Republic of the Philippines
Department of Finance
Securities and Exchange Commission
COMMISSION EN BANC

IN THE MATTER OF THE PETITION FOR DECLARATION OF A STATE OF SUSPENSION OF PAYMENT; FOR THE APPROVAL OF A REHABILITATION PLAN; AND THE APPOINTMENT OF A MANAGEMENT COMMITTEE,

VICTORIAS MILLING COMPANY, INC.,
Appellant,

SEC En Banc Case No. 07-18-449

-versus-

THE SECURITIES AND EXCHANGE COMMISSION SPECIAL HEARING PANEL 1,
Appellee.

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DECISION

Before the Commission is the *Appeal*[1] filed on 27 July 2018 by Victorias Milling Company, Inc. (VMC) assailing the *Order* dated 11 July 2018 (Assailed Order) of the Special Hearing Panel 1 (SHP1), and prayed for the reversal and setting aside of the same for allegedly having been issued without or in excess of jurisdiction, or with grave abuse of discretion. The dispositive portion of the Assailed Order reads:

> "WHEREFORE, premises considered, the Special Hearing Panel 1 hereby resolves to:
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> 1. **DENY** VMC's Motion[2] to Direct Bank of Philippine Islands and Metropolitan Bank and Trust Company: (1) To cancel the participation certificates; (2) To annotate the appropriate instruments of release with the appropriate registry of deeds; and (3) To make the notation of the satisfaction of the promissory notes, the discharge of the indemnity obligations and the cancellation of participation certificates; and

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[1] Notice of Appeal and Memorandum of Appeal dated July 23, 2018.
[2] Dated July 25, 2013.

2. **DENY** the BPI and BPI-AMTG's Motion[3] to Consign Assets and Documents to the Securities and Exchange Commission."

FACTS

On 3 September 1991, VMC entered into a Mortgage Trust Indenture Agreement ("First MTI") with its secured creditors and appointed the Bank of the Philippine Islands – Asset Management & Trust Group (BPI-AMTG) as a trustee-bank to hold VMC's mortgaged properties and assets on behalf and for the benefit of VMC's creditors listed therein (the "Secured Creditors").

Under the First MTI, the Secured Creditors expressly consented to the execution of the First MTI and agreed to hold Mortgage Participation Certificates ("MPCs") in order to secure the payment of the principal and interest, premium and other charges, if any, on the obligation and the performance of all the provisions of the First MTI and other existing credit agreements.

On 4 July 1997, VMC filed a Petition for the Declaration of a State of Suspension of Payment, for the Approval of a Rehabilitation Plan and Appointment of a Management Committee (the "Petition"), alleging that although it has sufficient property to cover all of its debts, it foresees its inability to pay them when they become due because of financial difficulties. In an Order dated July 8, 1997, the Commission granted the Petition and suspended all actions and claims against VMC pending before any court, tribunal, office, board, body and/or commission.

Acting on the rehabilitation plan and the amendments thereto which were submitted by VMC and the Management Committee ("ManCom") that was constituted, the Commission in its Orders dated 2 June 1999 and 19 August 1999, approved the Updated Rehabilitation Plan dated 25 September 1998 subject to the terms of the Original Rehabilitation Plan (the "ORP")[4]. On 19 November 2000, the Alternative Rehabilitation Plan (the "ARP") prepared by VMC ManCom, intended to supplement the ORP, was subsequently approved by the Commission.

To implement the ORP and the ARP, VMC and its creditors executed a Debt Restructuring Agreement ("DRA") dated 29 April 2002. Under the DRA, VMC agreed that its total principal obligation, inclusive of interest in the amount of Seven Billion Nine Hundred Seventeen Million Two Hundred Ninety Two Thousand Eight Hundred Twenty Seven and 45/100 Pesos

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[3] Dated July 10, 2015.
[4] Consists of the First Addendum to the Rehabilitation Plan as of February 5, 1999 and the Second Amendment to the Rehabilitation Plan dated July 22, 1999.

(P7,917,292,827.45)[5] (hereinafter, the "Outstanding Loan Obligation") shall be paid as follows:

a. One Billion One Hundred Million Pesos (P1,100,000,000.00) shall be converted into equity;

b. Two Billion Four Hundred Million Pesos (P2,400,000,000.00) shall be converted into Convertible Notes ("CN"); and

c. Four Billion Four Hundred Seventeen Million Two Hundred Ninety Two Thousand Eight Hundred Twenty Seven and 45/100 Pesos (P4,417,292,827.45)[6] shall be restructured and paid over a period of fifteen (15) years[7], (hereinafter referred as the "Restructured Loans").

The DRA also provides for the continuing validity and enforceability of the first mortgage over the properties covered by the First MTI in favor of its secured creditors, and for a secondary mortgage by unsecured creditors over the MTI properties in so far as their restructured loans are concerned.

