

AUTOMATIC STAY: AN ANALYSIS OF THE CONFLICTING JURISPRUDENCE REGARDING SUSPENSION OF CLAIMS AGAINST A DISTRESSED CORPORATION UNDER CORPORATE REHABILITATION

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ABSTRACT

The case of BPI vs CA (229 SCRA 223) is contrary to the case of RCBC vs IAC (320 SCRA 279). It caused a conflicting jurisprudence as to when suspension of claims commenced. The application of automatic stay, which suspends all claims against distressed corporation upon the filing the petition, offers a workable solution for the preservation of an enterprise while allowing its ownership to be restructured and its creditors treated fairly. The study employed the method of data gathering procedure and data analysis to illustrate the conflicting jurisprudence decided by the Supreme Court. The study aims to clear and mend the laws with respect to corporate rehabilitation. The case of BPI vs CA (229 SCRA 223) prohibits the foreclosure proceedings upon the filing of the petition for corporate rehabilitation; whereas in the case of RCBC vs IAC (320 SCRA 274), the Supreme Court held that suspension of claims (foreclosure) is suspended only upon appointment of management committee. The automatic stay provides a feasible and viable corporate rehabilitation. The automatic stay provides an adequate protection on the distressed corporation and prevents unwarranted claims or actions of other creditors.

INTRODUCTION

When most companies suffer financial distress, it affects the public interest. Stockholders want to avoid dilution of ownership. Workers would like to maintain workforce levels. Creditors want their loan be paid or repaid. In these situations, laws on corporate rehabilitation provide an acceptable remedy for corporation's financial difficulty.

The Philippines, as it adheres to civil law, has not made an effort to enact a law compulsive enough to allow reasonable, meaningful and adequate relief when it came to corporate financial distress.ⁱ

The Asian financial crisis has passed since 1997-1999, but crisis still persist.ⁱⁱ This frustrates the State to cure it. It is very timely to discuss some interesting issue that accompanies the process towards corporate rehabilitation.ⁱⁱⁱ

Although the laws on corporate rehabilitation provide remedial measures about distressed corporation, nevertheless the Supreme Court fails to give a clear interpretation of law on when suspension of claims be commenced.

In the case of **Bank of the Phil Islands (BPI) vs CA^{iv}**, the Supreme Court ruled that “whenever a distressed corporation asks SEC (RTC) for rehabilitation and suspension of payments, preferred creditors may no longer assert such preference but shall stand on equal footing with other creditors. Foreclosure shall be disallowed so as not to prejudice other creditors or cause discrimination among them. If foreclosure is undertaken despite the fact that a petition for rehabilitation has been filed, the certificate of sale shall not be delivered pending rehabilitation”. Contrary to the case of **Rizal Commercial Banking Corporation (RCBC) vs IAC^v**, the Supreme Court ruled that “suspension of claims against a corporation under rehabilitation is counted and figured only upon the appointment of a management committee or a rehabilitation receiver”. In the said cases, it is clear that there are two distinct theories of interpretation of law on corporate rehabilitation, which necessarily be settled or resolved.

Given the contrary jurisprudence, it is worth to study and analyze the cases-mentioned to make a resolution to it. It is prompted that the focus of the study is to determine which decision of the Supreme Court is more reasonable to provide adequate solution to the existing problem. Until now, it is still plaguing the courts when should suspension of enforcement of

claims starts.^{vi} The Philippine jurisprudence needs to modernize and clarify its rules for rehabilitation.

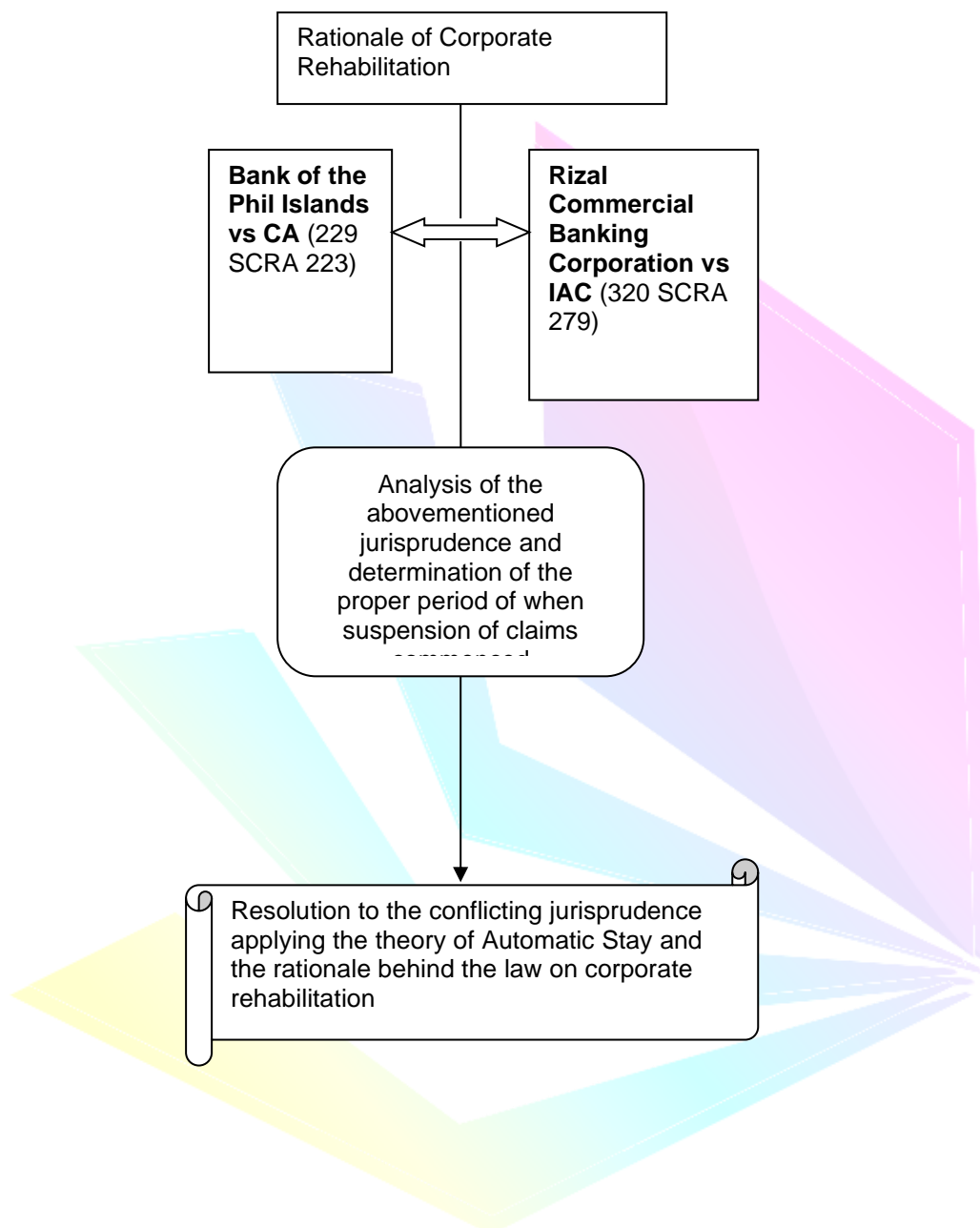
Usual problem arises when collection remedies generally reward the creditor(s) who act first in proceeding against debtor's assets, and not promoting equal or equitable treatment when the debtor's assets are insufficient to pay all creditor(s) claims.

It is time, therefore, that when it came to corporate financial distress, there must be a resolution to provide adequate relief to financially distressed corporation, especially now that the economic condition of the country is unstable. The application of Automatic Stay, which suspends all claims against distressed company upon filing the petition, offers workable solution for the preservation of an enterprise while allowing its ownership to be restructured and its creditors treated fairly.

THEORETICAL FRAMEWORK

The parameters of the research problem will discuss the reason behind the law on corporate rehabilitation. It will present the conflicting cases of BPI vs CA^{vii} and RCBC vs IAC^{viii}. After the presentation of contrary ruling, there will be an analysis of such jurisprudence conveying its different factual situations. Determination of the proper period on when suspension of claims will be discussed. At the conclusion, the study will resolve the conflicting jurisprudence upholding the liberal interpretation of laws on corporate recovery. The application of automatic stay will be discussed to justify a reasonable resolution to the problem.

To illustrate the application of the theory, Figure 1 is presented.

*Paradigm of the Study***Figure 1****STATEMENT OF THE PROBLEM**

The study intends to resolve the existing jurisprudence regarding the suspension of claims against a distressed corporation. The specific problems to be answered are the following:

1. What is the rationale of the law on corporate recovery?

2. How does the case of Bank of the Phil Islands vs CA (229 SCRA 223) differ from Rizal Commercial Banking Corporation vs IAC (320 SCRA 279) in terms of application of Sec. 6 (c) of PD 902-A on the issue of the commencement of suspension of claims?
3. When should the proper claims be suspended?
4. How automatic stay principle applies in the conflicting jurisprudence?
5. What are the implications of the adoption of the automatic stay principle in suspension of payment?

ASSUMPTIONS OF THE STUDY

In the course of the study, it is expected to prove that the suspension of claims commenced *upon the filing of the petition for corporate rehabilitation*. This proposition is known as “automatic stay” under the US Bankruptcy Code. This provides adequate protection both on part of the creditor(s) and the debtor (distressed corporation).^{ix}

The automatic stay protects creditors, since it prevents some creditors from grabbing all the debtor’s assets while other creditors receive nothing.^x As between the creditors, the key phase is equality in equity.^{xi}

The study focuses on the most important issue to be settled as to when suspension of claims begin. Given the diversity of interpretation of law, this study is necessary to achieve a viable corporate rehabilitation. On the issue of suspension of claims, the cases of *Alemar’s Sibal & Sons vs Elbinias*^{xii}, *BF Homes, Inc vs Court of Appeals*^{xiii}, *Ruby Industrial Corporation vs. Court of Appeals*^{xiv}, *RCBC vs. Court of Appeals*^{xv} and *Bank of the Philippine Islands vs Court of Appeals*^{xvi} will be the legal basis to justify the solution on the conflicting jurisprudence. These cases provide more feasible and viable rehabilitation, invoking more the liberal application of law on corporate rehabilitation. It provides more feasible and viable rehabilitation since it contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency.^{xvii}

The study assumes that a corporation threatened by insolvency will better maintain its solvency towards a feasible and viable rehabilitation; and shall put all creditors (secured or

unsecured) stand on equal footing with other creditors. The Supreme Court underscored the rationale behind the law on corporate recovery – which is to effect a feasible and viable rehabilitation of the distressed company.^{xviii} The Supreme Court observed that this cannot be done if one creditor is preferred over the others.^{xix}

SCOPE, DELIMITATION AND LIMITATION OF THE STUDY

The coverage of the study is generally focused on the matters of the corporate rehabilitation from the time of filing of the petition until the appointment of the corporate receiver (FOCUS ON THE CONFLICTING JURISPRUDENCE AS LIMITATION OF THE STUDY). Conflicting jurisprudence is presented to properly determine a reasonable solution to the problem as to when suspension of claims begins.

The study is limited to justify the application of automatic stay upon a distressed corporation upon the filing of corporate rehabilitation. The wisdom behind the automatic stay will present on how to resolve the existing conflicting jurisprudence. This study will be discussed in the Chapter IV.

SIGNIFICANCE OF THE STUDY

In general, the study intends to encourage a juridical debtor and its creditor to resolve competing claims and property rights under supervision of court when the debtor can no longer pay its debts as they came due or when the debtor has become insolvent.^{xx}

The study is an attempt to familiarize the law students, lawyers or law practitioners, judges (those designated by the Supreme Court to hear corporate rehabilitation case^{xxi} (see Appendix “E”), and as well as to any corporate entity with respect to the corporate management, creditor(s) and investing public. In corporate rehabilitation court, businesses of all sizes are rehabilitated, oftentimes affecting the livelihoods of many employees, suppliers and consumers and even the economies of local communities.

Legislators or the rule-making body should be aware of the conflicting jurisprudence so that appropriate legislation be enacted, especially now that the economic condition of the country is shaky.^{xxii}

The conduct of the study is important on the part of the lawyers, judges and other legal practitioners, especially those employed in corporate practice. It is beneficial because they will become aware of the cases affecting corporate rehabilitation; and the fact that the study tried to simplify the rules of corporate recovery with the use of legal textual discussion.

For law students, this will serve as a clear guide in terms of attaining sensible corporate rehabilitation, and a matter of necessity since it provides a conduct of procedure on corporate recovery, which has been asked in Bar Examination on Mercantile Law.

On the part of the corporate management, the study will exemplify legal and business situation on matters of corporate recovery. The proceeding is intended for debtors, particularly business, whose financial problems may be solvable if they are given some time and guidance and if they are relieved of some pressure from creditors.^{xxiii} The creditor and the investing public will likewise be benefited since the law is designed to protect all of the creditors against actions of debtor's assets that would unreasonably diminish the debtor's assets to which they are entitled and has the legal effect that creditors (secured or unsecured) ought to stand on equal footing.

