup> (Emphasis supplied).

In 2000, the jurisdiction of the Securities and Exchange Commission over these cases was transferred to the Regional Trial Court,<sup>113</sup> by operation of Section 5.2 of the Securities Regulation Code.<sup>114</sup> In the same year, this court approved the Interim Rules of Procedure on Corporate Rehabilitation. The Interim Rules of Procedure on Corporate Rehabilitation provides a summary and non-adversarial proceeding to expedite the resolution of cases for the benefit of the corporation in need of rehabilitation, its creditors, and the public in general.<sup>115</sup>

Currently, the prevailing law and procedure for corporate rehabilitation is the Financial Rehabilitation and Insolvency Act of 2010 (FRIA).<sup>116</sup> FRIA provides procedures for the different types of rehabilitation and liquidation proceedings. The Financial Rehabilitation Rules of Procedure was issued by this court on August 27, 2013.<sup>117</sup>

However, since the Regional Trial Court acted on petitioner's Amended Petition before FRIA was enacted, Presidential Decree No. 902-A and the Interim Rules of Procedure on Corporate Rehabilitation were applied to this case.<sup>118</sup>

## II

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<sup>112</sup> Pres. Decree No. 902-A (1976), sec. 5(d), as amended by Pres. Decree No. 1758.

<sup>113</sup> Since 2000, this court has designated different branches of several multi-sala Regional Trial Courts as "Special Commercial Courts" to resolve cases that were originally under the jurisdiction of the Securities and Exchange Commission. In *Gonzales v. GJH Land, Inc.*, G.R. No. 202664, November 10, 2015  
<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/november2015/202664.pdf>>  
[Per J. Perlas-Bernabe, En Banc], we clarified that it is the Regional Trial Court that has subject-matter jurisdiction over these commercial cases, and it is an exercise of jurisdiction to refer these cases to the branches designated as Special Commercial Courts for their speedy and efficient disposition.

<sup>114</sup> Rep. Act No. 8799, sec. 5.2 provides:

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

<sup>115</sup> *New Frontier Sugar Corp. v. Regional Trial Court, Branch 39, Iloilo City*, 542 Phil. 587, 595 (2007) [Per J. Austria-Martinez, Third Division].

<sup>116</sup> Rep. Act No. 10142 (2010).

<sup>117</sup> A.M. No. 12-12-11-SC, Resolution dated April 27, 2013.

<sup>118</sup> Rep. Act No. 10142 (2010), sec. 146 provides:

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

The controversy in this case arose from petitioner's failure to comply with appellate procedural rules in corporate rehabilitation cases. Petitioner now pleads this court to apply the policy of liberality in constructing the rules of procedure.<sup>119</sup>

We observe that during the corporate rehabilitation proceedings, the Regional Trial Court already exercised the liberality contemplated by the Interim Rules of Procedure on Corporate Rehabilitation. The Regional Trial Court initially dismissed Viva Shipping Lines' Petition but allowed the filing of an amended petition. Later on, the same court issued a stay order when there were sufficient grounds to believe that the Amended Petition complied with Rule 4, Section 2 of the Interim Rules of Procedure on Corporate Rehabilitation. Petitioner was not penalized for its non-compliance with the court's order to produce relevant documents or for its non-submission of a memorandum.<sup>120</sup>

Even with these accommodations, the trial court still found basis to dismiss the plea for rehabilitation.

Any final order or decision of the Regional Trial Court may be subject of an appeal.<sup>121</sup> In *Re: Mode of Appeal in Cases Formerly Cognizable by the Securities and Exchange Commission*,<sup>122</sup> this court clarified that all decisions and final orders falling under the Interim Rules of Procedure on Corporate Rehabilitation shall be appealable to the Court of Appeals through a petition for review under Rule 43 of the Rules of Court.<sup>123</sup>

*New Frontier Sugar Corporation v. Regional Trial Court, Branch 39, Iloilo City*<sup>124</sup> clarifies that an appeal from a final order or decision in corporate rehabilitation proceedings may be dismissed for being filed under the wrong mode of appeal.<sup>125</sup>

*New Frontier Sugar* doctrinally requires compliance with the procedural rules for appealing corporate rehabilitation decisions. It is true that Rule 1, Section 6 of the Rules of Court provides that the "[r]ules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding." However, this provision does not negate the entire Rules of Court by

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<sup>119</sup> INTERIM CORP. REHAB. RULE, Rule 2, sec. 2.