On 8 September 2003, VMC entered into a Secondary Mortgage Trust Indenture Agreement ("Secondary MTI") and appointed Metropolitan Bank & Trust Company – Trust Banking Group (MBTC-TBG) as the trustee-bank to comply with the DRA[8] that provides that the unsecured creditors shall have secondary mortgage over the MTI properties in relation to their Restructured Loans.

Pursuant to and under the First and Secondary MTIs, both secured and unsecured creditors of VMC, respectively, have mortgage liens over the properties covered therein.

On 26 July 2013, VMC filed a Motion to Direct both BPI-AMTG and MBTC-TBG: (1) To cancel the participation certificates; (2) To annotate the appropriate instruments of release with the appropriate registry of deeds; and (3) To make the notation of the satisfaction of the promissory notes, the discharge of the indemnity obligations and the cancellation of participation certificates ("Motion to Direct") on the ground that it had already fully paid the Outstanding Loan Obligation, both to the Secured and Unsecured Creditors.

On August 16 and September 26, 2013, China Banking Corporation ("China Bank") and Metropolitan Bank & Trust Company ("Metrobank") filed their Oppositions, respectively. China Bank argued that the Secondary

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[5] DRA, Annex B, B-1 and B-2.
[6] DRA, Annex C.
[7] Restructuring Period is from September 1, 2003 to August 31, 2018.
[8] Section 10.

MTI secured not only the Restructured Loans but also the CNs. Hence, considering that CNs were still outstanding, including those that were held by China Bank, VMC cannot seek the release and discharge of its mortgaged properties under the Secondary MTI. Metrobank on the other hand, posited that the First and Secondary MTI were constituted mainly to secure the fulfillment of a principal obligation. Since, there are still unsecured creditors who are not yet paid, VMC cannot be discharged from both MTIs.

In his Comment dated 1 October 2013, the Rehabilitation Receiver opined and maintained that on the basis of Section 17.5 of the DRA[9], VMC's obligations under CN are not covered and secured by the First and Secondary MTIs, arguing that the properties that were used to secure the CNs are limited to those that are not subject to any encumbrances or liens in favor of any party. Hence, since the properties that are covered by the First and Secondary MTIs are clearly subject to the encumbrances or liens created by these indentures in favor of the SECURED and UNSECURED CREDITORS, these properties cannot, and do not secure the CNs.

On 10 July 2015, BPI-AMTG filed a Motion to Consign VMC's Assets and Documents to the Commission ("Motion to Consign") following its resignation[10] as trustee under the First MTI, which took effect on April 6, 2014.

In compliance with the Order dated 21 September 2016, the Rehabilitation Receiver filed his Compliance dated 21 October 2016 where he reported to the SHP1 that VMC had, on 15 January 2013 and 31 May 2013, made payments which effected the full settlement of the Outstanding Loan Obligation. The foregoing reiterated the Status Report as of Crop Year 2012-2013 that was submitted by the Rehabilitation Receiver to the SHP1 on 17 February 2014. Thus in his Comment (to the Motion to Consign) dated 21 October 2016, the Rehabilitation Receiver recommended and prayed for the issuance of an order granting the Motion to Direct on the ground that the Outstanding Loan Obligation of VMC have all been paid in full.

On 17 January 2018, the SHP1 issued an Order directing VMC, the Rehabilitation Receiver and all concerned parties to submit their respective position papers on VMC's Motion to Direct and BPI-AMTG's Motion to Consign.

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[9] "Section 17.5. **The mortgage lien herein created, established and constituted** in favor of the SECURED CREDITORS as first mortgagee and UNSECURED CREDITORS as second mortgagee **shall cover only those VMC fixed assets that are not subject to any encumbrances or liens in favor of any party**. It is hereby understood by the parties hereto that **the mortgage lien herein created shall not in any way novate any provisions, terms and conditions of any existing mortgage** nor prejudice or diminish the rights, benefits and privileges of any existing mortgagees." (Emphasis supplied)

[10] Dated 6 March 2014.

Of the eleven (11) concerned parties, only VMC, the Rehabilitation Receiver and BPI and BPI-AMTG filed their position papers. The Rehabilitation Receiver reiterated his position that the First and Secondary MTIs (collectively, the MTIs) should be discharged on the ground that the principal obligations secured by the same have already been paid in full. BPI and BPI-AMTG on the the other hand prayed for the denial of the Motion to Direct and the grant of the Motion to Consign.

In its Position Paper dated 21 February 2018, VMC prayed for the grant of the Motion to Direct on the ground that it had already paid its secured and unsecured creditors[11], as well as the holders of the Convertible Notes (CM)[12] in full.

Among the remaining eight (8) concerned parties who did not file a position paper, only the Development Bank of the Philippines (DBP), Land Bank of the Philippines (LBP) and China Bank, filed their respective manifestations:

(a) On February 5, 2018, the DBP filed its Manifestation and Comment, stating among others, that it interposes no objection to both Motions.
(b) The LBP filed its Manifestation on February 1, 2018, saying that it has no interest over the matters or issues raised in the Motions that would necessitate the filing of a Position Paper.
(c) China Bank filed its Manifestation on February 13, 2018, stating that it will not participate in the instant proceedings because it has already assigned its CNs in 2014 to other parties.