The result of the study will add up to the repository of information of the College of Law Library of the University of Batangas. It will have practical use on the part of its future students particularly when it comes to the issue of corporate rehabilitation.

DEFINITION OF TERMS

The following terms are the used in the study. Most of them are excerpt from Title 11 of Chapter 1 (General Provisions) of US Bankruptcy Code, as amended by Bankruptcy Reform Act of 1994; and under the definitions of terms stated in the Interim Rules of Corporate Recovery dated November 21, 2000 (A.M. 00-8-10 SC).

Automatic Stay. It arises immediately upon filing of a petition under laws on corporate recovery/rehabilitation. It generally bars all debts collection efforts against the debtor or property although subject to exemption as may provided by the law.^{xxiv} The court need not sign any order to give rise the stay; the mere filing of the petition with supporting documentation with the clerk is sufficient.^{xxv} It is ended upon dismissal of the petition or termination of the proceedings on corporate rehabilitation.

Board of Directors. It shall include the executive committee or management of a partnership or association.^{xxvi}

Claims. It means – (a) right to payment, whether or not such right is reduced to judgment, liquidated or not, fixed or contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured;^{xxvii} (b) right to equitable remedy for breach of performance if such breach gives rise to the payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured;^{xxviii} (c) It shall include all claims or demands of whatever nature or character against the debtor or its property, whether for money or otherwise.^{xxix}

Corporation. It includes – (a) association having power or privilege that of a private corporation possesses, but not an individual person; (b) partnership association organized under a law that makes only the capital subscribed responsible for the debts of such association; (c) joint stock company; (d) unincorporated company or association; or (e) business trust.^{xxx}

Corporate Rehabilitation. It is also known as corporate recovery under the Insolvency Law or Bankruptcy Code. It is an attempt to conserve assets of insolvent corporation in hope of its eventual return from financial stress to solvency.^{xxxi} It contemplates continuance of corporate life and activities, and its effort to restore and reinstate corporation to former condition of successful operation and solvency.^{xxxii}

Creditor. It shall mean – (a) any holder of claim;^{xxxiii} (b) entity that has claim against debtor that arose at the time of or before order for relief concerning the debtor;^{xxxiv} (c) entity that has a community claim.^{xxxv}

Debt. It means liability on a claim.^{xxxvi}

Debtor. It shall mean any corporation, partnership or association whether supervised or regulated by the Securities and Exchange Commission or other government agencies on whose behalf a petition for rehabilitation has been filed under these Rules (Interim Rules Procedure of Corporate Rehabilitation).^{xxxvii} An entity is deemed a debtor who foresees the impossibility of meeting its debts when they fall due and file petition to the proper Regional Trial Court to be placed under rehabilitation.^{xxxviii}

Distressed corporation. It means a corporation suffering from financial instability whether declared by court as insolvent or technically insolvent corporation.

Insolvent. It refers to a corporation or partnership whose financial condition such that the sum of such entity's debts is greater than all of such entity's property, at a fair valuation, exclusive of property transferred, concealed or removed with intent to hinder, delay or defraud such entity's creditors.^{xxxix} If it established that the inability of the petitioner to pay, although temporary, will last for a period longer than one (1) year from the time of filing of the petition, the petitioner is deemed technically insolvent.^{xi}

Lien. It means a charge against or interest in property to secure payment of a debt or performance of an obligation. It includes judicial lien as obtained by judgment, levy, and sequestration or other legal or equitable process or proceeding.^{xli}

Ordinary course of business. It is the transaction of business according to the common usages and customs of the commercial world generally or of the particular community or (in some cases) of the particular individual whose acts are under consideration. In general, any matter which transpires as a matter of normal and incidental daily customs and practices of business.^{xlii}

Party-in-interest. All actions filed under corporate rehabilitation proceedings which is prosecuted or defended in the name of the debtor in whose behalf or for whose behalf the petition is filed.^{xliii}

Proceedings. It shall refer to judicial proceedings commenced by the Court's acceptance of a petition filed under corporate recovery/rehabilitation.

Receiver. An officer appointed by the court of equity to take or collect property and hold it awaiting orders for its disposition from the court.^{xliv} The property is then "in *custodia legis*" and interference with constitutes a contempt of court.^{xlv} A representative of the court appointed for the purpose of preserving or conserving the property in litigation and prevent its possible destruction or dissipation, if were left in possession of any parties.^{xlvi}

Receivership. It has its purpose of preserving the property during the pendency of the corporate rehabilitation, or to dispose of it according to the judgment or court when it is finally rendered or otherwise to carry the judgment into effect.^{xlvii}

Regular course of business. It means in the inherent nature of the business in question, and in the method systematically employed for the conduct of the business as a business.^{xlviii} A good-faith-purchase protection to normal and usual mercantile dealings in the trade.^{xlix}

Technically insolvent. A debtor (petitioner) corporation who established that inability to pay, although temporary, will last for a period longer than one (1) year from the filing of the petition.¹

Transfer. It means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention title as a security interest and foreclosure of the debtor's equity of redemption.^{li}

REVIEW OF THE RELATED LITERATURE AND STUDIES

A. Historical Background of law relating to Corporate Rehabilitation.

Law on corporate recovery has its roots in the law of Roman Empire and has been part of English jurisprudence.^{lii} The first bankruptcy act of England was adopted in 1542 and initially applied to traders or merchants who were unable to pay their debts.^{liii} The US Congress, under the power granted to it by the Constitution^{liv}, enacted the Bankruptcy Act in 1898, amended by Chandler Act of 1938, and subsequently improved by Bankruptcy Reform Act of 1978 (Bankruptcy Code).^{lv}

In the Philippines, the legislative history of the Act No. 1956, known as The Insolvency Law, as amended, was enacted since May 20, 1904.^{lvi} Insolvency and bankruptcy on matters of corporate rehabilitation are synonymous terms and used interchangeably.^{lvii} The Philippine Insolvency Law is essentially a bankruptcy law because it discharges the honest debtor.^{lviii} History of the part of Act No. 1965 clearly shows that the Legislature intended to establish the essential features of the American system,^{lix} as illustrated in the following case:

Mitsui Bussan Kaisha vs Hongkong Shanghai Bank

No. 11079, January 12, 1917 (36 Phil. 27)

Plaintiff (Mitsui Bussan Kaisha) and Coal Supply Company, by Chua Pue Tee and Ramon Basa, entered into contract by which the former agreed to deliver to the latter 8,000 tons of coal, payment to be made by document draft at International Bank of Manila. Chua Pue Tee pledged 3,000 tons of coal of Coal Supply Company to Hongkong Shanghai Bank (HSB) for P30,000. HSB acted in good faith when it turned over to Chua Pue Tee the amount of P30,000.,

and knew nothing about the insolvency of Chua Tee. HSB discovered that Chua Pue Tee was insolvent. HSB secured a real pledge and took physical possession of the coal. The intervenor, elected as assignee, contended that instrument has no legal value and void under Act 1956.

Held. The legislative history of that part of Act No. 1965, which deals with voluntary, involuntary and involuntary insolvency, clearly shows that the Legislature intended to establish the essential features of the American system. We may therefore look to the decision of the United States Court for guidance. Section 70 of Act No. 1965 as adopted in the US Bankruptcy Code provides for limitation upon the general right of a debtor to prefer certain creditors by means of pledges, mortgages, etc. and declares void enumerated acts of the insolvent or one in contemplation of insolvency, which have for their view the giving of a preference to creditor. In view of the foregoing principle, We (Supreme Court) of opinion that the exercise of right on the part of the bank to take possession of the coal within 30 days did not constitute illegal preference because it was taken pursuant to valid agreement to pledge for which present consideration had moved to the insolvent, thus, related back to such agreement, the bank is entitled to the money.

Historically, the Insolvency Laws was not covered with benefiting the debtor (insolvent/financially distressed corporation) as it was now benefiting the debtor's creditors.^{lx} In its origin, the law was designed to compel fraudulent debtors to bring their property into court and to pay it to their creditors, thus preventing them from concealing their property or from paying them it to some of their creditors.^{lxi} Today, a law on bankruptcy or corporate reorganization is concerned with benefiting both debtor and creditor, as can be seen from the fact that debtor may initiate a case in bankruptcy or creditor.^{lxii}

B. Corporate rehabilitation under US Code, Title 11 (Bankruptcy Code), as amended by Bankruptcy Reform Act of 1994.

Corporate rehabilitation or business reorganization is essentially a process of negotiation in which the debtor firm and its creditors develop a plan for the adjustment and discharge of debts.^{lxiii} The plan may provide for change of management and even for the liquidation of the firm.^{lxiv} However, continuation of the business is the usual goal.^{lxv} The basic concept underlying bankruptcy is to allow a debtor who is in difficult financial situation a fresh

financial start.^{lxxvi} In other words, the bankruptcy permits delivering debtor the opportunity to come out from under overwhelming financial burdens and to begin life anew.^{lxxvii} Filing for bankruptcy is no longer socially unacceptable or admission of failure, rather it provides an acceptable solution for debtor's financial difficulty.^{lxxviii}

The US Bankruptcy Act has two fundamental purposes: (1) to relieve honest debtor from overburden financial obligations and give a fresh start; and (2) to provide for equitable treatment of creditors who are competing for the debtor's limited assets.^{lxxix}

B.1. Commencement of the Petition

A petition commencing a case under the US Bankruptcy Code shall be filed with the clerk.^{lxxx} The case shall be filed in a federal court where the law provides for the creation in each judicial district of bankruptcy court, a unit of the district court staffed by bankruptcy judges.^{lxxxi} Petition for rehabilitation may be filed either voluntary or involuntary.

Once petition for reorganization proceedings is filed and relief is ordered, the court usually appoints (1) committee of creditors holding unsecured claims, (2) a committee of equity security holders (shareholders), and the trustee.^{lxxxii}

B.2. Adequate Protection under Automatic Stay

After the filing of the bankruptcy petition, the debtor needs protection from filing the collection efforts of creditor.^{lxxxiii} The filing of the bankruptcy petition operates as an *automatic stay* (holds in abeyance) various forms of creditor action against a debtor or his property.^{lxxxiv} Initially, the automatic stay prevents the creditor from collecting the secured debt or from repossessing and selling its collateral.^{lxxxv} Bankruptcy law requires that the debtor in such a case provide the secured party with "adequate protection" of its interest in the collateral while enforcement efforts are prevented by the automatic stay.^{lxxxvi}

Automatic stay is applicable to all entities of – (1) the commencement or continuation, including the issuance of employment process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case, or to recover a claim against the debtor that arose before the commencement of the case;^{lxxxvii} (2) the enforcement, against the debtor or against the property of the estate, of a judgment obtained before the commencement of the case;^{lxxxviii} (3) any act to obtain possession of the property, create, perfect, or enforce any lien against the property of

the corporation;^{lxxix} (3) the setoff of any debt owing to the debtor that arose before the commencement of the case against any claim the debtor.^{lxxx}

The rationale behind the automatic stay was enunciated in US Congress saying “the automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors... The automatic stay provides creditor protection. Without it, certain creditors would be able to pursue their own remedies against the debtor’s property”.^{lxxxi} Despite the potential harm to creditors, the stay automatically becomes applicable immediate upon the bankruptcy petition being filed, as occurred in the following case:

United Northwest Federal Credit vs. Arens

664 P.2nd 811 (Kan. 1983)

On September 8, 1980, appellants, Arens filed for a voluntary petition in bankruptcy seeking relief under Bankruptcy Code. On September 9, 1980, appellee, United Northwest Federal Credit, filed a petition for recovery of money advanced to Arens pursuant to its open-ended loan agreement to purchase a mobile home. The trial court granted the appellee default judgment.

Held: Judgment in favor of the appellants. 11 USC> 362(a) provides for an automatic stay of all proceedings against the debtor once the bankruptcy petition is filed..... The US House Report (H.R. Rep. No. 595, 95 Cong. 1st Sess. 340 G977) on section 362 offers insight into purpose behind the stay: *The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment or reorganization plan, or simply to be realized of the financial pressures that drove him into bankruptcy. The automatic stay provides creditor protection. Without it, certain creditors would be able to pursue their own remedies against the debtor’s property. Those acted first would obtain payment of the claims in preference to and to the detriment of other creditors.* The automatic stay is in force from the moment the bankruptcy petition is filed. The fact a creditor has not received notice of the filing is irrelevant. Formal service is not required to effectuate stay. Thus, the filing of foreclosure on September 9, 1980 was in violation of the automatic stay.