<sup>120</sup> A memorandum, however, is a prohibited pleading under the Interim Rules of Procedure on Corporate Rehabilitation.

<sup>121</sup> INTERIM CORP. REHAB. RULE, Rule 3, sec. 5.

<sup>122</sup> A.M. No. 04-9-07-SC, Resolution dated September 14, 2004.

<sup>123</sup> A.M. No. 04-9-07-SC, Resolution dated September 14, 2004, par. 1.

<sup>124</sup> 542 Phil. 587 (2007) [Per J. Austria-Martinez, Third Division].

<sup>125</sup> *Id.* at 597-598.

providing a license to disregard all the other provisions. Resort to liberal construction must be rational and well-grounded, and its factual bases must be so clear such that they outweigh the intent or purpose of an apparent reading of the rules.

Rule 43 prescribes the mode of appeal for corporate rehabilitation cases:

*Sec. 5. How appeal taken.* – Appeal shall be taken by filing a verified petition for review in seven (7) legible copies with the Court of Appeals, *with proof of service of a copy thereof on the adverse party and on the court or agency a quo.* The original copy of the petition intended for the Court of Appeals shall be indicated as such by the petitioner.

....

*Sec. 6. Contents of the petition.* – The petition for review shall (a) *state the full names of the parties to the case, without impleading the court or agencies either as petitioners or respondents;* (b) contain a concise statement of the facts and issues involved and the grounds relied upon for the review; (c) be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers; and (d) contain a sworn certification against forum shopping as provided in the last paragraph of section 2, Rule 42. The petition shall state the specific material dates showing that it was filed within the period fixed herein. (Emphasis supplied)

Petitioner did not comply with some of these requirements. First, it did not implead its creditors as respondents. Instead, petitioner only impleaded the Presiding Judge of the Regional Trial Court, contrary to Section 6(a) of Rule 43. Second, it did not serve a copy of the Petition on some of its creditors, specifically, its former employees. Finally, it did not serve a copy of the Petition on the Regional Trial Court.

Petitioner justified its failure to furnish its former employees with copies of the Petition by stating that the former employees were late in filing their opposition before the trial court.<sup>126</sup> It also stated that its failure to furnish the Regional Trial Court with a copy of the Petition was unintentional.<sup>127</sup>

The Court of Appeals correctly dismissed petitioner's Rule 43 Petition as a consequence of non-compliance with procedural rules. Rule 43, Section 7 of the Rules of Court states:

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<sup>126</sup> *Rollo*, p. 29, Petition for Review on Certiorari.

<sup>127</sup> *Id.* at 725, Viva Shipping Lines' Memorandum.



*Sec. 7. Effect of failure to comply with requirements.* – The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit of costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

Petitioner admitted its failure to comply with the rules. It begs the indulgence of the court to give due course to its Petition based on their belated compliance with some of these procedural rules and the policy on the liberal construction of procedural rules.

There are two kinds of “liberality” with respect to the construction of provisions of law. The first requires ambiguity in the text of the provision and usually pertains to a situation where there can be two or more viable meanings given the factual context presented by a case. Liberality here means a presumption or predilection to interpret the text in favor of the cause of the party requesting for “liberality.”

Then there is the “liberality” that actually means a request for the suspension of the operation of a provision of law, whether substantive or procedural. This liberality requires equity. There may be some rights that are not recognized in law, and if courts refuse to recognize these rights, an unfair situation may arise.<sup>128</sup> Specifically, the case may be a situation that was not contemplated on or was not possible at the time the legal norm was drafted or promulgated.

It is in the second sense that petitioner pleads this court.

### III

Our courts are not only courts of law, but are also courts of equity.<sup>129</sup> Equity is justice outside legal provisions, and must be exercised in the *absence* of law, not against it.<sup>130</sup> In *Reyes v. Lim*:<sup>131</sup>

Equity jurisdiction aims to do complete justice in cases where a court of law is unable to adapt its judgments to the special circumstances of a case because of the inflexibility of its statutory or legal jurisdiction. Equity is the principle by which substantial justice may be attained in cases where the prescribed or customary forms of ordinary law are inadequate.<sup>132</sup> (Citation omitted)

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<sup>128</sup> *See Insurance of the Philippine Islands Corp. v. Spouses Gregorio*, 658 Phil. 36 (2011) [Per J. Peralta, Second Division].