On April 2, 2018, VMC filed a Manifestation with Urgent Motion[13] praying that (a) the Motion to Consign be granted and (b) BPI-ATMG be directed to consign the assets and related documents pertaining to the First MTI to the Controller referred in Section 22[14] of the DRA.

After the parties submitted their respective Position Papers, SHP1 issued the Assailed Order.

Hence, this *Appeal*.

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[11] Annexes "B" to "AA" and "B-1" to "AA-1".
[12] Annexes "DD" to "TT" and "DD-1" to "TT-1".
[13] Manifestation with Urgent Motion (To Resolve the July 10, 2015 Motion to Consign Assets and Documents to the Commission, filed by Bank of the Philippine Islands – Asset Management and Trust Group) dated March 31, 2018.
[14] "The SECURED CREDITORS and the UNSECURED CREDITORS shall have the right to appoint VMC's Controller throughout the duration of the Restructuring Period. The Controller shall be appointed by the representatives of the SECURED and UNSECURED CREDITORS in the VMC's Board of Directors, upon the recommendation of the majority of the SECURED CREDITORS and the UNSECURED CREDITORS."

In its Appeal, VMC maintains that there is no need to appoint a successor trustee considering that, as early as May 31, 2013, its entire Outstanding Loan Obligation was already fully paid. VMC argued that since the Outstanding Loan Obligation including the CNs has been fully paid, the principal obligation has been extinguished; and considering that properties covered by the MTIs were mere collaterals to the Outstanding Loan Obligation, the discharge of the MTI is proper on the ground that it cannot exist apart from the principal obligation. VMC also argued that the SHP committed reversible error in directing the appointment of a trustee considering that there are no longer any creditors to speak of, emphasizing the fact that no creditor has opposed its Motion to Direct. In the alternative, VMC moved that all assets and related documents under the MTIs should be consigned to VMC's Controller.

VMC likewise posits that the Motion to Direct is part of the implementation of VMC's ORP, ARP and DRA, and an incident of the rehabilitation proceeding of VMC over which the Commission has jurisdiction. VMC argues that the determination by the Commission of the Motion to Direct is consistent with the exercise of its implied powers, and/or those which are necessary or incidental to the carrying out of its the express powers. VMC thus maintains that the SPH1 committed reversible error in holding that it has no jurisdiction over the Motion to Direct considering that it has jurisdiction on, and has in fact passed upon the ORP, ARP, the MTIs and the matter relating to the Outstanding Loan Obligation.

ISSUES

1. Did the SHP commit reversible error in requiring the appointment of a successor trustee for the First MTI and in denying the Motion to Consign?

2. Did the SHP1 commit reversible error in denying the Motion to Direct for lack of jurisdiction?

RULING

After a careful review of the arguments and the evidence on record, the Commission finds the Appeal meritorious and hereby grants the same.

(1) <u>The appointment of a successor trustee for the First MTI is no longer necessary as entire</u>

<u>Outstanding Loan Obligation of VMC has been paid in full.</u>

In the Assailed Order, the SHP1 denied BPI-AMTG's Motion to Consign on the ground that under the First MTI, the appointment of a trustee is required. The SHP1 noted the failure of VMC and its creditors to appoint a successor trustee after the resignation of BPI-AMTG as trustee in 6 April 2-14. Apparently, the reason for BPI-AMTG's Motion to Consign was that it ceased to be a trustee and was discharged from its duties, and freed from any accountability or claim arising therefrom under the First MTI. Notwithstanding its resignation as trustee, the SHP1 was of the position that it can compel BPI-AMTG to continue holding the said properties until a new trustee is appointed. The SHP1 was also of the position that the MTI subsists notwithstanding the full payment of VMC's Outstanding Loan Obligation.

We do not agree with the SHP1.

Corporate rehabilitation refers to the restoration of a financially distressed corporation to a condition of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan, more if the financially distressed corporation continues as a going concern than if it is immediately liquidated. The foregoing finds support in *Philippine Asset Growth Two, Inc. vs. Fastech Synergy Philippines, Inc.*,[15] where the Supreme Court (the "Court") explained the purpose of corporate rehabilitation, to wit:

> "Case law explains that corporate rehabilitation contemplates a continuance of corporate life and activities in an effort <u>to restore and reinstate the corporation to its former position of successful operation and solvency</u>, <u>the purpose being to enable the company to gain a new lease on life and allow its creditors to be paid their claims out of its earnings</u>. Thus, **the basic issues in rehabilitation proceedings concern the viability and desirability of continuing the business operations of the distressed corporation, <u>all with a view of effectively restoring it to a state of solvency or to its former healthy financial condition through the adoption of a rehabilitation plan</u>**." (Emphasis supplied)