The automatic stay is designed to protect both debtor and creditor.^{lxxxii} The stay provides the debtor time and freedom from financial pressures to attempt repayment or to develop a plan of reorganization.^{lxxxiii} Creditors are protected by the stay since it forces them to comply with the orderly administration of the debtor's estate.^{lxxxiv} In other words, the stay prevents some creditors from grabbing all the debtor's assets while other creditors receive nothing.^{lxxxv} It allows an orderly trial of claims.^{lxxxvi} In the case of Newkirk, the US Court held that attorney's acceptance of post-dated checks for services in filing of bankruptcy proceedings puts the attorney in the position of a creditor, thus creating a conflict of interest. Further, cashing of checks post-petition is a violation of the automatic stay.^{lxxxvii}

B.3. Exemptions from Automatic Stay

Despite the advantages of staying all proceedings against the debtor who files a bankruptcy petition, there are exceptions to the application of the automatic stay.^{lxxxviii} These exceptions apply to proceedings that are not directly related to the debtor's financial situation.^{lxxxix} Filing of the petition under Bankruptcy Code does not operate as a stay, includes – (1) the commencement or continuation of action by the government unit to enforce police or regulatory power;^{xc} (2) the setoff by commodity broker, forward contract merchant, stockbroker, financial institutions, or security clearing agency of any mutual debt and claim under or in connection with commodity contract;^{xc1} (3) audit by the government unit of tax liability, including issuance of tax deficiency, demand for tax returns or making assessment and demand for payment of such an assessment.^{xcii}

The creditor is not entitled to interim interest payment designed to prevent growth of a claim from eroding an "equity cushion".^{xciii} However, adequate protection is appropriate when the value of the collateral itself is declining and thereby reducing the value of a creditor's secured claim.^{xciv} Also in the case of North American Shelter Associates, the US court granted the relief from stay filed by the creditor despite filing of foreclosure action. The Court found that the mobile home park had a value of \$1.15 million, that the debtor had not equity in the property, that the property was declining in value, that the income generated from the property was insufficient to provide adequate protection to the secured creditor, and that the debtor had no reasonable prospect for a successful reorganization.^{xcv}

Upon the request of a party in interest, the court, with or without a hearing, shall grant such relief from the stay provided that is necessary to prevent irreparable damage to the interest

of an entity in property, if such interest will suffer such damage before there is an opportunity for notice and a hearing.^{xcvi} In any hearing concerning relief from automatic stay, the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and the party opposing such relief has the burden of proof on all other issues.^{xcvii}

C. Corporate rehabilitation under Philippine laws, rules and regulations.

While the United States adheres to that system of law known as common law, the Philippine, on the other hand, prides itself as civilian law adherent.^{xcviii} With respect to corporate rehabilitation, the Philippine in its jurisdiction provide two substantive laws containing provisions on corporate rehabilitation.^{xcix} First is Act 1956 (Insolvency Law) as amended which took effect in 1909 and the second is PD 902-A^c (SEC Reorganization Act) as amended by Presidential Decrees No. 1653, 1758^{ci} and 1799^{cii} which took effect in 1976 and reorganized the SEC and conferred upon it certain additional powers among which was the exclusive jurisdiction over corporate rehabilitation and suspension of payments.^{ciii} However, Republic Act No. 8799 (Securities Regulation Code) repealed the jurisdictional power of SEC over corporate rehabilitation. Jurisdiction of SEC over all cases enumerated under Sec. 5 of PD 902-A has been transferred to court of general jurisdiction and designated Regional Trial Court;

RA No. 8799 (5.2). The commission 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 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.

Pursuant to the aforementioned provisions, the Securities and Exchange Commission Securities Investigation and Clearing Department (SICD) issued guidelines on the disposition of cases before SICD and the Commission *En Banc* prior to the transfer to the SEC's jurisdiction to appropriate Regional Trial Court (RTC).^{civ} Under such guidelines, it provides under Section 4 that “the Commission shall retain jurisdiction over pending suspension of payment or rehabilitation cases filed on or before June 30, 2000 until finally disposed of or until the termination of the liquidation proceedings.”

To implement the provision of Sec. 5.2 of Republic Act No. 8799 (The Securities Regulation Code), and in the interest of a speedy and efficient administration of justice, the Supreme Court in *En Banc* Resolution designated certain branches of Regional Trial Court to try and decide cases formerly cognizable by the Securities and Exchange Commission *En Banc*.^{cv} In Batangas City, the designated rehabilitation court is Branch II under Judge Mario V. Lopez (Appendix “E”).

Likewise, the Supreme Court in its *En Banc* Resolution made a clarification on the legal fees to be collected and the applicable period of appeal in cases formerly cognizable by the Securities and Exchange Commission.^{cvi} In such resolution, it provides that a petition for rehabilitation, the procedure for which is provided in the Interim Rules of Procedure on Corporate Recovery, should be considered as special proceedings.^{cvi} It is one that seeks to establish the status of a party or a particular fact. As provided in section 1, Rule 4 of the Interim Rules on Corporate Recovery, the status or fact sought to be established is the inability of the corporate debtor to pay its debts when they fall due so that a rehabilitation plan, containing the formula for the successful recovery of the corporation, may be approved in the end. It does not seek a relief from an injury caused by another party.

With respect to Insurance companies, Title XV of PD No. 612, as amended by PD No. 1455 or the Insurance Code's Insolvency Proceedings, it mandates the Office of the Insurance Commission to handle distressed insurance companies with regard to their reorganization/rehabilitation. And as regards bank rehabilitation, RA No. 7653 or the New Central Bank Act which created a central monetary authority called the *Bangko Sentral ng Pilipinas* (BSP) and which vested its Monetary Board with the power to regulate and supervise financial institutions and designated the Philippine Deposit Insurance Company to act as receiver and regulator of trouble banks referred to it by the BSP.

C.1. Differences between Suspension of Payments Proceedings under Insolvency Law (Act No. 1956) and under PD 902-A.

Act No. 1956 (Insolvency Law) and PD 902-A (SEC Reorganization Act), insofar as petition for suspension of payment/corporate rehabilitation are concerned, govern the same subject matter. It is pertinent to ask whether PD 902-A, being subsequent law, superseded Act No 1956, or it was merely intended to compliment earlier law.^{cviii}

Under Insolvency law, the critical issue is how the creditors are to be paid from the assets of the distressed corporation. The consent of creditors is viewed as necessary to the plan of payment.^{cix} However in case of suspension of payments under PD 902-A, where the distressed corporation seeks the approval of a rehabilitation plan, suspension is allowed not as an end itself but simply as a means to enable the company to focus all its energies and muster all its recoveries with the end in view of allowing the company to continue operating as a going concern without being unnecessarily hampered by creditor's suit.^{cx} In this case, the approval of rehabilitation rest on the sole discretion of the Commission (RTC), this may be guided by the advice of the management committee on whether rehabilitation is feasible option of the company.^{cxii}

Three types of actions are available under the Insolvency Law and these are: (1) suspension of payment where the debtor possesses sufficient property to cover all his debts; (2) voluntary insolvency; and (3) involuntary insolvency, whereas under PD 902-A, a corporate debtor may file a petition for suspension of payments with a request for the appointment of a management committee or rehabilitation receiver where the corporation has no sufficient liquid assets to cover its liabilities.^{cxiii}

Under Insolvency law, in the absence of any agreement among corporate creditors, the suspension of payments would expire after three (3) months, whereas under PD 902-A, the suspension of payments has no time limit and would prevail for so long as the corporate debtor is under a management committee/rehabilitation receiver and there is no directive to have its assets liquidated.^{cxiiii}

The effectiveness of final agreement on the manner of payment of the obligations of the corporate debtor is subject to the qualifying majority votes required under the Insolvency Law; whereas, under PD 902-A, the management committee or the rehabilitation receiver is

granted sufficient powers to take such measures as are necessary to bring back to financial health the distressed company without need to obtain approval of the corporate creditors.^{cxiv}

Under insolvency law, the suspensive effect of the order issued pursuant to the petition for suspension of payment does not cover secured creditors, while the suspensive effect under PD 902-A upon appointment of the management committee or rehabilitation receiver, would cover all corporate creditors, both secured and unsecured.^{cxv}

The following insolvency procedures under Insolvency law may be commenced by: (1) for Suspension of Payments: by the debtor (Sec. 2, Insolvency Law); (2) for Voluntary Insolvency: by the debtor (Sec. 14, Ibid.); (3) for Involuntary Insolvency - by three or more creditors, residents of the Philippine, whose credits or demands accrued in the Philippine, and the amount of which credits or demands are in the aggregate not less than one thousand pesos: provided, that none of said creditors has become a creditor by assignment, however made, within thirty (30) days prior to the filing of the petition. (Sec. 20, Ibid.).], whereas under PD No. 902-A, as amended, for Suspension of Payments (without sufficient assets) accompanied by a prayer for the creation/appointment of a management committee and/or rehabilitation receiver - debtor, creditors, shareholders (Sec. 6, PD 902-A). The SEC may, however, *motu proprio* undertake the management of corporations not supervised or regulated by other government agencies in appropriate cases where there is imminent danger of dissipation, loss, wastage or destruction of assets or other properties of paralization of business operation of such corporations which may be prejudicial to the interest of minority stockholders, parties-litigants or the general public (*supra*).^{cxvi}

C.2. Business Rehabilitation

Corporate “rehabilitation” contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency.^{cxvii} It is a process to try to conserve and administer the corporation’s assets in the hope that it may eventually be able to return from financial stress to solvency.^{cxviii} It contemplates of the continuation of corporate life and activities so that it may able to return to its former condition of successful operations and financial stability.^{cxix}

Unlike liquidation, this connotes a winding up or settling the affairs of the corporation, disposing of and conveying its property and to distribute its assets, but not for the purpose of

continuing the business for which it was established.^{cxx} On the opposite end of the spectrum of corporate liquidation is rehabilitation which connotes a reopening or reorganization.^{cxxi}

Philippine Veterans Bank Employees Union vs. Hon. Benjamin Vega

G.R. No. 105364, 28 June 2001

Held: Liquidation, in corporation law, connotes a winding up or settling with creditors and debtor. It is the winding up of a corporation so that assets are distributed to those entitled to receive them. It is the process of reducing assets to cash, discharging liabilities and dividing surplus or loss. On the opposite end of the spectrum is rehabilitation, which connotes a reopening or reorganization. Rehabilitation contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency. It is crystal clear that the concept of liquidation is diametrically opposed or contrary to the concept of rehabilitation, such that both cannot be undertaken at the same time. To allow the liquidation proceedings to continue would seriously hinder the rehabilitation of the subject bank.

The law on corporate rehabilitation, which formerly Securities and Exchange Commission (SEC) has jurisdiction came in not as a statute specifically enacted for purposes of corporate recovery, but merely as a power granted to the Commission (RTC), as enunciated under PD No. 902-A.^{cxxii} Designated Regional Trial Court has jurisdiction over petition for rehabilitation filed by corporation under PD No. 902-A, and over cases for rehabilitation transferred from the SEC.^{cxxiii} In order to successfully exercise its transferred jurisdiction, the RTC shall possess the following powers as found in Section 6(c) of PD 902-A, as amended by PD Nos. 1758 and 1799:

Section 6(c) PD No. 902-A (PD 1799). To appoint one or more receivers of the property, real or personal, which is the subject of the action pending before the Commission (RTC) in accordance with the pertinent provisions of the Rules of Court in such other cases whenever necessary in order to preserve the rights of the parties-litigants and/or protect the interest of the investing public and creditors; Provided, however, that the

Commission may, in appropriate cases, appoint a rehabilitation receiver of corporations, partnerships or other associations not supervised or regulated by other associations not supervised by other government agencies who shall have, in addition to the powers of a regular receiver under the provisions of the Rules of Court, such functions and powers as are provided for in the succeeding paragraph (d) hereof: Provided, further, That the Commission (RTC) may appoint a rehabilitation receiver of corporations, partnership or other associations, supervised or regulated by other government agencies, such as banks and insurance companies, upon the request of the government agency concerned: Provided, finally, That upon appointment of a management committee, rehabilitation receiver, board or body, pursuant to this Decree, all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body shall be suspended accordingly.

Section 6(d) PD No. 902-A (PD 1799). To create and appoint a management committee, or body upon petition or *motu proprio* to undertake the management of corporations, partnership or other associations not supervised or regulated by other government agencies in appropriate cases where there is imminent danger of dissipation, loss, wastage or destruction of assets or other properties or paralization of business operations of such corporations or entities which may be prejudicial to the interest of minority stockholders, parties-litigants or the general public: Provided, further, That the Commission (RTC) may create or appoint a management committee, board, or body to undertake the management of the corporations, partnerships or other associations supervised or regulated by other government

agencies, such as banks and insurance companies, upon request of the government agency concerned.