<sup>129</sup> *Rustia v. Franco*, 41 Phil. 280, 284 (1920) [Per J. Street, En Banc].

<sup>130</sup> *GF Equity Inc. v. Valenzona*, 501 Phil. 153, 166 (2005) [Per J. Carpio-Morales, Third Division].

<sup>131</sup> *Reyes v. Lim*, 456 Phil. 1 (2003) [Per J. Carpio, First Division].

<sup>132</sup> *Id.* at 10.

Liberality lies within the bounded discretion of a court to allow an equitable result when the proven circumstances require it. Liberality acknowledges a lacuna in the text of a provision of law. This may be because those who promulgated the rule may not have foreseen the unique circumstances of a case at bar. Human foresight as laws and rules are prepared is powerful, but not perfect.

Liberality is not an end in itself. Otherwise, it becomes a backdoor disguising the arbitrariness or despotism of judges and justices. In *North Bulacan Corp. v. PBCom*,<sup>133</sup> the Regional Trial Court ignored several procedural rules violated by the petitioning corporation and allowed rehabilitation in the guise of liberality. This court found that the Regional Trial Court grossly abused its authority when it allowed rehabilitation despite the corporation's blatant non-compliance with the rules.

The factual antecedents of a plea for the exercise of liberality must be clear. There must also be a showing that the factual basis for a plea for liberality is not one that is due to the negligence or design of the party requesting the suspension of the rules. Likewise, the basis for claiming an equitable result—for all the parties—must be clearly and sufficiently pleaded and argued. Courts exercise liberality in line with their equity jurisdiction; hence, it may only be exercised if it will result in fairness and justice.

#### IV

The first rule breached by petitioner is the failure to implead all the indispensable parties. Petitioner did not even interpose reasons why it should be excused from compliance with the rule to “state the full names of the parties to the case, without impleading the court . . . as . . . respondents.” Petitioner did exactly the opposite. It failed to state the full names of its creditors as respondents. Instead, it impleaded the Presiding Judge of the originating court.

The Rules of Court requires petitioner to implead respondents as a matter of due process. Under the Constitution, “[n]o person shall be deprived of life, liberty or property without due process of the law.”<sup>134</sup> An appeal to a corporate rehabilitation case may deprive creditor-stakeholders of property. Due process dictates that these creditors be impleaded to give them an opportunity to protect the property owed to them.

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<sup>133</sup> 640 Phil. 301 (2010) [Per J. Abad, Second Division].

<sup>134</sup> CONST., art. III, sec. 1.

Creditors are indispensable parties to a rehabilitation case, even if a rehabilitation case is non-adversarial. In *Boston Equity Resources, Inc. v. Court of Appeals*:<sup>135</sup>

An indispensable party is one who has such an interest in the controversy or subject matter of a case that a final adjudication cannot be made in his or her absence, without injuring or affecting that interest. He or she is a party who has not only an interest in the subject matter of the controversy, but “an interest of such nature that a final decree cannot be made without affecting [that] interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. It has also been considered that an indispensable party is a person in whose absence there cannot be a determination between the parties already before the court which is effective, complete or equitable.” Further, an indispensable party is one who must be included in an action before it may properly proceed.<sup>136</sup>

A corporate rehabilitation case cannot be decided without the creditors’ participation. The court’s role is to balance the interests of the corporation, the creditors, and the general public. Impleading creditors as respondents on appeal will give them the opportunity to present their legal arguments before the appellate court. The courts will not be able to balance these interests if the creditors are not parties to a case. Ruling on petitioner’s appeal in the absence of its creditors will not result in judgment that is effective, complete, and equitable.

This court cannot exercise its equity jurisdiction and allow petitioner to circumvent the requirement to implead its creditors as respondents. Tolerance of such failure will not only be unfair to the creditors, it is contrary to the goals of corporate rehabilitation, and will invalidate the cardinal principle of due process of law.