Consistent with the afore-quoted objective, VMC and its creditors executed, among others, the DRA which was intended to implement the ORP and ARP approved by the Commission to ensure full payment of the Outstanding Loan Obligation. The Outstanding Loan Obligation were previously secured by the properties of VMC pursuant to and under the MTIs. The DRA expressly recognized and provided for a continuing security of VMC's secured creditors over the MTI properties and constituted a second

[15] G.R. No. 206528, June 28, 2016.

mortgage in favor of unsecured creditors over the MTI properties, respectively. Sections 9 and 10 of the DRA provides:

> "Section 9. As security for the prompt and effective repayment and compliance by VMC of any or all obligations contracted pursuant to this Restructuring Agreement and related documents, including payment of interests, charges, accruals and other fees due thereon, **VMC hereby confirms the continuing validity and enforceability of the first mortgage granted to the SECURED CREDITORS, pari passu and in such proportion to their respective loans to, credits to our claims against VMC directly covered/secured by MPCs, over the MTI properties**, include any and all substitutions, replacements, additions, amendments and/or renewals thereof which may be covered by the Mortgage Trust Indenture executed on 03 September 1991 by VMC in favor of BPI for the benefit of the SECURED CREDITORS and all amendments thereof." (Emphasis supplied)

> "Section 10. As a security for the prompt and effective repayment and compliance by VMC of any or all obligations contracted pursuant to this Restructuring Agreement and related documents including payment of penalties, charges, interests, other fees due thereon, and principal loan obligations, **VMC hereby creates, establishes and constitutes in favor of the UNSECURED CREDITORS**, including loan facilities and credit accommodations of the SECURED CREDITORS that is/are not directly covered/secured by MPC's of the first mortgage, pari passu and in such proportion that their respective loans to, credits to, or claims against VMC, **a second mortgage over the MTI Properties, including any and all substitutions, replacements, additions, amendments and/or renewals thereof which may be covered by the Second Mortgage Trust Indenture (hereinafter "Secondary MTI")** to be executed between VMC and the UNDESURED CREDITORS holding on to at least two-thirds (2/3) of the Peso Unsecured Loans. The Terms of the Secondary Mortgage Trust Indenture to be executed by VMC in favor of the UNSECURED CREDITORS as second mortgagee to the MTI Properties must have the approval of the VMC Management Committee, with at least one (1) member representing the interest of the SECURED CREDITORS voting in favour of the execution of the Secondary MTI in favour of the SECURED CREDITORS." (Emphasis supplied)

Under the afore-quoted provisions of the DRA, VMC and its creditors (secured and unsecured) agreed that the Outstanding Loan Obligation should continue to be secured by the properties under the MTI. The MTI was clearly accessory contract which was intended to secure the original loan obtained by VMC from its creditors. The subsequent execution of the DRA did not alter the nature of the MTI as an accessory contract; the DRA merely modified the coverage of the properties secured under the MTIs i.e. the Outstanding Loan Obligation. The foregoing is consistent with the doctrine in *Philippine National Bank vs. RBL Enterprises Inc*.[16] where the Court held that:

> "Article 2126 of the Civil Code describes the real nature of a mortgage: it is a real right following the property, such that in subsequent transfers by the mortgagor, the transferee must respect the mortgage. A registered mortgage lien is considered inseparable from the property inasmuch as it is a right in rem. The mortgage creates a real right or a lien which, after being recorded, follows the chattel wherever it goes. Under Article 2129 of the same Code, the mortgage on the property may still be foreclosed despite the transfer.
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> Indeed, even if the mortgaged property is in the possession of the debtor, the creditor is still protected. To protect the latter from the former's possible disposal of the property, the chattel mortgage is made effective against third persons by the process of registration." (Emphasis supplied)

The records show that on 17 February 2014, the Rehabilitation Receiver submitted to the SHP1 a Status Report on VMC as of Crop Year 2012-2013 (the "Report") where it showed that VMC has already paid in full the entire Outstanding Loan Obligation. This fact was reiterated by the Rehabilitation Receiver in his Compliance dated 21 October 2016 filed with the SHPI where he declared and submitted proof that VMC had, on 15 January 2013 and 31 May 2013, made payments which effected the full settlement of the Outstanding Loan Obligation. Moreover, in his Compliance[17], the Rehabilitation Receiver informed the Commission that on 28 February 2014 and 04 April 2014, VMC paid holders of Convertible Notes pursuant to Section 13.2 of the DRA[18] and submitted proof thereof. In addition, VMC's Audited Financial Statements for the Crop Years 2013-2019 support its claim that other than the CN awaiting conversion and its corresponding interest totaling to Php5.45million, its entire Outstanding Loan Obligation per approved DRA has already been paid in full.