The management committee or rehabilitation receiver, board or body shall have the power to take custody of, and control over, all the existing assets and property of such entities under management; to evaluate the existing assets and liabilities, earnings and operations of such corporations, partnership or other associations; to determine the best way to salvage and protect the interest of investors and creditors; to study, review and evaluate the feasibility of continuing operations and restructure and rehabilitate such entities if determined to be feasible by the Commission (RTC). It shall report and be responsible to the Commission (RTC) until dissolved by order of the Commission (RTC): Provided, however, That the Commission (RTC) may, on the basis of the findings and recommendation of the management committee, or rehabilitation receiver, board or body, or its own findings, determine that the continuance in business of such corporation or entity would not be feasible or profitable nor work to the best interest of the stockholders, parties-litigants, creditors, or the general public, order the dissolution of such corporation or entity and its remaining assets liquidated accordingly. The management committee or rehabilitation receiver, board or body may overrule or revoke the actions of the previous management and board of directors of the entity or entities under management notwithstanding any provision of law, articles of incorporation or by-laws to the contrary.

The management committee, or rehabilitation receiver, board or body shall not be subject to any action, claim or demand for, or in connection with, any act done or omitted to be done in good faith in the exercise of its functions, or in connection with the exercise of its power herein conferred.

The nature of the proceedings initiated under corporate rehabilitation shall be considered in rem.^{cxxiv} Jurisdiction over all those affected by the proceedings shall be considered as acquired upon publication of the notice of the commencement of the proceedings in any newspaper of general circulation in the Philippines.^{cxxv} The proceedings shall also be summary and non-adversarial in nature.^{cxxvi} The following pleadings are prohibited: (a) motion to dismiss; (b) motion for bill of particulars; (c) motion for new trial or for reconsideration; (d) petition for relief; (e) motion for extension; (f) memorandum; (g) motion for postponement; (h) reply or rejoinder; (i) third party complaint; and (j) intervention.^{cxxvii} Permissive intervention on the motion and for a good cause shown, the Commission (RTC) may permit any interested party to intervene generally or with respect to any specified matter.^{cxxviii}

The order issued by the court is immediately executory.^{cxxix} A petition for review or an appeal therefrom shall not stay the execution of the order unless restrained or enjoined by the appellate court.^{cxxx} The relief issued by the trial or appellate court shall take into account the need for resolution or proceedings in a just, equitable, and speedy manner.^{cxxxi}

The statutory construction shall be liberally construed to carry out the objectives of Sections 5(d), 6(c) and 6(d) of PD No. 902-A, as amended, and to assist the parties in obtaining a just, expeditious, and inexpensive determination of cases.^{cxxxii} Where, applicable, the Rules of Court shall apply suppletorily to corporate rehabilitation proceedings.^{cxxxiii}

C.3. Commencement of the Petition

A debtor which is insolvent because its assets are not sufficient to cover its liabilities, or which is technically insolvent, but which may still be rescued or revived through the institution of some changes in its management, organization, policies, strategies, operations, or finances, may petition the Commission (RTC) to be placed under rehabilitation.^{cxxxiv} It includes a debtor who foresees the impossibility of meeting its debts when they respectively fall due, or any creditor or creditors holding at least twenty-five percent (25%) of the debtor's total liabilities, may petition the proper Regional Trial Court to have the debtor placed under rehabilitation.^{cxxxv}

The general rule is that the filing of a petition for insolvency, voluntary involuntary suspends all civil proceedings against the insolvent.^{cxxxvi} The purpose of such rule is to place the insolvent debtor and all his liabilities completely within the jurisdiction and control of the

court in insolvency, and not to permit the intervention of any other court,^{cxxxvii} as illustrated in the following case:

De Amuzategui vs. MaCleod

No. 10629, December 24, 1915, (33 Phil 80)

Uy Yan filed petition for insolvency. He was declared a bankrupt; and after the usual proceedings, John T. MaCleod was appointed as assignee. In the course of proceedings, Jose M. de Amuzategui had claim against the insolvent debtor in the amount of P2,000. Jose M. de Amuzategui filed a petition in insolvency court praying that his claim be declared preferred and he paid such amount resulting from collection of a policy of insurance. The insolvency court found that the claim was not preferred. However, Jose M. de Amuzategui filed before the City of Manila for collection against Uy Yan. The latter court denied the action on the ground that Jose M. de Amuzategui should gone to insolvency court to obtain his relief.

Held: Courts in insolvency obtain full and complete jurisdiction over all property of the insolvent upon the filing the petition for insolvency and of all claims by and against him with full authority to suspend, on the application of the debtor, creditor, or assignee, any action or proceedings then pending in any court for proper determination of the court of insolvency on the question of the bankrupt's discharge. We believe it to be the policy of the Insolvency Law to place the insolvent debtor and all his assets and liabilities completely within the jurisdiction and control of the court in insolvency and not to permit intervention of any other court in the bankrupt's concerns or in the administration of his estate.

The contents of 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.^{cxxxviii}

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) any 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 assets, and attaching the corresponding certificate of title therefore in case of real property, or the evidence of title or ownership in case of movable encumbrances, liens, or claims thereon, if any, and the identities and addresses of the lien holders and claimants. The inventory shall include a Schedule of Accounts Receivable which must indicate the amount of each, the persons from which due, the date of maturity, and the degree of collectibility categorizing them as highly collectible to remotely collectible; (e) a rehabilitation plan; (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) statement of possible claims by or against the debtor which must obtain a brief statement of the facts which might give a rise to the claim and an estimate of the probable amount thereof; (i) an affidavit of general financial conditions which shall contain answer to the questions or matters prescribe in Annex “A”^{cxix}; (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 (1) 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’ right.^{cxl}

Any pleading, motion, opposition or claim filed by any interested party shall be supported by verified statements that the affiant has read the same and that the factual allegations therein are true and correct of his personal knowledge or based on authentic records

and shall contain as annexes such documents as may be deemed by the party submitting the same as supportive of the allegations in the affidavits.^{cxli} The court may decide matters on the basis of affidavits and other documents evidence.^{cxlii} Where necessary, the Court shall conduct clarificatory hearings before resolving any matter submitted to it for resolution.^{cxliii}

The petition filed by the debtor must be verified by an affidavit of a responsible officer or the debtor and shall be in a form substantially as follows:

I, _____, (position) of (name of petitioner), do solemnly swear that the petitioner has been duly authorized to file the petition and that the stockholders and board of directors (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 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 acknowledges 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 officer, 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.

If the petition is filed by the creditors, it is sufficient that the petition is accompanied by a rehabilitation plan, and list of nominees to the position of Rehabilitation Receiver and verified by a sworn statement that the affiant has read the petition and that its contents are true and correct of his personal knowledge or based on authentic records obtained from the debtor.^{cxliv}

The filing of the petition in insolvency is caveat to all the world, and in effect an attachment and injunction restraining all persons from interfering therewith. It does not divest the insolvent of the title to his property, but all his assets come within the jurisdiction of the court, to be applied and disposed of as directed by the law for the benefit of creditors.^{cxlv} Thus, it has been held that property of an insolvent is regarded as in “*custodia legis*” from the date of the filing of the petition.^{cxlvi}

C.4. Summary of Corporate Rehabilitation under Philippine system.

The Supreme Court had approved the Interim Rules of Procedure on Corporate Rehabilitation (2000), which were based primarily on the provision of the SEC Rules on Corporate Recovery.^{cxlvii} The Interim Rules provide for the following basic steps for rehabilitation:

1. Filing of the verified Petition with the appropriate RTC by: (a) corporate debtor which foresees the impossibility of meeting its debts when they respectively fall due; or (b) creditor(s) holding at least 25% of the debtor’s total liabilities.

2. The following shall be annexed to the Petition: (a) Audited financial statements at end of its last fiscal year; (b) Interim financial statement; (c) Schedule of Debts and liabilities; (d) Inventory of Assets; (e) Rehabilitation plan; (f) schedule of payments and disposition of assets effected within three (3) months preceding filing of petition; (g) schedule of cash flow for the last three (3) months; statement of possible claims; (i) affidavit of General Financial Condition; (j) at least three (3) nominees for rehabilitation receiver; (k) certificate under oath

that directors and stockholders have irrevocably approved/consented to all actions/matters necessary under rehabilitation plan.

3. The Rehabilitation Plan shall include: (a) desired business assets or goals and the duration and coverage of the rehabilitation; (b) terms and conditions of such rehabilitation, including manner of implementation, giving due regard to the interest of secured creditors; (c) material financial commitments to support the rehabilitation plan; (d) means for execution of rehabilitation plan, which may include debt-to-equity conversion, restructuring of debts, *dacion de pago*, sale of assets or of controlling interests; (e) liquidation analysis that estimates the proportion of the claims that the creditors, and shareholders would receive if the debtors' properties were liquidated; and (f) such other relevant information to enable a reasonable investor to make an informed decision on the feasibility of the rehabilitation plan.

4. Issuance of the stay order not later than five (5) days from the filing of the petition which, among other, shall: (a) appoint a rehabilitation receiver for petitioning corporate debtor; (b) stay all actions for claims against the debtor, which shall cover both secured and unsecured creditors or claimants; (c) set an initial hearing for the petition; and (d) direct the creditors and other interested parties to file their verified comments on or opposition to the petition not later than ten (10) days before the initial hearing and putting them on notice that their failure to do so would bar them from participating in the proceedings. (For purposes of this study, the stay of all claims refers to automatic stay, which is known under US Bankruptcy Code, that which commenced upon filing of petition of corporate rehabilitation)

5. Publication of the stay order in a newspaper of general circulation once a week for two (2) consecutive weeks, which makes the proceeding *in rem* in nature.

6. Initial hearing on the petition not earlier than 45 days but not later than 60 days from the filing of the petition; and referral of rehabilitation plan to rehabilitation receiver who shall submit his recommendation thereon to the RTC not later than 90 days from initial hearing.

7. Meetings between corporate debtor and/or rehabilitation receiver with the creditors and other interested parties, which should take place before the final revision of the plan prior to its final submission to the RTC for approval, including modification or revision by debtor of the rehabilitation plan.

8. Submission of a final rehabilitation plan to the RTC for approval.

9. The Petition shall be dismissed (which results into the automatic lifting of the stay order unless otherwise ordered by the RTC) if no rehabilitation plan is approved by the RTC after 180 days from the date of the initial hearing.

10. Approval or disapproval of rehabilitation plan by the RTC: (a) if approved, implementation of the plan and modifications in the course thereof if necessary to meet the desired business targets; or (b) if not approved, the Petition shall be dismissed.

D. Synthesis of Related Literature

The related literature conferred the substantive laws with respect to corporate rehabilitation and its implementing rules and regulations. The substantive laws mentioned refer to Insolvency Law under Philippine statute and Bankruptcy Code of American system. With regard to the remedial measures affecting corporate rehabilitation, Interim rules of corporate recovery was discussed for purposes of determining the remedial procedures of corporate rehabilitation under Philippine system.

METHODOLOGY

This chapter provides the methods, procedures and techniques used in gathering data which is the fundamental measure in order to analyze and explain the study on the matters of corporate rehabilitation rules and procedures. This chapter is necessary so as the researcher will have a clear guidelines of the procedures and techniques of his study. This method also rendered the course of the research more convenient and practical.

RESEARCH DESIGN

The method to be used describes the research through documentary analysis using various cases and jurisprudence enunciated by the Supreme Court. It involves discussion of the particular situation of the company being under corporate recovery with respect to legal effect filing petition for corporate rehabilitation, and as to when should suspension of claims commenced. The method aims to present conflicting jurisprudence for purposes of making a resolution to settle the problem.

Descriptive method of research, which will present the condition the study wants to find out, is done through the use of library and internet research. It involves an element of interpretation, of the meanings and significance of corporate rehabilitation objectives and legitimate purposes.

DATA GATHERING PROCEDURE

In this procedure of study, the researcher will illustrate and give details briefly and objectively the different cases decided by the Supreme Court with respect to its interpretation on when suspension of claims start. The data that will be gathered are basically those already mentioned conflicting jurisprudence, including its citations.

With respect to the proposed resolution, the data to be gathered are laws and procedural rules affecting corporate rehabilitation and also those relevant principles and doctrines.

DATA ANALYSIS

The data to be analyzed are the conflicting jurisprudence, which the study aims to harmonize. Each of the mentioned cases will be digested in order to easily comprehend the distinction and its different factual situation. Out of that distinction, the determination of the proposed resolution will be conspicuously discussed, but limited only from the time of filing the petition until the appointment of corporate receiver. From the out come of that application of proposed resolution, the study will give a realization for a reasonable justification to resolve the conflicting jurisprudence.