The failure of petitioner to implead its creditors as respondents cannot be cured by serving copies of the Petition on its creditors. Since the creditors were not impleaded as respondents, the copy of the Petition only serves to inform them that a petition has been filed before the appellate court. Their participation was still significantly truncated. Petitioner’s failure to implead them deprived them of a fair hearing. The appellate court only serves court orders and processes on parties formally named and identified by the petitioner. Since the creditors were not named as respondents, they could not receive court orders prompting them to file remedies to protect their property rights.

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<sup>135</sup> *Boston Equity Resources, Inc. v. Court of Appeals*, G.R. No. 173946, June 19, 2013, 699 SCRA 16 [Per J. Perez, Second Division].

<sup>136</sup> *Id.* at 34, *citing Lagunilla, et al. v. Velasco, et al.*, 607 Phil. 194, 205 (2009) [Per J. Nachura, Third Division], *in turn citing Regner v. Logarta*, 562 Phil. 862 (2007) [Per J. Chico-Nazario, Third Division] and *Arcelona v. Court of Appeals*, 345 Phil. 250 (1997) [Per J. Panganiban, Third Division].

The next procedural rule that petitioner pleaded to suspend is the rule requiring it to furnish all parties with copies of the Rule 43 Petition. Petitioner admitted its failure to furnish its former employees with copies of the Petition because they belatedly filed their claims before the Regional Trial Court.

This argument is specious at best; at worst, it foists a fraud on this court. The former employees were unable to raise their claims on time because petitioner did not declare them as creditors. The Amended Petition did not contain any information regarding pending litigation between petitioner and its former employees. The only way the former employees could become aware of the corporate rehabilitation proceedings was either through the required publication or through news informally circulated among their colleagues. Clearly, it was petitioner who caused the belated filing of its former employees' claims when it failed to notify its employees of the corporate rehabilitation proceedings. Petitioner's failure was conveniently and disreputably hidden from this court.

Former employee Luzviminda C. Cueto filed her Manifestation and Registration of Monetary Claim as early as November 25, 2005. Alejandro Olit, et al., the other employees, filed their Comment on September 27, 2006. By the time petitioner filed its Petition for Review dated November 21, 2006 before the Court of Appeals, it was well aware that these individuals had expressed their interest in the corporate rehabilitation proceedings. Petitioner and its counsel had no excuse to exclude these former employees as respondents on appeal.

Petitioner's belated compliance with the requirement to serve the Petition for Review on its former employees did not cure the procedural lapse. There were two sets of employees with claims against petitioner: Luzviminda C. Cueto and Alejandro Olit, et al. When the Court of Appeals dismissed petitioner's appeal, petitioner only served a copy on Alejandro Olit, et al. Petitioner still did not serve a copy on Luzviminda C. Cueto.

We do not see how it will be in the interest of justice to allow a petition that fails to inform some of its creditors that the final order of the corporate rehabilitation proceeding was appealed. By not declaring its former employees as creditors in the Amended Petition for Corporate Rehabilitation and by not notifying the same employees that an appeal had been filed, petitioner consistently denied the due process rights of these employees.

This court cannot be a party to the inequitable way that petitioner's employees were treated.

Petitioner also pleaded to be excused from the requirement under Rule 6, Section 5 of the Rules of Court to serve a copy of the Petition on the originating court. According to petitioner, the annexes for the Petition for Review filed before the Court of Appeals arrived from Lucena City on the last day of filing the petition. Petitioner's representative from Lucena City and petitioner's counsel rushed to compile and reproduce all the documents, and in such rush, failed to send a copy to the Regional Trial Court. When petitioner realized that it failed to furnish the originating court with a copy of the Petition, a copy was immediately sent by registered mail.<sup>137</sup>

Again, petitioner's excuse is unacceptable. Petitioner had 15 days to file a Rule 43 petition, which should include the proof of service to the originating court. Rushing the compilation of the pleading with the annexes has nothing to do with being able to comply with the requirement to submit a proof of service of the copy of the petition for review to the originating court. If at all, it further reflects the unprofessional way that petitioner and its counsel treated our rules.