The records also show that BPI-AMTG resigned as trustee under the First MTI on April 6, 2014, the year following the submission of the Rehabilitation Receiver's Report that VMC had settled in full its Outstanding Loan Obligation. Moreover, in the Report, the Rehabilitation Receiver presented and attached proof of payment of the principal and interest of the restructured loan to BPI and BPI-AMTG.[19] We also note that no creditor of VMC came forward and pursued an opposition to the Motion to Direct. These circumstances affirm and confirm the matters covered in Report and

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[16] G.R. No. 149569, May 28, 2004.
[17] Dated 21 October 2016.
[18] "In the event that the Restructured Loans are already fully settled before the 15 year repayment period, VMC Cash Flow in excess of Capital Expenditure requirements shall be used to pay/redeem the Convertible Note (principal plus accumulated interests)
[19] Annexes "H", "H-1" and "H-2".

Compliance of the Rehabilitation Receiver relating to VMC's full payment of the Outstanding Loan Obligation.

Article 2085 of the Civil Code provides for the essential requisites to a valid contract of mortgage, thus:

> "(1) That they be constituted <u>to secure the fulfillment of a principal obligation</u>;
> (2) That the pledgor or mortgagor be the absolute owner of the thing pledged or mortgaged;
> (3) That the persons constituting the pledge or mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose." (Emphasis supplied)

Considering that a mortgage is constituted for the purpose of securing the fulfillment of a principal obligation, it is settled in jurisprudence that a mortgage contract is merely an accessory contract, the consideration of which is the same as and totally dependent on the principal contract without which, it cannot exist as an independent contract. In *Social Security System vs. Moonwalk Development & Housing Corp*.[20], the Court ruled that:

> "Now an accessory obligation has been defined as that attached to a principal obligation in order to complete the same or take its place in the case of breach (4 Puig Peña Part 1 p. 76). Note therefore that an accessory obligation is dependent for its existence on the existence of a principal obligation. A principal obligation may exist without an accessory obligation but an accessory obligation cannot exist without a principal obligation. For example, <u>the contract of mortgage is an accessory obligation to enforce the performance of the main obligation of indebtedness. An indebtedness can exist without the mortgage but a mortgage cannot exist without the indebtedness, which is the principal obligation. In the present case, the principal obligation is the loan between the parties</u>." (Emphasis supplied)

In *Philippine National Bank vs. Court of Appeals*[21], the Court categorically held that the effect of extinguishment of the loan consequent to the full payment thereof, is the extinguishment *ipso jure* of the mortgage, thus:

> "Records show that PNB's application for foreclosure, filed on July 15, 1985, was based on the Spouses Cruz's third mortgage deed. However, the Spouses So Hu had already paid on March 18, 1983 the principal obligation secured by the third mortgage. **A mortgage is but an accessory contract, the consideration of which is the same consideration of the principal contract without which it cannot exist as an independent contract. Since the full amount of the Third Loan was paid as early as March 18, 1983, extinguishing the loan obligation under the principal contract, the**

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[20] G.R. No. 73345, April 7, 1993.
[21] G.R. No. 126908, January 16, 2003.

> **mortgage obligation under the accessory contract has likewise been extinguished.**" (Emphasis supplied)

Applying the foregoing doctrinal pronouncements to the instant case, We hold that the MTIs, being an accessory contract, were extinguished after VMC fully paid the Outstanding Loan Obligation as shown in the Report of the Rehabilitation Receiver.

More importantly, the foregoing is supported by no less than the MTI itself where the parties expressly agreed in Paragraph 7 (Granting Clause) thereof that the full payment of VMC's obligations shall result in the cessation and termination of the MTI, thus:

> "**PROVIDED, HOWEVER, that if the Company, its successors or assigns, shall pay or cause to be paid the principal of, interest and other charges on the Obligation or other obligations secured by this Indenture**, directly to the holders thereof, or shall deposit with the Trustee the entire amount due or to become due thereon for principal, interest, and other charges on the Obligation or other obligations secured by the Indenture, directly to the holders thereof, or shall deposit with the Trustee the entire amount due or to become due thereon for principal, interest, and other charges, if any, and if the Company shall also pay or cause to be paid all the sums payable hereunder by it, **then this Indenture and the estate and rights granted shall cease, terminate, and be void**, as more fully provided in Article XI, Section 11.01 hereof, **and the Trustee shall execute and deliver to the Company such deeds or other instruments as shall be requisite to cancel and discharge the lien of this Indenture and reconvey to the Company the estate and title hereby conveyed**." (Emphasis supplied)

Under the afore-quoted provision, VMC and its creditors are no longer obliged to appoint a Trustee after it has paid its obligation in full, apparently for the clear and simple reason that the office of the trustee becomes *functus officio* with no creditors left to protect. Necessarily, the properties subject of the MTIs which were used to secure the obligation that has been extinguished by payment need not remain with the trustee.