PRESENTATION AND ANALYSIS OF DATA

Rationale of Corporate Rehabilitation

A corporation who filed petition for corporate rehabilitation seeks a judicial process to conserve and administer its assets in hope of returning to solvency. It contemplates of the continuation of corporate life and activities so that it may be able to regain its former condition of successful operations and financial stability.^{cxlviii}

The common causes cited by applicants in their petitions include “debt servicing”, high-interests rate”, unfavorable market conditions due to the regional crisis” and “policy changes of government lending institutions brought about by the present crisis.”^{cxlix} Based on available statistics coming from the Philippine Securities Exchange Commission (“SEC”) for the period of January to end of July 1999, no corporation has been placed in formal liquidation during the said period by the SEC under Presidential Decree No. 902-A. With respect to insolvency cases filed under Act No. 1956, as amended, otherwise known as “The Insolvency Law”, there is no way to determine the number of corporations that have been placed in formal liquidation by the various Regional Trial Courts around the Philippines unless such decision is contested and reaches the Supreme Court.^{cl}

Based on a list obtained by this research from the SEC of cases for suspension of payments filed from 1 April 1982 to 30 October 1998 and from 1 January to 31 July 1999 with the SEC, the following are the relevant numbers of corporate rehabilitation cases or administrations in the Philippines:^{cli}

Year	Number of cases filed
1982	1
1983	0
1984	2
1985	0
1986	0
1987	0
1988	0
1989	0
1990	1
1992	4

1993	5
1994	2
1995	10
1996	9
1997	20
1998	32
1999	11

1. Number of cases dismissed	30
- due to failure to comply with requirements	18
- due to other reasons	12
2. Companies going through rehabilitation	4
3. Cases with on-going hearings	22
4. Number of:	
a) Manufacturing Companies	35
b) Realty Companies	20
c) Sugar Milling Companies	4
d) Steel Fabrication Companies	3
e) Construction Companies	3
f) Retail Companies	3

g) Towing Companies	2
h) Hotel and Resort Companies	2
i) Garments/Fabrics Companies	2
j) Others	32
5. Value of total assets involved in the cases filed from April 1982 to 30 October 1998	P135,393,187,921.32
6. Value of total assets involved in the cases filed from 1995 to 30 October 1998	P127,009,242,491.00
7. Value of total assets involved in the cases filed from 1 January to 31 July 1999	P41,224,155,935.41
8. Value of total liabilities involved in the cases filed from April 1982 to 30 October 1998	P 209,969,677,315.25
9. Value of total liabilities involved in the cases filed from 1995 to 30 October 1998	P202,632,629,651.00
10. Value of total liabilities involved in the cases filed from 1 January to 31 July 1999	P 19,071,597,384.14

(Sources: <http://www.insolvencyasia.com/news/Aug/31Aug-Ph.htm>)

The records show that manufacturing and realty companies are the most corporations commenced the filing of corporate rehabilitation. The 1998 is the year when most of the cases filed before the Securities and Exchange Commission (SEC) for corporate rehabilitation. Second to the rank is 1997. From the year 1997-1998 is the period when Asian financial crisis is in existence. The data also shows that the billions of assets and liabilities of a distressed corporation affect the public's financial and economic conditions.

However, mere filing of the petition does not necessarily mean granting the relief for suspension of payments or rehabilitation because it shows that number of cases was dismissed

due to failure to comply with the requirements and some other reasons. More than eight years have passed since the financial crisis affected every industry in Asia, but the crisis still persists, dampening prospects for growth and even baffling authorities on how to best cure it.

With respect to corporate rehabilitation proceedings filed before the trial courts, the latter should be required to file periodic reports to the Supreme Court indicating thereon such pertinent data on the pending corporate rehabilitation proceedings. Said reports should indicate the amount of assets and liabilities involved, as well as the status of the proceedings.

The continuance of corporate life and activities of a distressed corporation to restore and reinstate to its former position of successful operation and solvency was contemplated in the case of *Ruby Industrial Corporation vs. Court of Appeals* (284 SCRA 445),^{clii} as illustrated herein below:

Ruby Industrial Corporation vs. Court of Appeals

G.R. No. 124185-87, January 20, 1998, (284 SCRA 445)

Ruby suffered severe liquidity problems and filed a petition for suspension of payments with the SEC. On December 20, 1983, SEC granted the petition and enjoined Ruby from disposing its property, except insofar as necessary in its ordinary operations. On August 10, 1984, the SEC created a management committee. Benhar/Ruby Rehabilitation plan was submitted to SEC, indicating that Benhar shall control and manage Ruby operations, and for its service, the Benhar shall receive a management fee equivalent to 7.5% of Ruby's net sales. Minority (40%) of stockholders opposed since transfer of Ruby's assets is beyond the reach and to prejudice its unsecured creditors. On October 28, 1988, the SEC approved the Benhar/Ruby Plan. However, it appears that before the SEC approved the Benhar/Ruby Plan on October 28, 1988, Benhar already implemented part of the plan by paying off Far East Bank & Trust Company (FEBTC), a secured creditor. By May 30, 1988, FEBTC already executed a deed of assignment of credit and mortgage rights in favor of Benhar. SEC nullified the deeds of assignment executed by Ruby in favor of Benhar and declared the parties in contempt. Court of Appeals affirmed the SEC's decision.

Held: Judgment against Ruby. Court of Appeals noted that the approved revised Benhar/Ruby plan gave undue preference to Benhar. Rehabilitation contemplated a continuance of corporate

life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency. When a distressed company is placed under rehabilitation, the appointment of management committee follows to avoid collusion between the previous management and creditors it might favor, to the prejudice of the other creditors. All assets of a corporation under rehabilitation receivership 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 attachment, execution or otherwise. As between the creditors, the key phrase is equality in equity. Once the corporation is threatened by bankruptcy is taken over by a receiver, all creditors ought to stand on equal footing. Not any one of them should be paid ahead of the other. This is precisely the reason for suspending all pending claims against the corporation under receivership.

The underlying philosophy of PD 902-A, as amended, is rehabilitative and, as implemented by the Supreme Court in its Interim Rules of Corporate Recovery, considered as debtor-friendly as a prime concern of the RTC is the rehabilitation of the corporation.^{cliii} This rehabilitation or "rescue" process may be described also as conservative in nature because it preserves the assets of the corporation for the benefit of the general public (corporation, creditors, management committee, employees and the supervising court).

ANALYSIS OF CASES ON THE ISSUE ON WHEN SUSPENSION OF CLAIMS SHOULD COMMENCE

The matter of when enforcement of claims against distressed corporation should be suspended has remained until now unsettled.^{cliv} The cases of Bank of the Phil Islands vs CA (229 SCRA 223) and Rizal Commercial Banking Corporation vs IAC (320 SCRA 279) causes conflicting jurisprudence in the application of law as when the suspension of claims commenced.

In the case of the Bank of the Phil Islands vs CA (229 SCRA 223), the Supreme Court was clear in saying that the prohibition against foreclosure attaches as soon as a petition for rehabilitation is filed, stating the rationale of PD 902-A, as amended, which is to effect a *feasible* and *viable* rehabilitation. To illustrate the said case:

Bank of the Philippine Islands (BPI) vs. Court of Appeals

G.R. No. 97178, January 10, 1994 (229 SCRA 223)

On February 16, 1984, BPI filed with the RTC of Pasig a complaint against Ruby Industrial Corp (Ruby) for foreclosure of real estate mortgage. After filing its answer with counterclaim on November 8, 1984, Ruby submitted to the trial court a motion for suspension of the proceedings on the ground that on August 10, 1984, the SEC issued a rehabilitation plan. The SEC ordered the creation of Management Committee and all actions and claims against Ruby is deemed suspended. December 19, 1984, the trial court issued an order granting the motion of Ruby. BPI appealed to Court of Appeals but the latter court denied the petition.

Issue: Whether the action of BPI for foreclosure is deemed suspended while Ruby is under rehabilitation.

Held: Judgment in favor of Ruby. In *Aleamar's Sibal & Sons v. Elbinias, BF Homes, Inc. v Court of Appeals, Araneta v. Court of Appeals, and RCBC v. Court of Appeals*, we already ruled that whenever a distressed corporation asks SEC for rehabilitation and suspension of payments, preferred creditors may no longer assert such preference, but shall stand on equal footing with other creditors. Foreclosure shall be disallowed so as not to prejudice other creditors or cause discrimination among them. If foreclosure is undertaken despite the fact that a petition for rehabilitation has been filed, the certificate of sale shall not be delivered pending rehabilitation. If this has already done, no transfer certificate of title shall likewise be effected within the period of rehabilitation. The rationale behind PD No. 902-A, as amended, is to effect a feasible and viable rehabilitation. This cannot be achieved if one creditor is preferred over the others.

While it is recognized that petitioner is a preferred creditor whose claim is secured by a real estate mortgage on the properties of Ruby, its right to enforce its claim in court is suspended with the placing by SEC of Ruby under rehabilitation. This rule is enable the management committee or rehabilitation receiver to effectively exercise his/its powers free from any judicial or extrajudicial interference that might unduly hinder the rescue of the distressed company.

But, the case of BPI does not specifically mention the application of principle of automatic stay.

On December 9, 1999, the Court came up with Rizal Commercial Banking Corporation vs. IAC (320 SCRA 279), where it vacated its prior ruling on September 14, 1992, holding that the SEC cannot order the suspension of the enforcement of any court action before the appointment of a management committee or a rehabilitation receiver. The RCBC case reiterates the ruling in the case of Barotac Sugar Mills, Inc vs. Court of Appeals^{clv} saying, “the xxx a court action is *ipso jure* suspended upon the appointment of a management committee or rehabilitation receiver”.

The Court in the case of RCBC case insisted that the prior ruling, no matter how practical and noble, would be to encroach upon legislative prerogative to define the wisdom of the law – plainly judicial legislation. To illustrate the said case:

Rizal Commercial Banking Corporation (RCBC) vs. Intermediate Appellate Court (IAC)

G.R. No. 74851, December 9, 1999 (320 SCRA 279)

On September 28, 1984, BF Homes filed a “Petition for Rehabilitation and Declaration for Suspension of Payment” with the SEC. One of its listed creditors was RCBC. October 26, 1984, RCBC requested the Prov. Sheriff of Rizal to extra-judicially foreclose its real estate mortgage in some of the properties of BF homes. November, 28, 1984, SEC issued a TRO enjoining the RCBC and the sheriff from the proceeding with the public auction sale. January 25, 1985, SEC ordered the issuance of a writ of preliminary injunction upon petitioner’s filing of bond. Petitioner did not file a bond until January 29, 1985, the same date preliminary injunction issued by the SEC. Sheriff proceeded with the public auction sale on January 29, 1985, which RCBC was the highest bidder. February 25, 1985, BF Homes filed with the SEC a motion to annul the auction sale and cite RCBC and sheriff for contempt. March 25, 1985, RCBC filed with RTC an auction for mandamus against the sheriff and his duty to deliver the certificate of sale. March 18, 1985, SEC appointed a Management Committee for BF Homes. May 8, 1985, the trial court ordered the sheriff to deliver to RCBC the certificate of auction sale. IAC set aside the decision of trial court, dismissed the mandamus case and suspended the issuance of new title to RCBC, until the matter shall be have been resolved by the SEC.

Issue: Whether action of RCBC for foreclose is suspended prior to appointment of management committee/rehabilitation receiver.

Held: Judgment in favor of RCBC. Insofar as RCBC is concerned, PD No. 902-A, as amended, are not yet applicable, and it may still be allowed to assert its preferred status because it foreclosed on the mortgage prior to the appointment of the management committee on March 18, 1985. The law on the matter, paragraph (c), section 6 of PD 902-A, provides “xxx: *Provided, finally, That upon appointment of a management committee, rehabilitation receiver, board or body, pursuant to this Decree, all actions for claims against corporations, partnership or associations under management or receivership pending before any court, tribunal, board or body shall be suspended accordingly.*”

It is adequately clear that suspension of claims against a corporation under rehabilitation is counted or figured up only upon the appointment of a management committee or a rehabilitation receiver. The holding that suspension of actions for claims against a corporation under rehabilitation takes effect as soon as the application or a petition for rehabilitation is filed with the SEC – may, to some, be more logical and wise but unfortunately, such is incongruent with the clear language of law. To insist on such ruling, no matter how practical and noble, would be to encroach upon legislative prerogative to define the wisdom of the law – plainly judicial legislation. It bears stressing that the fundamental duty of the Court is to apply the law.

All the foregoing cases show that there is a need for specific legislation to address the problems of corporate financial distress and to give relief to financially ailing corporations.^{clvi} Indeed, the Philippines need to modernize and clarify the rules for corporate rehabilitation to give relief for financially distressed corporation. It is within the power of the state to impose a just and reasonable regulation, as the interest of the public may deem proper to rejuvenate a financially distressed corporation. The determination of the nature and extent of regulation, which should be prescribed, rests in the hands of the legislators, in concurrence with the wisdom of the judiciary.

PROPER PERIOD AS TO WHEN ARE CLAIMS SUSPENDED

It is submitted that the proper period of suspension of all claims commenced from the moment of filing the petition for corporate rehabilitation. In the RCBC case, it should be noted that SEC took about six (6) months (September 28, 1984 to March 18, 1985) after the filing of the petition of B.F. Homes to create and appoint a management committee. This is a clear manifestation of delay causing loan shark creditors to paralyze the operation of business towards solvency. Circumstances warrant that for purposes of avoiding danger of dissipation, loss, wastage or destruction of assets which is prejudicial to the interest of corporation, creditors and investing public, necessarily the suspension of claims should start upon filing of petition for rehabilitation, and not from the time of appointment of management committee/rehabilitation receiver.