As this court has consistently ruled, “[t]he right to appeal is not a natural right[,] nor a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.”<sup>138</sup>

In line with this, liberality in corporate rehabilitation procedure only generally refers to the trial court, not to the proceedings before the appellate court. The Interim Rules of Procedure on Corporate Rehabilitation covers petitions for rehabilitation filed before the Regional Trial Court. Thus, Rule 2, Section 2 of the Interim Rules of Procedure on Corporate Rehabilitation, which refers to liberal construction, is limited to the Regional Trial Court. The liberality was given “to assist the parties in obtaining a just, expeditious, and inexpensive disposition of the case.”<sup>139</sup>

In *Spouses Ortiz v. Court of Appeals*,<sup>140</sup> the petitioners made a procedural mistake with the attachments of the petition before the Court of Appeals. The petitioners subsequently provided the correct attachments; however, this court still upheld the Court of Appeals' dismissal:

The party who seeks to avail [itself] of [an appeal] must comply with the requirements of the rules. Failing to do so, the right to appeal is lost. Rules of procedure are required to be followed,

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<sup>137</sup> *Rollo*, pp. 25–26, Petition for Review on Certiorari.

<sup>138</sup> *Bello v. Fernando*, 114 Phil. 101, 103 (1962) [Per J. Reyes, J.B.L., En Banc], citing *Aguila v. Navarro*, 55 Phil. 898 (1931) [Per J. Villamor, Second Division] and *Santiago v. Valenzuela*, 78 Phil. 397 (1947) [Per J. Feria, En Banc].

<sup>139</sup> INTERIM CORP. REHAB. RULE, Rule 2, sec. 2.

<sup>140</sup> 360 Phil. 95 (1998) [Per J. Quisumbing, First Division].

except only when for the most persuasive of reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.<sup>141</sup>

Petitioner's excuses do not trigger the application of the policy of liberality in construing procedural rules. For the courts to exercise liberality, petitioner must show that it is suffering from an injustice not commensurate to the thoughtlessness of its procedural mistakes. Not only did petitioner exercise injustice towards its creditors, its Rule 43 Petition for Review did not show that the Regional Trial Court erred in dismissing its Amended Petition for Corporate Rehabilitation.

## V

Petitioner's main argument for the continuation of corporate rehabilitation proceedings is that the Regional Trial Court should have allowed petitioner to clarify its Amended Petition with respect to details regarding its assets and its liabilities to its creditors instead of dismissing the Petition outright.<sup>142</sup>

The Regional Trial Court correctly dismissed the Amended Petition for Corporate Rehabilitation. The dismissal of the Amended Petition did not emanate from petitioner's failure to provide complete details on its assets and liabilities but on the trial court's finding that rehabilitation is no longer viable for petitioner. Under the Interim Rules of Procedure on Corporate Rehabilitation, a "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>143</sup> The proceedings are also deemed terminated upon the trial court's disapproval of a rehabilitation plan, "or a determination that the rehabilitation plan may no longer be implemented in accordance with its terms, conditions, restrictions, or assumptions."<sup>144</sup>

*Bank of the Philippine Islands v. Sarabia Manor Hotel Corp.*<sup>145</sup> provides the test to help trial courts evaluate the economic feasibility of a rehabilitation plan:

In order to determine the feasibility of a proposed rehabilitation plan, it is imperative that *a thorough examination and analysis of the distressed corporation's financial data* must be conducted. If the results of such examination and analysis show that there is *a real opportunity to rehabilitate the corporation in view of the assumptions made and financial*

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<sup>141</sup> Id. at 101.

<sup>142</sup> CA *rollo*, p. 31, Petition for Review.

<sup>143</sup> INTERIM CORP. REHAB. RULE, Rule 4, sec. 11.

<sup>144</sup> INTERIM CORP. REHAB. RULE, Rule 4, sec. 27.

<sup>145</sup> G.R. No. 175844, July 29, 2013, 702 SCRA 432 [Per J. Perlas-Bernabe, Second Division].