The SHP1 thus made reversible error in directing the appointment of a successor trustee notwithstanding the clear provision of the MTI that full payment results in the termination of the same. Moreover, by directing the appointment of a successor trustee who will continue to hold the mortgaged properties under the MTI, the SHP disregarded settled jurisprudence holding that the extinguishment of loan obligation results in the extinguishment of the mortgage obligation. In the instant case, considering that the Outstanding Loan Obligation have been fully settled, Paragraph 7 (Granting Clause) of the MTI which provides for its automatic termination applies as such was the clear intent and express agreement of VMC and its creditors.

The directive of the SHP1 in requiring the appointment of a successor trustee notwithstanding the extinguishment of the VMC's entire Outstanding Loan Obligation and the consequent loss of creditors' cause of action against VMC after they have been paid in full, runs counter to the very purpose of corporate rehabilitation which is to provide the debtor corporation with a fresh start after paying the creditors. Certainly, the properties subject of the MTI which have ceased to become securities with the extinguishment of the loan obligation can be used by VMC to start anew by securing new loans to sustain its business operations, with the said properties as collaterals. To order the retention of the said properties with a successor trustee will unjustly deprive VMC of its property without due process.

Moreover, considering that all the party-creditors in the MTIs (and holders of Mortgage Participation Certificates) have already been paid in full, the directive of the SHP1 to appoint a successor trustee pursuant to Section 4.10 of the MTI will be impossible to comply with since there are no more holders of Mortgage Participation Certificates who can validly appoint a successor trustee. It is likewise impossible for VMC to appoint a successor trustee as no banking institution or trust company[22] will be willing to accept the role of a trustee and execute another MTI considering that there are no more creditors.

(2) <u>The Commission has jurisdiction over the Motion to Direct.</u>

In the Assailed Order, the SHP1 denied the Motion to Direct on the ground that the Commission has no jurisdiction over the same. The SHP1 maintained that the relief sought by VMC, i.e. the release and discharge of the properties under the First and Secondary MTI, requires the interpretation of a contract which is within the province of the regular trial courts.

We do not agree with the SHP1.

Jurisdiction has been defined as the power or authority of a court to hear and determine cases or controversies, and to carry its judgments into effect. The term imports the power and authority to declare the law, to hear and determine issues of law and of fact, the power to inquire into the facts, to apply the law, and to pronounce the judgment.[23]

The Commission was granted jurisdiction over matters on corporate rehabilitation, and was empowered to create and/or appoint receivers and/or

[22] Section 3.10 of the MTI provides that "The new Trustee to be appointed shall be a bank or trust company having its principal office and place of business in Metro Manila. xxx"
[23] 21 C.J.S, Courts, ξ 2, 1990.

management committee under P.D. No. 902-A, as amended by P.D. No. 1653, 1758 and 1799, for the purpose of preserving the rights of parties-litigants and/or to protect the interests of the investing public.[24] The Securities Regulation Code likewise granted the Commission the authority to "***exercise such powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted** to the Commission to achieve the objectives and purposes of the Decree*."[25] In the exercise of its jurisdiction over corporate rehabilitation cases, the Commission is guided by the Rules of Procedure on Corporate Recovery (the "Rules").[26]

In relation to the scope of and the exercise of its jurisdiction over corporate rehabilitation cases, the Commission was consistently guided by laws and established doctrines on jurisdiction, ruling that:

> "It is axiomatic that the jurisdiction of a tribunal, including a quasi-judicial officer or government agency, over the nature and subject matter of a petition or complaint is determined by the material allegations therein and the character of the relief prayed for, irrespective of whether the petitioner or complainant is entitled to any or all such relief.
>
> In this case, **the Commission's exclusive and original jurisdiction over the petition for suspension of payments or rehabilitation of corporations, as well as incidents thereof, is clearly provided in sections 5(d) and 6(c) and 6(d) of P.D. 902-A, as amended by P.D. No. 1758**.
>
> Thus, the Commission, prior to the enactment of R.A. No. 8799 or the Securities Regulation Code (SRC) is empowered to hear and determine all claims by creditors against the distressed corporation. **Indeed, section 5.2 of the SRC further declared that the Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of June 30, 2000 until finally disposed**. This is the reason why the Commission should retain jurisdiction over the instant case, and any incidents thereof.[27] (Emphasis supplied)

It bears emphasis that a corporate rehabilitation case is a special proceeding *in rem* wherein the petitioner seeks to establish the status of a party or a particular fact, *i.e.*, the inability of the corporate debtor to pay its debts when they fall due. It is summary and non-adversarial in nature. Its end goal is to secure the approval of a rehabilitation plan to facilitate the successful recovery of the corporate debtor. It does not seek relief from an injury caused