The Supreme Court in the case of RCBC vs IAC (320 SCRA 279) admitted that suspension of actions for claims against a corporation under rehabilitation takes effect as soon as a petition for rehabilitation is filed is more *logical, wise, practical and noble*. It seems that an actions or claims that are not suspended at the time the petition are filed for corporate rehabilitation is deemed illogical, unwise, impractical and disgraceful decision. The argument held by the Supreme Court in RCBC case is deemed an argument against its own argument, thus, contrary to logic.

The Supreme Court should be warned by the judiciousness of Justice Homes cited in the Case of Alonzo vs. Intermediate Appellate Court^{clvii} saying that:

As judges, we are not automations. We do not and must not unfeelingly apply the law as it is worded, yielding like robots to the literal command without regard to its cause and consequence. Court are apt err by sticking too closely to the words of law, so we are warned, by Justice Holmes gain, where these words import a policy that goes beyond them. While we admittedly may not legislate, we nevertheless have the power to interpret the law in, such a way as to reflect the will of the legislature. While may not read into the law a purpose that is not there, we nevertheless have the right to read out of it the reason for its

enactment. In doing so, we defer not to “the letter that killeth but to the spirit that vivifieth,” to give effect to the lawmaker’s will.

The proposition that the suspension of all claims commenced at the time of filing the petition for corporate rehabilitation is adopted from the US Bankruptcy Code known as the automatic stay. Under the automatic stay principle, the filing of the bankruptcy petition operates as an *automatic stay* (holds in abeyance) various forms of creditor action against a debtor or his property.^{clviii} Initially after the filing of the bankruptcy petition, the debtor-corporation needs a protection from the filing the collection efforts of the vulture-creditor, and this automatic stay prevents vulture-creditor from collecting the secured debt or from repossessing and selling its collateral.^{clix}

The justification is largely economic but, to a degree, is capable of being translated into collective policy principles.^{clx} Greater benefit may be obtained by keeping the component parts of the business operations of an insolvent corporation together. That opportunity cannot be undertaken if the property can be sold off and dismembered by creditors in the exercise of their contractual enforcement rights.^{clxi}

The justification is that greater benefit may be obtained by keeping the component parts of the business operations of an insolvent corporation together.^{clxii} The opportunity to obtain a greater economic benefit cannot be taken if the property of the corporation can be sold off and dismembered creditors in exercise of their individual contractual enforcement rights. Therefore, it is at least necessary to impose some type of temporary restraint (automatic stay) on the exercise of those contracting and other rights for the purpose of (a) determining whether reorganization is a possibility; and (b) promoting and obtaining agreement to a plan of reorganization.^{clxiii}

Since the rehabilitation contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency,^{clxiv} all assets of the corporation, upon the filing of petition for rehabilitation, are held in trust in for the equal benefit of all creditors. During rehabilitation receivership, the assets are held in trust for the equal benefit of all creditors to preclude one from obtaining advantage or preference over another by the expediency of an attachment, execution or otherwise.^{clxv} As between creditors, the key phrase is “equality is equity”,^{clxvi} as illustrated in the following case:

Alemar's Sibal & Sons, Inc. vs. Elbinias

G.R. No. 75414, June 4, 1990 (186 SCRA 94)

On December 11, 1984, G.A. Yupangco filed an action with the trial court for collection of a sum of money with prayer for damages and preliminary attachment against Alemar's Sibal & Sons, Inc. (Alemar's). The trial court held on August 30, 1985 that Alemar's be ordered to pay G.A. Yupangco the unpaid obligation. A motion to suspend the order filed by Alemar, and attached to its motion is the order of the SEC dated on August 1, 1984 that actions for claims against corporation pending before any court, tribunal, board of body are suspended accordingly. G.A. Yupangco opposed that it received notice of the receivership only on January 10, 1985 or after one month after the collection suit, and urged the issuance of writ of execution is final and executory. The trial court granted the opposition in favor of G.A. Yupangco.

Issue: Whether the trial court can validly proceed with the execution of a final decision for the payment of sum of money despite the fact that the judgment debtor is placed under receivership.

Held: Judgment in favor of Alemar's. It is a general rule that once a decision becomes final and executory, its enforcement becomes ministerial duty of the court. Equally settled is that rule admits of certain exceptions, one of which is where it becomes imperative in the higher justice to direct the deferment of execution. In the instant case, the stay of execution is warranted by the fact that Alemar's has been placed under "rehabilitation". During rehabilitation receivership, the assets are held in trust for the equal benefit of all creditors to preclude one from obtaining advantage or preference over another by the expediency of an attachment, execution or otherwise.^{clxvii} As between creditors, the key phrase is "equality is equity". When the corporation is 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.

For purposes of this study, the automatic stay is not considered as the "stay order" provided by Rule IV, Section 6 of the Interim Rules of Procedure on Corporate Rehabilitation. Under the Rules it provides that "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 petition, issue and Order: (b)

staying enforcement of all claims, whether for money or otherwise xxx”. Under the automatic stay, the mere filing of the petition for corporate rehabilitation with the clerk is sufficient, the court need not sign any order to give rise the stay.^{clxviii} Mere filing of the petition constitutes an immediate relief showing that the distressed corporation is entitled to rehabilitation court’s protection.

If the court dismisses or terminates the petition filed, the automatic stay is not applicable because it is as if no petition for corporate rehabilitation is filed. Section 362, Title 11 of US Bankruptcy Code applies the automatic stay upon filing of the petition until it is dismissed or upon the termination of the proceedings. Thus, if the court dismissed the petition for insufficiency of form and substance,

During the period of suspension, it must be emphasized that the suspension is only for a temporary period to prevent the irresistible collapse of the corporation and give the management committee or receiver the absolute tranquility to study the viability of the corporation.^{clxix} During this period, the law creates a wall around the corporation against all claims.^{clxx}

Since the all claims are suspended at the time upon filing of the petition, the term “claims” shall include all claims or demands of whatever nature or character against a debtor or its property, whether for money or otherwise.^{clxxi} When the Committee (Supreme Court Committee on Interim Rules of Procedure on Corporate Rehabilitation) deliberated on what “claim” in corporate rehabilitation should mean, it took cognizance of the fact that any kind of suit that may be filed against a rehabilitating corporation would result in tying up the process.^{clxxii} The term claims also include breach of contract resulting in damages due to the negligence of employee as illustrated in the case of *Philippine Airlines vs Kurangking*^{clxxiii}:

Philippine Airlines vs Kurangking

G.R. No. 146698, September 24, 2002 (389 SCRA 588)

On April 1997, Spouse Kuranking and Spouses Dianalan (Respondents) returned to Manila from their pilgrimage to the Holy City of Mecca, on board a Philippines Airlines (PAL) flight. Respondents claimed that they were unable to retrieve their luggage, and filed a complaint with the RTC of Marawi City against PAL for breach of contract resulting in damages due to negligence in the custody of the missing luggage. PAL claimed to have suffered serious

business losses due to the Asian economic crisis, followed by a massive strike by its employees, filed a petition on June 19, 1998 for the approval of a rehabilitation plan and appointment of receiver. On June 23, 1998, the SEC issued an order granting the prayer for an appointment of receiver, and on June 25, 1998, the SEC created a Management Committee. Thereupon, PAL moved for the suspension of proceedings before the Marawi City RTC. The trial court denied the motion of PAL for suspension of proceedings on the ground that the claim of respondents was only yet to be established.

Held: A “claim” is said to be “a right to payment, *whether or not* it is reduced to judgment, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, legal or equitable, and secured or unsecured. Verily, the claim of respondents against PAL is a money claim for the missing luggages, a financial demand that the law required to be suspended pending the rehabilitation proceedings.

THE APPLICATION OF AUTOMATIC STAY TO RESOLVE THE CONFLICTING JURISPRUDENCE

The automatic stay is an important legal consequence of filing petition for corporate rehabilitation since the distressed corporation, creditors, investing public and parties-litigant who has interest against distressed corporation needs protection from the collection effort of vulture or loan shark creditors. The automatic stay prevents some creditors grabbing the debtor’s assets while other creditors receive nothing.^{clxxiv}

In the case of RCBC vs IAC^{clxxv}, the filing of extra-judicial foreclosure action on October 26, 1984 was a violation of rule on automatic stay. The automatic stay is in force from the moment BF Homes filed a petition for rehabilitation and declaration for suspension of payment dated on September 28, 1984. The decision in case of BPI vs CA^{clxxvi} is logical, wise, practical and noble as admitted by the Supreme Court in the RCBC case. Rather than applying the law on stick sense, the Supreme Court should be reminded that it has inherent equity jurisdiction, it can always exercise in settings attended by unusual circumstances to prevent manifest injustice that could result from bare technical adherence to the letter of the law and imprecise jurisprudence under it.^{clxxvii}

The foreclosure shall be disallowed so as not to prejudice other creditors, or cause discrimination among them.^{clxxviii} If foreclosure is undertaken despite the fact that a petition for rehabilitation has been filed, the certificate of sale shall not be delivered pending rehabilitation.^{clxxix} PD No. 902-A, as amended, is to effect a *feasible* and *viable* rehabilitation, this cannot be achieved if one creditor is preferred over the other.^{clxxx} In this connection, the prohibition against foreclosure *attaches as soon as a petition for rehabilitation is filed*. Were it otherwise, what is to prevent the petitioner from delaying the creation of the management committee and in the meantime dissipate all its assets.^{clxxxi} The sooner the SEC (RTC) takes over and imposes a freeze on all assets, the better for all concerned.^{clxxxii} Suspension of claims also applies even against the claims of the labor, as illustrated in the following case:

Rubberworld (Phils), Inc. vs NLRC

G.R. No. 128003, July 26, 2000 (336 SCRA 433)

On August 26, 1994, Rubberworld filed with the DOLE a notice of temporary shutdown of operations. Rubberworld was forced to shutdown. November 11, 1994, the private respondents filed with NLRC a compliant for illegal dismissal and non-payment of separation pay. On November 22, 1994, Rubberworld filed with the SEC a petition for declaration of suspension of payments with a proposed rehabilitation plan. On December 28, 1994, SEC issued an order creating a Management Committee. Rubberworld filed a motion to suspend the proceedings before the labor arbiter invoking SEC's order. Labor Arbiter held that there was an illegal shutdown. NLRC upheld labor arbiter's decision.

Held: Judgment in favor of Rubberworld. The justification for the automatic stay of all pending actions claims is to enable the management committee or the rehabilitation receiver to effectively exercise its powers free from any judicial or extrajudicial interference that might unduly hinder or prevent the "rescue" of the debtor company. To allow such other actions 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. Thus, labor case would defeat the purpose of an automatic stay. To rule otherwise would open the floodgates to numerous claims and would defeat the rescue efforts of the management committee.

It is well-settled rule that whenever a distressed corporation asks the Court for rehabilitation or filed a petition thereof, preferred creditors may no longer assert such preference, but shall stand on equal footing with other creditors. The proposition that upon filing petition for corporate rehabilitation all claims is suspended is reasonable, equitable and rational since it will enable the court through the rehabilitation receiver to rescue the financially distressed corporation as public interest, justice and equity requires. The justification for the automatic stay of all pending actions claims is to enable the management committee or the rehabilitation receiver to effectively exercise its powers free from any judicial or extrajudicial interference that might unduly hinder or prevent the “rescue” of the debtor company.^{clxxxiii}

THE LEGAL IMPLICATION OF AUTOMATIC STAY IN SUSPENSION OF PAYMENTS

The economic welfare of the nation needs a legislative act to provide an immediate and adequate relief to an ailing corporation. An automatic stay is a laudable and recommendable measure in order to provide a feasible and viable corporate rehabilitation.

Upon filing the petition for corporate rehabilitation, a financially distressed corporation needs protection from harassment suit of collecting claims of creditor. The automatic stay is designed to protect both debtor and creditor.^{clxxxiv} US House Report on automatic stay deliberates that “the automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment or reorganization plan, or simply to be realized of the financial pressures that drove him into bankruptcy. The automatic stay provides creditor protection. Without it, certain creditors would be able to pursue their own remedies against the debtor’s property. Those acted first would obtain payment of the claims in preference to and to the detriment of other creditors.”^{clxxxv} Automatic stay was added to bankruptcy law to protect the inexperienced, frightened or ill-counseled debtors who might succumb to attempts to evade the purpose of bankruptcy laws by sophisticated creditors.^{clxxxvi}

Initially upon filing petition for corporate rehabilitation, the distressed corporation is protected because the automatic stay is applicable immediately.^{clxxxvii} The filing of the

bankruptcy petition operates as an *automatic stay* (holds in abeyance) various forms of creditor action against a debtor or his property.^{clxxxviii} Initially, the automatic stay prevents the creditor from collecting the secured debt or from repossessing and selling its collateral.^{clxxxix} The stay provides the debtor time and freedom from financial pressures to attempt to repayment or to develop a plan of reorganization.^{cx} The rehabilitation court acquired by constructive seizure all the properties and assets of the distressed corporation upon filing the petition for rehabilitation. Thus, placing it in *custodia legis* to protect the interest of the creditors, stockholders, and investing public.