*goals stated* in the proposed rehabilitation plan, then it may be said that a rehabilitation is feasible. In this accord, the rehabilitation court should not hesitate to allow the corporation to operate as an on-going concern, albeit under the terms and conditions stated in the approved rehabilitation plan. *On the other hand, if the results of the financial examination and analysis clearly indicate that there lies no reasonable probability that the distressed corporation could be revived and that liquidation would, in fact, better subserve the interests of its stakeholders, then it may be said that a rehabilitation would not be feasible.* In such case, the rehabilitation court may convert the proceedings into one for liquidation.<sup>146</sup> (Emphasis supplied)

Professor Stephanie V. Gomez of the University of the Philippines College of Law suggests specific characteristics of an economically feasible rehabilitation plan:

- a. The debtor has assets that can generate more cash if used in its daily operations than if sold.
- b. Liquidity issues can be addressed by *a practicable business plan* that will generate enough cash to sustain daily operations.
- c. The debtor has a definite source of financing for the proper and full implementation of a Rehabilitation Plan that is anchored on realistic assumptions and goals.<sup>147</sup> (Emphasis supplied)

These requirements put emphasis on liquidity: the cash flow that the distressed corporation will obtain from rehabilitating its assets and operations. A corporation's assets may be more than its current liabilities, but some assets may be in the form of land or capital equipment, such as machinery or vessels. Rehabilitation sees to it that these assets generate more value if used efficiently rather than if liquidated.

On the other hand, this court enumerated the characteristics of a rehabilitation plan that is infeasible:

- (a) the absence of a sound and workable business plan;
- (b) baseless and unexplained assumptions, targets and goals;
- (c) speculative capital infusion or complete lack thereof for the execution of the business plan;
- (d) cash flow cannot sustain daily operations; and

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<sup>146</sup> Id. at 447–448.

<sup>147</sup> 2 STEPHANIE V. GOMEZ-SOMERA, CREDIT TRANSACTIONS; NOTES AND CASES 797–798 (2015).

- (e) negative net worth and the assets are near full depreciation or fully depreciated.<sup>148</sup>

In addition to the tests of *economic feasibility*, Professor Stephanie V. Gomez also suggests that the Financial and Rehabilitation and Insolvency Act of 2010 emphasizes on rehabilitation that provides for better *present value recovery* for its creditors.<sup>149</sup>

Present value recovery acknowledges that, in order to pave way for rehabilitation, the creditor will not be paid by the debtor when the credit falls due. The court may order a suspension of payments to set a rehabilitation plan in motion; in the meantime, the creditor remains unpaid. By the time the creditor is paid, the financial and economic conditions will have been changed. Money paid in the past has a different value in the future.<sup>150</sup> It is unfair if the creditor merely receives the face value of the debt. Present value of the credit takes into account the interest that the amount of money would have earned if the creditor were paid on time.<sup>151</sup>

Trial courts must ensure that the projected cash flow from a business' rehabilitation plan allows for the closest present value recovery for its creditors. If the projected cash flow is realistic and allows the corporation to meet all its obligations, then courts should favor rehabilitation over liquidation. However, if the projected cash flow is unrealistic, then courts should consider converting the proceedings into that for liquidation to protect the creditors.

The Regional Trial Court correctly dismissed petitioner's rehabilitation plan. It found that petitioner's assets are non-performing.<sup>152</sup> Petitioner admitted this in its Amended Petition when it stated that its vessels were no longer serviceable.<sup>153</sup> In *Wonder Book Corporation v. Philippine Bank of Communications*,<sup>154</sup> a rehabilitation plan is infeasible if the assets

<sup>148</sup> *Wonder Book Corp. v. Philippine Bank of Communications*, G.R. No. 187316, 691 Phil. 83, 95 (2012) [Per J. Reyes, Second Division].

<sup>149</sup> Rep. Act No. 10142 (2010), sec. 4(gg) defines rehabilitation as: "the restoration of the debtor to a condition of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors *can recover by way of the present value of payments* projected in the plan, more if the debtor continues as a going concern than if it is immediately liquidated." This is because if rehabilitation is still viable, creditors may still be able to recover the full value of the credit. If the assets are immediately liquidated even when rehabilitation is viable, creditors run the risk of sharing in the losses of the corporation, especially if the book value of its assets is less than its outstanding credits.

<sup>150</sup> J. Leonen, Dissenting Opinion in *Secretary of the Department of Public Works and Highways v. Spouses Tecson* (Resolution), G.R. No. 179334, April 21, 2015 <[http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/april2015/179334\\_leonen.pdf](http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/april2015/179334_leonen.pdf)> [Per J. Peralta, En Banc].