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[24] Covers petitions filed by corporations for the suspension of claims and actions filed on or before June 30, 2000.
[25] Section 5.1(n) of RA 8799.
[26] December 21, 1999.
[27] See Victorias Milling Company, Inc. v. Special Hearing Panel 1 and Dao Heng Bank, Inc. (SEC *En Banc* Case No. 01-15-353) and Victorias Milling Company, Inc. v. Special Hearing Panel 1 and Land Bank of the Philippines (SEC *En Banc* Case No. 04-16-399)

by another party.[28] In *Advent Capital and Finance Corp. v. Alcantara*[29], the Court categorically defined the nature of the proceedings in corporate rehabilitation, thus:

> "*Rehabilitation proceedings are summary and non-adversarial in nature, and do not contemplate adjudication of claims that must be threshed out in ordinary court proceedings. Adversarial proceedings similar to that in ordinary courts are inconsistent with the commercial nature of a rehabilitation case. The latter must be resolved quickly and expeditiously for the sake of the corporate debtor, its creditors and other interested parties. Thus, the Interim Rules "incorporate the concept of prohibited pleadings, affidavit evidence in lieu of oral testimony, clarificatory hearings instead of the traditional approach of receiving evidence, and the grant of authority to the court to decide the case, or any incident, on the basis of affidavits and documentary evidence.*" (Emphasis supplied)

A review of the Motion to Direct will readily reveal that VMC was seeking for the application of the clear provisions of the MTI on the basis of an uncontested fact that the VMC's Outstanding Loan Obligation has been paid in full. Contrary to the position of the SHP1, the relief sought for by VMC does not and will not involve the interpretation of the provisions of the DRA, but only the implementation of its clear and unambiguous provision therein. This is undoubtedly a duty of the SHP1, acting as a rehabilitation court, to sanction the implementation of an agreement which was entered into by VMC and its creditors pursuant to the ORP and ARP that the Commission approved. To sanction the position of the SHP1 that the parties to a corporate rehabilitation proceeding will have to go to the regular courts every time they wish to implement a clear provision in an agreement on the premise that this allegedly involves the interpretation of a contractual provision will defeat the very purpose of a rehabilitation proceeding. This will unreasonably clog the dockets of the courts which is not the intent of the law.

In *Allied Banking Corporation vs. Equitable PCI Bank, Inc.*[30], the Court, quoting with approval the disquisition of the Court of Appeals, emphasized the fundamental tenet in corporate rehabilitation embodied in the afore-quoted provision, thus:

> "It should be stressed that the Interim Rules was enacted to provide for a summary and non-adversarial rehabilitation proceedings. This is in consonance with the commercial nature of a rehabilitation case, which is aimed to be resolved expeditiously for the benefit of all the parties concerned and the economy in general." (Emphasis supplied)

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[28] Note 53, Supra.
[29] G.R. No. 183050, January 25, 2012.
[30] G.R. No. 191939, March 14, 2018.

Pursuant to the afore-quoted doctrine, the Court has ruled that only claims which are contested are excluded from the jurisdiction of the rehabilitation courts, including the Commission in so far as it relates to the instant case. In *Steel Corporation of the Philippines vs. Mapfre Insular Insurance Corporation*[31], the Court dismissed the argument of the RTC that acting as a court of general jurisdiction, it has competence to take cognizance of the disputed insurance claims which was denied by the insurer for alleged violation of the insurance policies, and categorically ruled that it is contrary to the very nature of rehabilitation proceedings which are summary and non-adversarial, thus:

> "The RTC, acting as rehabilitation court, has no jurisdiction over the subject matter of the insurance claim of SCP against respondent insurers. SCP must file a separate action for collection where respondent insurers can properly thresh out their defenses. SCP cannot simply file with the RTC a motion to direct respondent insurers to pay insurance proceeds. Section 3 of Republic Act No. 10142 states that rehabilitation proceedings are "summary and non-adversarial" in nature. They do not include adjudication of claims that require full trial on the merits, like SCP's insurance claim against respondent insurers. In Advent Capital and Finance Corporation v. Alcantara,[19] the Court held that:
>
>> Ultimately, the issue is what court has jurisdiction to hear and adjudicate the conflicting claims of the parties over the dividends that Belson held in trust for their owners. Certainly, not the rehabilitation court which has not been given the power to resolve ownership disputes between Advent Capital and third parties. xxx.
>
> Rehabilitation proceedings are summary and non-adversarial in nature, and do not contemplate adjudication of claims that must be threshed out in ordinary court proceedings. Adversarial proceedings similar to that in ordinary courts are inconsistent with the commercial nature of a rehabilitation case. The latter must be resolved quickly and expeditiously for the sake of the corporate debtor, its creditors and other interested parties. Thus, the Interim Rules "incorporate the concept of prohibited pleadings, affidavit evidence in lieu of oral testimony, clarificatory hearings instead of the traditional approach of receiving evidence, and the grant of authority to the court to decide the case, or any incident, on the basis of affidavits and documentary evidence."
>
> Here, Advent Capital's claim is disputed and requires a full trial on the merits. It must be resolved in a separate action where the Alcantaras' claim and defenses may also be presented and heard. (Emphases supplied)

In the instant case, the provisions of the MTI are not contested. The fact that no creditors came forward to pursue their opposition to the Motion to Direct affirms the allegation of VMC and the Rehabilitation Receiver that the Outstanding Loan Obligation has been paid in full. The application of

[31] G.R. No. 201199, October 16, 2013

Paragraph 7 (Granting Clause) of the MTI relating to the termination or cessation of the agreement is a matter that is within the jurisdiction of the Commission considering that it is not contested. This is consistent with and will serve the purpose of VMC's rehabilitation.