With the application of automatic stay, the reason for suspending actions of claims against the corporation should not be difficult to discover.^{cxci} It is stated that the whenever a distressed corporation asked or filed for rehabilitation before the court, preferred creditors may no longer assert such preference, but stand on equal footing with other creditors.^{cxcii} The key phrase is equality in equity.^{cxci} This is precisely the reason for suspending the all claims and actions against a distressed corporation upon filing the petition for corporate rehabilitation. To rule otherwise would open the floodgates to numerous claims and would defeat the rescue efforts of the management committee.^{cxci}

The suspension of claims upon the filing of petition for corporate rehabilitation 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 various claims and litigations. Automatic stay is even more important in business rehabilitation proceedings because without such stay the distressed corporation would find it hard or impossible to continue operating its business.

The automatic stay avoids the time consuming litigation over whether debtor is solvent or not at the onset of the proceedings. It clarifies the right of the financially distressed corporation, who file to the court if it cannot pay its debts as they are coming due, regardless if it is solvent. This is a reasonable solution because the application of automatic stay is instantaneous and immediately applicable upon the filing of the petition for corporate rehabilitation. Thus, this offers practicable and effective solutions for the preservation of an enterprise to be restructured and its creditors treated fairly.

SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

This Chapter presents the findings, conclusion and recommendation.

The study intends to resolve the existing jurisprudence regarding the suspension of claims against a distressed corporation. The specific problems to be answered are the following:

1. What is the rationale of the law on corporate recovery?

2. How does the case of *Bank of the Phil Islands vs CA (229 SCRA 223)* differ from *Rizal Commercial Banking Corporation vs IAC (320 SCRA 279)* in terms of application of Sec. 6 (c) of PD 902-A on the issue of the commencement of suspension of claims?

3. When should the proper claims be suspended?

4. How automatic stay principle applies in the conflicting jurisprudence?

5. What are the implications of the adoption of the automatic stay principle in suspension of payment?

The study employed the method of data gathering procedure and data analysis to illustrate the conflicting jurisprudence decided by the Supreme Court. The study aims to clear and mend the laws with respect to corporate rehabilitation.

FINDINGS

The findings of the study will answer the specific problems as provided above. Based on the analysis of the study the researcher came out the following findings:

1. The underlying reason on corporate rehabilitation is intended to provide an uninterrupted and successful operation of a distressed corporation towards solvency.

2. The case of *BPI vs CA (229 SCRA 223)* prohibits the foreclosure proceedings upon the filing of the petition for corporate rehabilitation; whereas in the case of *RCBC vs IAC (320 SCRA 274)*, the Supreme Court held that suspension of claims (foreclosure) is suspended only upon appointment of management committee.

3. The proper period of suspension of claims is upon filing of petition for corporate rehabilitation.

4. The rule on automatic stay suspends all actions and claims against a distressed corporation upon filing of petition. This rule supports a distressed corporation, under supervision of court, to effectively restore its former solvency condition.

5. The automatic stay provides a feasible and viable corporate rehabilitation.

CONCLUSION

After analyzing the cases of BPI vs CA and RCBC vs IAC, the researcher came out with the following conclusions:

1. The filing of foreclosure proceedings by RCBC on October 26, 1984 is deemed suspended because of the petition filed by BF Homes for corporate rehabilitation on September 28, 1984.

2. The foreclosure must be disallowed to protect other creditor(s) and not to interrupt the operation of corporation towards solvency. In this situation, the rule on automatic stay should be applied.

3. The automatic stay resolves the conflicting jurisprudence pursuant to the rationale of law on corporate rehabilitation, which towards continuance of corporate life and successful solvency.

4. The automatic stay provides an adequate protection on the distressed corporation and prevents unwarranted claims or actions of other creditors.

RECOMMENDATIONS

In the light of the findings and conclusion of the study, the researcher recommends the following:

1. For the Congress:

- a. It must incorporate in the pending bill, entitled Corporate Recovery Act, under House Bill No. 2007 and House Bill No. 3038, the provision on the rule of automatic stay.
 - b. It must provide specialized body charged to implement the law on corporate recovery.
2. For the Executive Department:
- a. The State must provide trainings and education in the operation and administration of corporation rehabilitation. Training and education of bank officers and other professionals including lawyers are vital for proper administration.
3. For the Supreme Court:
- a. It is recommended that *RCBC vs IAC*, 320 SCRA 279 (1999) should be vacated and reiterated its more reasonable ruling in original case held on 1992, involving the same case. This can be done by the way of applying Article VIII, Section 4 (3) of 1987 Constitution which provides that “no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc*”.
 - b. There must an administrative resolution requiring the corporate rehabilitation court to file periodic report to the Supreme Court, indicating data on the pending corporate rehabilitation.

ENDNOTES

- ⁱ Marcial O.T. Balgos, *The Need for a Law on Corporate Distress*, Journal and Magazine of the Integrated Bar of the Phil, Vol. XXV No.1, 1st Quarter 1999, p. 63.
- ⁱⁱ Explanatory Notes of House Bill 3038, Introduced by Rep. Ma. Theresa T. Defensor: *An Act Providing for Debt-Relief Measures To Rehabilitate Financially Distressed Enterprises and for Other Purposes* (Corporate Recovery Act).
- ⁱⁱⁱ Fe Eloisa C. Gloria, *On Insolvency and Suspension of Payments*, Address delivered in the General Membership of the Bar Administration Institute of the Phil (Sept 29, 1998); except from *UB Law Journal*, Vol. II, April-June 1999.
- ^{iv} G.R. No. 97178, 10 January 1994, (229 SCRA 223).
- ^v G.R. No. 74851, 9 December 1999, (320 SCRA 279).
- ^{vi} Marcial O.T. Balgos, *The Need for a Law on Corporate Distress*, Journal and Magazine of the Integrated Bar of the Phil, Vol. XXV No.1, 1st Quarter 1999.
- ^{vii} See, note no. 4
- ^{viii} See, note no. 5
- ^{ix} Robert N. Corley & Peter J. Shedd, *Principles of Business Law*, p. 583 (14th Ed.).
- ^x *Ibid*, p. 583
- ^{xi} *Ruby Industrial Corporation vs. Court of Appeals*, G.R. Nos 124185-87, 20 January 1998 (284 SCRA 445).
- ^{xii} G.R. No. 75414, 4 June 1990 (186 SCRA 94).
- ^{xiii} G.R. No. 77143, 3 October 1990 (190 SCRA 262).
- ^{xiv} G.R. No. 124185-87, January 20, 1998, (284 SCRA 445).
- ^{xv} G.R. No. 74851, 14 September 1992 (213 SCRA 830);
- ^{xvi} See Note No. 4
- ^{xvii} *Ruby Industrial Corporation vs. Court of Appeals*, G.R. Nos 124185-87, 20 January 1998 (284 SCRA 445).
- ^{xviii} Fe Eloisa C. Gloria, *On Insolvency and Suspension of Payments*, *supra* (1998).
- ^{xix} *Ibid*, p.5.
- ^{xx} Explanatory Notes: House of Representatives, 12th Congress, **House Bill No. 2007**, Introduced by Rep. Joey Sarte Salceda: *An Act Providing for the Recovery of Financially Distressed Enterprises and the Resolution of their Indebtedness* (Corporate Recovery Act); and **House Bill No. 3038**, Introduced by Rep. Ma. Theresa T. Defensor: *An Act Providing for Debt-Relief Measures To Rehabilitate Financially Distressed Enterprises and for Other Purposes* (Corporate Recovery Act).
- ^{xxi} A.M. 00-11-03-SC, *Designating Certain Branches of RTC to Try and Decide Cases Formerly Cognizable by the SEC*, dated November 21, 2000. See Appendix “E”.
- ^{xxii} Marcial O.T. Balgos, *The Need for a Law on Corporate Distress*, Journal and Magazine of the Integrated Bar of the Phil, Vol. XXV No.1, 1st Quarter 1999.
- ^{xxiii} Metzger, Mallor, Barnes, etc., *Business Law and the Regulatory Environment: Concept and Cases*, (6th Ed.), p. 1047.
- ^{xxiv} Black Law Dictionary; 6th Edition (1990), p. 134., citing 11USC > 362 (a).
- ^{xxv} *Ibid*; p. 134.
- ^{xxvi} Section 1 of Rule 2, *Interim Rules of Procedure on Corporate Rehabilitation*; A.M. 00-8-10 SC, dated November 21, 2000
- ^{xxvii} 11 USC > 101 (5) (A)
- ^{xxviii} 11 USC > 101 (5) (B)
- ^{xxix} *Interim Rules of Procedure on Corporate Rehabilitation*; *supra*
- ^{xxx} 11 USC > 101 (9)(A)
- ^{xxxi} Black Dictionary, 6th Edition (1990), p. 1287.
- ^{xxxii} *Ibid*;
- ^{xxxiii} *Interim Rules of Procedure on Corporate Rehabilitation*; *supra*
- ^{xxxiv} 11 USC > 101 (10) (A)
- ^{xxxv} 11 USC > 101 (10) (B)
- ^{xxxvi} 11 USC > 101 (12)
- ^{xxxvii} *Interim Rules of Procedure on Corporate Rehabilitation*, *supra*.
- ^{xxxviii} *Interim Rules of Procedure on Corporate Rehabilitation*, *supra*, Section 1 of Rule 4 (Rehabilitation).
- ^{xxxix} 11 USC > 101 (32) (A)(B).

- ^{xi} Section 3-12, SEC: *Rules of Procedure on Corporate Recovery*, , Dec. 21, 1999.
- ^{xli} 11 USC > 101 (37)(36).
- ^{xlii} Black Law Dictionary; 6th Edition (1990).
- ^{xliii} Section 1-2. SEC: *Rules of Procedure on Corporate Recovery*, Dec. 21, 1999.
- ^{xliv} Sibal, Jose Agaton R. *Philippine Legal Dictionary*, (1986), p. 831-832; citing the case of *Dela Riva vs. Salvador*, 32 Phil 277, No. 10106, November 23, 1915.
- ^{xlv} *Ibid*; p. 831.
- ^{xlvi} Sibal, Jose Agaton R. *Philippine Legal Dictionary*, (1986), p. 831-832; citing the case of *Normandy vs Duque*, 29 SCRA 385, No. L-25407, August 29, 1969,
- ^{xlvii} *Ibid*, p. 832; citing the case of *Francisco vs. Rodriquez*, 6 SCRA 443, No. L-15605, October 31, 1962.
- ^{xlviii} Black Law Dictionary; 6th Edition (1990), p. 1286,; citing the definition from *US Uniform Business Record Act*.
- ^{xlix} *Ibid*; p. 1286.
- ¹ Section 3-12, SEC: *Rules of Procedure on Corporate Recovery*, Dec. 21, 1999.
- ^{li} 11 USC > 101 (54).
- ^{lii} Robert N. Corley & Peter J. Shedd, *Principles of Business Law*, (14th Ed.), p. 568.
- ^{liii} Howell, Allison & Prentice, *Business Law: Text and Cases* (4th Ed), p. 693.
- ^{liv} US Constitution under Article 1, Section 8, clause 4 provides: “*The Congress shall the power ... to establish ... uniform laws on the subject of bankruptcies throughout the United States.*”
- ^{lv} Anderson, Fox & Twomey, *Business Law and the Legal Environment*, (14th Ed), p.706.
- ^{lvi} Agbayani, Aguado F., *Commentaries and Jurisprudence on the Commercial Law of the Philippine*, Volume III (1996), p. 650.
- ^{lvii} Vitug, Jose C., *Pandect of Commercial Law and Jurisprudence*, (3rd Ed., 1997), p. 738.
- ^{lviii} Agbayani, Aguado F., *Commentaries and Jurisprudence on the Commercial Law of the Philippine*, Volume III (1996), p. 650.
- ^{lix} *Ibid*, citing *Mitsui Bussan Kaisha v. Hongkong & Shanghai Bank*, 36 Phil 27. No. 11079, January 12, 1917.
- ^{lx} Anderson, Fox & Twomey, *Business Law and the Legal Environment*, (14th Ed), p.706
- ^{lxi} *Ibid*; p. 706.
- ^{lxii} *Ibid*; p. 706.
- ^{lxiii} J. David Reitzel; Donald P. Lyden; Nathan J. Roberts; Gordon B. Severance: *Contemporary Business Law: Principles and Cases*, 4th Edition (1990), p. 560.
- ^{lxiv} *Ibid*, p. 560.
- ^{lxv} *Ibid*, p. 560.
- ^{lxvi} Robert N. Corley & Peter J. Shedd, *Principles of Business Law*, (14th Ed.).p. 568
- ^{lxvii} *Ibid*, p. 568.
- ^{lxviii} *Ibid*; p. 568.
- ^{lxix} *Ibid*; p. 603.
- ^{lxx} Rule 1002. *Commencement of Case*; (a).
- ^{lxxi} Mark E. Roszkowski, *Business Law: Principles, Cases and Policy*, (6th Ed.), p. 604.
- ^{lxxii} Metzger, Mallor, Barnes, etc., *Business Law and the Regulatory Environment: Concept and Cases*, (6th Ed.), p. 1061.
- ^{lxxiii} Anderson, Fox & Twomey, *Business Law and the Legal Environment*, (14th Ed), p.709.
- ^{lxxiv} Metzger, Mallor, Barnes, etc., *Business Law and the Regulatory Environment: Concept and Cases*, (6th Ed.), p. 1048.
- ^{lxxv} Mark E. Roszkowski, *Business Law: Principles, Cases and Policy*, (6th Ed.), p. 618.
- ^{lxxvi} *Ibid*, p. 618.
- ^{lxxvii} 11 USC > 362 (a)(1). *Automatic stay*.
- ^{lxxviii} 11 USC > 362 (a)(2)
- ^{lxxix} 11 USC > 362 (a)(3)(4)
- ^{lxxx} 11 USC > 362 (a)(7).
- ^{lxxxi} Robert N. Corley & Peter J. Shedd, *Principles of Business Law*, (14th Ed.).p. 582, citing the case of *United Northwest Federal Credit vs. Arens*; 664 P.2nd 811 (Kan. 1983)
- ^{lxxxii} Robert N. Corley & Peter J. Shedd, *Principles of Business Law*, (14th Ed.).p. 583.
- ^{lxxxiii} *Ibid*, p. 583.
- ^{lxxxiv} *Id*.
- ^{lxxxv} *Id*.

- lxxxvi *Id.*
- lxxxvii *IN RE. NEWKIRK*, Bankr. W.D.N.C., Sept. 7, 2001 (J. Hodges); <http://www.ncwb.uscourts.gov/index>.
- lxxxviii *Id.*
- lxxxix *Id.*
- xc 11 USC > 362 (b)(4).
- xc1 11 USC > 362 (b)(6).
- xcii 11 USC > 362 (b) (9)(A)(B)(C)(D).
- xciii *IN RE WESTCHASE ASSOCIATES*, 126 B.R. 692 (W.D.N.C. 1991)(J. Mullen); <http://www.ncwb.uscourts.gov/index>.
- xciv *Ibid.*
- xcv *IN RE NORTH AMERICAN SHELTER ASSOCIATES*, Case No. C-B-90-31418 (Bankr. W.D.N.C., Nov. 19, 1990) (J. Hodges); <http://www.ncwb.uscourts.gov/index>.
- xcvi 11 USC > 362 (f).
- xcvii 11 USC > 362 (g)(1)(2).
- xcviii Marcial O.T. Balgos, *The Need for a Law on Corporate Distress*, Journal and Magazine of the Integrated Bar of the Phil, Vol. XXV No.1, 1st Quarter 1999, p. 63.
- xcix Fe Eloisa C. Gloria, *On Insolvency and Suspension of Payments*, Address delivered in the General Membership of the Bar Administration Institute of the Phil (Sept 29, 1998); except from *UB Law Journal*, Vol. II, April-June 1999.
- c See Appendix “A”.
- ci See Appendix “B”.
- cii See Appendix “C”.
- ciii *Ibid.*
- civ SEE Appendix “D”.
- cv A.M. NO. 00-11-03-SC [November 21, 2000], SEE Appendix “E”.
- cvi A.M. No. 00-8-10-SC. Re: *Transfer of Cases from the Securities and Exchange Commission to the Regional Trial Courts*; SEE Appendix “F”.
- cvi *Ibid.*
- cvi Fe Eloisa C. Gloria, *On Insolvency and Suspension of Payments*, Address delivered in the General Membership of the Bar Administration Institute of the Phil (Sept 29, 1998); except from *UB Law Journal*, Vol. II, April-June 1999.
- cix *Ibid.*
- cx *Ibid.*
- cx1 *Ibid.*
- cxii http://www.insolvencyasia.com/insolvency_law_regimes/philippine/section_i.html
- cxiii Cesar Villanueva, *Commercial Law Reviewer*, (2004), p. 1219.
- cxiv *Ibid.*
- cxv *Ibid.*
- cxvi http://www.insolvencyasia.com/insolvency_law_regimes/philippine/section_i.html
- cxvii *Ruby Industrial Corporation vs. Court of Appeals*, G.R. Nos 124185-87, 20 January 1998 (284 SCRA 445).
- cxviii Black Dictionary, 6th Edition (1990), p. 1287.
- cxix *Ibid.*
- cxx BP No. 68, Section 122. *The Corporation Code of the Phil.*
- cxxi *Philippine Veterans Bank Employees Union vs Hon. Benjamin Vega*, G.R. No. 105364, 28 June 2001.
- cxvii Marcial O.T. Balgos, *The Need for a Law on Corporate Distress*, Journal and Magazine of the Integrated Bar of the Phil, Vol. XXV No.1, 1st Quarter 1999.
- cxviii Republic Act No. 8799, 5.2: *Securities Regulation Code*
- cxviii Section 1 of Rule 3, *Interim Rules Procedure of Corporate Rehabilitation*; A.M. 00-8-10 SC, November 21, 2000. Action in “**in rem**” is that which is not directed only against particular persons but against the thing itself and the object of which is to bar indifferently all who might be minded to make any objections against the right sought to be enforced, hence the judgment therein is binding theoretically upon the whole world (Regalado).
- cxv *Ibid.*
- cxvi *Ibid.*
- cxvii *Ibid.*

- cxxviii Section 2-4. SEC: *Rules of Procedure on Corporate Recovery*, Dec. 21, 1999. Under the rule on intervention, the allowance and disallowance of a motion to intervene is addressed to the sound discretion of the court, and it is not intended to change the nature and character of the action itself (Regalado). To warrant intervention, it must be shown that the movant has legal interest in the matter in litigation and consideration must be given as to whether or not the adjudication of the rights of the original parties may be delayed or prejudiced (*Ibid*).
- cxxix Section 5 of Rule 3. *Ibid*.
- cxxx *Ibid*.
- cxixi *Ibid*.
- cxixii Section 2 of Rule 1, *Ibid* .
- cxixiii *Ibid*.
- cxixxiv Section 4-1, SEC: *Rules of Procedure on Corporate Recovery*, Dec. 21, 1999.
- cxixxv Section 1 of Rule 4, *Interim Rules Procedure of Corporate Rehabilitation*; A.M. 00-8-10 SC, November 21, 2000.
- cxixxvi Hernando B. Perez, *Reviewer on Insurance, Insolvency and Code of Commerce*, (2000), p. 128; citing Sec 18 and Sec. 24 of Insolvency Law (Act No. 1956).
- cxixxvii *De Amuzategui vs. MacLeod*, No. 10629, December 24, 1915, (33 Phil 80).
- cxixxviii Section 2 of Rule 4. *Ibid*.
- cxixxix See Appendix “G”.
- cxli Section 2 of Rule 4. *Ibid*
- cxlii Section 1 of Rule 3. *Ibid*.
- cxliii *Ibid*.
- cxliiii *Ibid*.
- cxliv Section 4 of Rule 4. *Ibid*.
- cxlv Agbayani, Aguedo F., *Commentaries and Jurisprudence on the Commercial Law of the Philippine*, Volume III (1996), p. 673.
- cxlvi *Ibid.*; citing *Mueller vs. Nugent*, 184 US 1.
- cxlvii Cesar Villanueva, *Commercial Law Reviewer*, (2004), p. 1221-1224.
- cxlviii Fe Eloisa C. Gloria, *On Insolvency and Suspension of Payments*, Address delivered in the General Membership of the Bar Administration Institute of the Phil (Sept 29, 1998); except from *UB Law Journal*, Vol. II, April-June 1999.
- cxlix *Ibid*.
- cl <http://www.insolvencyasia.com/news/Aug/31Aug-Ph.htm>.
- cli *Ibid*.
- clii G.R. No. 124185-87, January 20, 1998.
- cliii http://www.insolvencyasia.com/insolvency_law_regimes/philippine/section_i.html.
- cliv *Ibid*.
- clv G.R. No. 123379, July 15, 1997 (275 SCRA 497)
- clvi Marcial O.T. Balgos, *The Need for a Law on Corporate Distress*, Journal and Magazine of the Integrated Bar of the Phil, Vol. XXV No.1, 1st Quarter 1999, p. 66.
- clvii No. L- 72873, May 28, 1987, 150 SCRA 259.
- clviii Metzger, Mallor, Barnes, etc., *Business Law and the Regulatory Environment: Concept and Cases*, (6th Ed.), p. 1048.
- clix Anderson, Fox & Twomey, *Business Law and the Legal Environment*, (14th Ed), p.715,
- clx Ronald Winston Hamer and Ms. Clare Wee, *Secured Transactions and Insolvency Law Reform*, a report of Office of the General Counsel of Asian Development Bank, Oct. 1999; www.insolvencyasia.com, at par. 56.
- clxi *Ibid*.
- clxii *Ibid* at par. 58.
- clxiii *Ibid*.
- clxiv *Ruby Industrial Corporation vs. Court of Appeals*, G.R. No. 124185-87, January 20, 1998, (284 SCRA 445)
- clxv *Alemar's Sibal & Sons, Inc. vs. Elbinias*, G.R. No. 75414, June 4, 1990.
- clxvi *Ibid*.
- clxvii *Ibid*.
- clxviii Black Law Dictionary; 6 Edition (1990), p. 134
- clxix *BF Homes, Incorporated vs. Court of Appeals*, G.R. No 76879, October 3, 1990; G.R. No. 77143, October 3, 1990 (190 SCRA 262); citing the Court of Appeals decisions (CA-G.R. Sp. No. 09680, October 16, 1986 in the case of *BF Homes vs. Hon. Fernando P. Agdamag, et.al*.

- clxx *Ibid.*
- clxxi Rule 2, Section 1, *Interim Rules of Procedure on Corporate Rehabilitation*, A.M. NO.00-8-10-SC (November 21, 2000).
- clxxii Marcial O.T. Balgos, *Corporate Rehabilitation: Arranza and PAL; Two Steps Backward?*, *The Lawyers Review*, July 31, 2004, p. 4.
- clxxiii G.R. No. 146698, September 24, 2002 (389 SCRA 588).
- clxxiv Robert N. Corley & Peter J. Shedd, *Principles of Business Law*, (14th Ed.)p. 583.
- clxxv G.R. No. 74851, December 9, 1999 (320 SCRA 279).
- clxxvi G.R. No. 97178, January 10, 1994 (229 SCRA 223).
- clxxvii *Co vs PNB*, No. L-51767, June 29, 1982 (114 SCRA 842).
- clxxviii *Rizal Commercial Banking Corporation (RCBC) vs. Intermediate Appellate Court (IAC)*
G.R. No. 74851, September 14, 1992 (Original Decision).
- clxxix *Ibid.*
- clxxx *Ibid.*
- clxxxi *Ibid.*
- clxxxii *Ibid.*
- clxxxiii *Rubberworld (Phils), Inc. vs NLRC*, G.R. No. 128003, July 26, 2000.
- clxxxiv Robert N. Corley & Peter J. Shedd, *Principles of Business Law*, (14th Ed.)p. 583.
- clxxxv *Ibid.*, p. 581.
- clxxxvi Mark E. Roszkowski, *Business Law: Principles, Cases and Policy*, (6th Ed.), p. 607, citing the case of *In Re of Holland*, 21 B.R. 681 (Bkrtcy.. N.D. Ind. 1982).
- clxxxvii Anderson, Fox & Twomey, *Business Law and the Legal Environment*, (14th Ed), p.709.
- clxxxviii Metzger, Mallor, Barnes, etc., *Business Law and the Regulatory Environment: Concept and Cases*, (6th Ed.), p. 1048.
- clxxxix Mark E. Roszkowski, *Business Law: Principles, Cases and Policy*, (6th Ed.), p. 618.
- cx Robert N. Corley & Peter J. Shedd, *Principles of Business Law*, (14th Ed.)p. 583.
- cxci *BF Homes, Incorporated vs Court of Appeals*, G.R. No. 76879, G.R. No. 77143, October 3, 1990 (1990 SCRA 262).
- cxcii *Rizal Commercial Banking Corporation vs Intermediate Appellate Court*, G.R. No. 74851, September 14, 1992 (213 SCRA 830).
- cxci *Ruby Industrial Corporation vs Court of Appeals*, G.R. No. 124185-87, January 20, 1998 (284 SCRA 445).
- cxci *Rubberworld (Phil), Inc. vs NLRC*, G.R. No. 128003, July 26, 2000 (336 SCRA 433).