<sup>151</sup> *See Heirs of Tria v. Land Bank of the Philippines*, G.R. No. 170245, July 1, 2013, 700 SCRA 188 [Per J. Peralta, Third Division].

<sup>152</sup> *Rollo*, p. 94, Regional Trial Court Order dated October 30, 2006.

<sup>153</sup> *Id.* at 50, Amended Petition.

<sup>154</sup> G.R. No. 187316, 691 Phil. 83 (2012) [Per J. Reyes, Second Division].



are nearly fully or fully depreciated. This reduces the probability that rehabilitation may restore and reinstate petitioner to its former position of successful operation and solvency.

Petitioner's rehabilitation plan should have shown that petitioner has enough serviceable assets to be able to continue its business. Yet, the plan showed that the source of funding would be to sell petitioner's old vessels. Disposing of the assets constituting petitioner's main business cannot result in rehabilitation. A business primarily engaged as a *shipping* line cannot operate without its ships. On the other hand, the plan to purchase new vessels sacrifices the corporation's cash flow. This is contrary to the goal of corporate rehabilitation, which is to allow present value recovery for creditors. The plan to buy new vessels after selling the two vessels it currently owns is neither sound nor workable as a business plan.

The other part of the rehabilitation plan entails selling properties of petitioner's sister company. As pointed out by the Regional Trial Court, this plan requires conformity from the sister company. Even if the two companies have the same directorship and ownership, they are still two separate juridical entities. In *BPI Family Savings Bank v. St. Michael Medical Center*,<sup>155</sup> this court refused to include in the financial and liquidity assessment the financial statements of another corporation that the petitioning-corporation plans to merge with.

As pointed out by respondents, petitioner's rehabilitation plan is almost impossible to implement. Even an ordinary individual with no business acumen can discern the groundlessness of petitioner's rehabilitation plan. Petitioner should have presented a more realistic and practicable rehabilitation plan within the time periods allotted after initiatory hearing, or otherwise, should have opted for liquidation.

Finally, petitioner argues that after Judge Mendoza's withdrawal as rehabilitation receiver, the Regional Trial Court should have appointed a new rehabilitation receiver to evaluate the rehabilitation plan. We rule otherwise. It is not solely the responsibility of the rehabilitation receiver to determine the validity of the rehabilitation plan. The Interim Rules of Procedure on Corporate Rehabilitation allows the trial court to disapprove a rehabilitation plan<sup>156</sup> and terminate proceedings or, should the instances warrant, to allow modifications to a rehabilitation plan.<sup>157</sup>

The Regional Trial Court rendered a decision in accordance with facts

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<sup>155</sup> G.R. No. 205469, March 25, 2015  
<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/march2015/205469.pdf>>  
[Per J. Perlas-Bernabe, First Division].

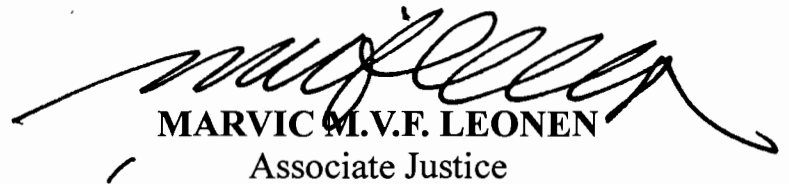
<sup>156</sup> INTERIM CORP. REHAB. RULE, Rule 4, sec. 27.

<sup>157</sup> INTERIM CORP. REHAB. RULE, Rule 4, sec. 11.

and law. Thus, we deny the plea for liberalization of procedural rules. To grant the plea would cause more economic hardship and injustice to all those concerned.


**WHEREFORE**, the Petition is **DENIED**. The Court of Appeals Resolutions dated January 7, 2007 and March 30, 2007 in CA-G.R. SP No. 96974 are **AFFIRMED**.

**SO ORDERED.**



**MARVIC M.V.F. LEONEN**  
Associate Justice

WE CONCUR:



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson

On leave  
**ARTURO D. BRION**  
Associate Justice




**MARIANO C. DEL CASTILLO**  
Associate Justice



**JOSE CATRAL MENDOZA**  
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.



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson, Second Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division 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