(3) <u>The full settlement of VMC's Outstanding Loan Obligation has and the Resignation of BPI as Trustee warrants and necessitates the consignment of the properties under the First and Secondary MTI to the Commission or to a custodian appointed by the Commission</u>.

In its Position Paper, BPI-AMTG maintained that consignment of the properties subject of the First MTI is necessary to preserve and maximize the assets of VMC considering the vacancy of the office of the trustee as a consequence of its resignation effective 6 April 2014. Moreover, the full payment of the VMC's Outstanding Loan Obligation which triggered the operation of the Section 7 of the Granting Clause, and which resulted in the termination of the MTI provides an additional justification to the propriety of consigning the properties subject thereof to a custodian appointed by the Commission for the purpose of effecting the discharge of the MTI and the cancellation of the Mortgage Participation Certificates issued thereunder.

The Commission has always been mindful of the objective of rehabilitation which is to conserve and administer the assets of an insolvent corporation in the hope of its eventual return from financial stress to solvency. It contemplates the continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and liquidity. The purpose of rehabilitation proceedings is precisely to enable the company to gain a new lease on life and thereby allow creditors to be paid their claims from its earnings.[32]

On account of the foregoing, the point of the Rehabilitation Receiver in his Position Paper dated 16 February 2018 relating to the appointment by the Commission of VMC's Controller as custodian under Section 22 of the DRA[33] is well taken. Considering however that all the secured and unsecured creditors have been paid in full and have consequently ceased to have a cause

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[32] Express Investments III Private, Ltd. vs. Bayantel, Inc, G.R. Nos. 174457-59, 175418-20 & 177270, December 5, 2012

[33] "The SECURED and UNSECURED CREDITORS shall have the right to appoint VMC's Controller throughout the duration of the Restructuring Period. The Controller shall be appointed by the representatives of SECURED and UNSECURED CREDITORS in VMC's Board of Directors, upon recommendation of the majority of the SECURED and UNSECURED CREDITORS."

of action against VMC, the discharge of the MTI can only be carried out if the Commission itself will appoint VMC's Controller as the custodian of the assets and properties under the MTIs that will be consigned by BPI-AMTG and MBTC-TBG, and thereafter effect the cancellation of the respective annotations. The foregoing will facilitate the continued rehabilitation of VMC as it will enable the latter to utilize and benefit from the properties which have technically been released from their respective encumbrances under the MTI.

In *Alemar's Sibal & Sons, Inc. vs. Judge Elbinias*[34], the Court emphasized that "during rehabilitation receivership, the assets are held in trust for the equal benefit of all creditors to preclude one from obtaining an advantage or preference over another by the expediency of an attachment, execution or otherwise." Necessarily, after the corporate debtor has fully satisfied and paid its creditors, the assets and properties used to secure the loans should revert to corporate debtor as the owner thereof, to seek the release of liens thereon, and be allowed to use the same in furtherance of its operations. This should be applied in the instant case considering that VMC has fully paid all its creditors under the MTIs.

The appointment by the Commission of VMC's Controller as custodian of the assets and properties under the MTIs that will be consigned is well within the exercise of its implied or incidental powers which under P.D. No. 902-A, as amended by P.D. No. 1653, 1758 and 1799 are necessary to carry out the express powers granted to achieve the objectives and purposes of the law. This is also consistent with the express provision of Paragraph 7 (Granting Clause) of the MTI which directs the execution and delivery of such deeds or other instruments as shall be requisite to cancel and discharge the lien subject thereof.

WHEREFORE, premises considered, the Commission hereby resolves to REVERSE AND SET ASIDE the Assailed Decision of the SHP1.

The First and Secondary MTI are hereby considered discharged with the full payment of the VMC's Outstanding Loan Obligation. The Bank of the Philippine Islands – Asset Management & Trust Group and Metropolitan Bank & Trust Company – Trust Banking Group are hereby directed to consign the properties subject of the First and Secondary MTI, respectively, to the Controller of VMC.

The Controller is directed to hold the properties and assets under the MTIs, to cause the release of the mortgages, and to submit a report to the Rehabilitation receiver. Finally, the Rehabilitation Receiver is directed to

[34] G.R. No. 75414, June 4, 1990.

submit to the SHP1 a report on all matters relating to the execution of this Decision.

SO ORDERED.

Pasay City, Philippines, 21 August 2020.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner