COMMERCIAL LAW

KOLIN ELECTRONICS CO., INC. *v.* KOLIN PHILIPPINES INTERNATIONAL, INC.

G.R. NO. 228165, 09 FEBRUARY 2021, *EN BANC*, (CAGUIOA, *J.*)

DOCTRINE OF THE CASE

According to jurisprudence, the Dominancy Test and the Holistic Test are used in assessing the resemblance of marks to determine the existence of likelihood of confusion. Out of the two tests, only the Dominancy Test has been incorporated in the IP Code. It also held that the legislative intent in explicitly adopting the Dominancy Test was to abandon the Holistic altogether. This was done by the Congress to finally resolve the conflicting doctrines regarding what constitutes colorable imitation of a registered mark.

Considering the adoption of the Dominancy Test and the abandonment of the Holistic Test, as confirmed by the IP Code and the legislative deliberations, the Court made it crystal clear that the use of the Holistic Test in determining the resemblance of marks has been deemed abandoned. As such, the Taiwan Kolin case, which used the Holistic Test, is improper precedent because the Dominancy Test is what is prescribed in the IP Code.

Applying the Dominancy Test, KPII's mark resembles KECI's mark because the word "KOLIN" is the prevalent feature of both marks. Phonetically or aurally, the marks are exactly the same.

FACTS

Two antecedent facts are involved in the present case: the KECI Ownership case and; the Taiwan Kolin case.

Under the *KECI Ownership case*, on August 17, 1993, KECI filed an application for Trademark Appilcan for ***KOLIN***, covering the following products under Class 9: automatic voltage regulator, converter, recharger, stereo booster and others. The KOLIN mark was used by KECI since 1989.

On February 29, 1996, Taiwan Kolin Co., Ltd. (TKC) filed its own application for **KOLIN** initially covering the following goods: color television, refrigerator, window-type air conditioner, split-type air conditioner, electric fan, and water dispenser. All of which are under Class 9 as well.

On July 22, 1998, TKC filed an opposition against KECI's trademark application claiming that it was the owner of Taiwan registrations for KOLIN and KOLIN SOLID series and that it has a pending application for **KOLIN.** It claimed that it would suffer damage if KECI's application because both marks is identical, if not confusingly similar.

Ultimately, without reaching the Supreme Court, the case was resolved in favor of KECI on July 31, 2006. Thus, KECI was considered as the owner of the ***KOLIN*** mark under the Trademark Law, the law applicable at that time, as against TKC.

However, in the *Taiwan Kolin case*, the registration of another KOLIN mark not owned by KECI was allowed. Such case was promulgated by the Supreme Court's Third Division on March 25, 2015. In that case, the **KOLIN** mark was resolved in favor of TKC but only with respect to Television and DVD players. The Court therein ruled that identical marks may be registered for products from the same classification. Moreover, it held that the emphasis should be on the similarity of the products involved and not on the arbitrary classification or general description of their properties or characteristics.

Furthermore, it held that the products covered by TKC's application and that of KECI's were unrelated. Also, it held that the list of products under Class 9 can be subcategorized into five different classifications and that the products covered by TKC's and KECI's marks fall under different sub-categories. The Court applied the Holistic Test. As a result, the Court gave due course to TKC's Trademark Application for KOLIN.

For the present case, Kolin Philippines International Inc., (KPII), an affiliate of TKC, filed a Trademark application for the **kolin** mark under Class 9 covering "Televisions and DVD players". KPII filed this application on September 11, 2006, or more than a month after the promulgation of the *KECI ownership case.*

Thus, KECI filed an opposition thereto claiming that it was the registered owner of the ***KOLIN*** mark and registration of KPII's mark will cause confusion among consumers.

KPII contended that, among others, the *KECI ownership case* specifically clarified that KECI's ownership over the mark is limited only in connection with goods specified in KECI's registration and those related thereto. "Television and DVD players" are not related to the goods covered by KECI's mark.

ISSUE

Is KPII allowed to register its **kol*i*n** mark?

RULING

NO. The Court ruled that KPII's Trademark application is not registrable because it will cause damage to KECI.

Section 123.1(d) of the Intellectual Property Code (IP Code) states that:

> SECTION 123. *Registrability*. - 123.1. A mark cannot be registered if it:
>
> (c) Is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of:
> i. The same goods or services, or
> ii. Closely related goods or services, or
> iii. If it nearly resembles such a mark as to be likely to deceive or cause confusion;

In determining likelihood of confusion — which can manifest in the form of "confusion of goods" and/or "confusion of business" several factors may be taken into account, such as:

> a) the strength of plaintiff's mark;
> b) the degree of similarity between the plaintiff's and the defendant's marks;
> c) the proximity of the products or services;
> d) the likelihood that the plaintiff will bridge the gap;
> e) evidence of actual confusion;
> f) the defendant's good faith in adopting the mark;

g) the quality of defendant's product or service; and/or
h) the sophistication of the buyers.

These criteria may be collectively referred to as the multifactor test. Out of these criteria, there are two which are uniformly deemed significant under the Trademark Law and the IP Code: the resemblance of marks (the degree of similarity between the plaintiff's and the defendant's marks) and the relatedness of goods or services (the proximity of products or services).

According to jurisprudence, the Dominancy Test and the Holistic Test are used in assessing the resemblance of marks to determine the existence of likelihood of confusion.

The Dominancy Test focuses on the similarity of the prevalent features of the competing trademarks which might cause confusion or deception, and thus infringement. If the competing trademark contains the main, essential or dominant features of another, and confusion or deception is likely to result, infringement takes place. Duplication or imitation is not necessary; nor is it necessary that the infringing label should suggest an effort to imitate.

On the other hand, the Holistic Test requires that the entirety of the marks in question be considered in resolving confusing similarity. Comparison of words is not the only determining factor. The trademarks in their entirety as they appear in their respective labels or hang tags must also be considered in relation to the goods to which they are attached. The discerning eye of the observer must focus not only on the predominant words but also on the other features appearing in both labels in order that he may draw his conclusion whether one is confusingly similar to the other.

However, the Court held that out of the two tests, only the Dominancy Test has been incorporated in the IP Code. It also held that the legislative intent in explicitly adopting the Dominancy Test was to abandon the Holistic altogether. This was done by the Congress to finally resolve the conflicting doctrines regarding what constitutes colorable imitation of a registered mark.

Considering the adoption of the Dominancy Test and the abandonment of the Holistic Test, as confirmed by the IP Code and the legislative deliberations, the Court made it crystal clear that the use of the Holistic Test in determining the resemblance of marks has been deemed abandoned. As such, the *Taiwan Kolin* case, which used the Holistic Test, is improper precedent because the Dominancy Test is what is prescribed in the IP Code.

Applying the Dominancy Test, KPII's mark resembles KECI's mark because the word "KOLIN" is the prevalent feature of both marks. Phonetically or aurally, the marks are exactly the same.

The Court further held that since the type of mark of KECI was a word mark, the word "KOLIN" itself is what is protected by the registration. That word marks protect the word itself stands to reason. Since there are no special characteristics to be shown in the reproduction of the mark in the application, the word itself is the subject of protection.

Thus, minor differences between the mark of KPII's and KECI's mark should be disregarded. The fact that KPII's application possesses special characteristics (e.g., italicized orange letter "i") not present in KECI's mark makes no difference in terms of appearance, sound, connotation, or overall impression because the "KOLIN" word itself is the subject of KECI's registration.

The Court held that goods covered by KPII and KECI are related. With respect to Relatedness of goods/services as a factor in determining confusion, jurisprudence laid down several factors in determining whether goods are related:

(a) the business (and its location) to which the goods belong
(b) the class of product to which the goods belong
(c) the product's quality, quantity, or size, including the nature of the package, or container
(d) the nature and cost of the articles
(e) the descriptive properties, physical attributes or essential characteristics with reference to their form, composition, texture or quality
(f) the purpose of the goods

(g) whether the article is bought for immediate consumption, that is, day-to-day household items
(h) the fields of manufacture
(i) the conditions under which the article is usually purchased and
(j) the channels of trade through which the goods flow, how they are distributed, marketed, displayed and sold.

The Court ruled that the factor "the class of product to which the goods belong" is inconsistent with the law and creates problems with making precedents in legal relatedness. The Nice Classification (NCL), used in classifying products, was made for purely administrative purposes, that is, to organize the thousands of applications filed worldwide with trademark offices. Thus, the classification of products/services should not have been included as one of the factors in determining relatedness because there was no legal basis for its inclusion.

It emphasized that the classes in the NCL undergo several changes each year. As such, judicial pronouncements regarding nature of certain goods/services and their legal relatedness/non-relatedness – which pronouncements would, in turn, affect substantive rights over marks and affect future cases involving the same goods/services – should not be made to depend on a constantly changing list. Therefore, the Court abandoned the use of product or service classification as a factor in determining relatedness or non-relatedness.

As such, the *Taiwan Kolin case* is once again inapplicable not only because it did not comprehensively consider all the jurisprudential factors in determining relatedness, but it also included an inapposite discussion on subcategories in the NCL as an additional rationale for its conclusion on non-relatedness.

In this case, the nature and cost of the articles are related. The goods covered by KPII and KECI are electronic in nature and expensive. The goods, being electronic, are likely made of metal. Furthermore, the goods cannot be easily carried around. As such, the descriptive properties, physical attributes or essential characteristics with reference to their form, composition, texture or quality are also related.

Both goods of the parties may be used for entertainment purposes, thus satisfying the factor of "purpose of goods". Furthermore, since both goods are not bought for immediate consumption, the factor "whether the article is bought for immediate consumption, that is, day-to-day household items" is also satisfied.

Both goods are rarely bought because they are relatively expensive and they last for a long time, goods covered by KOLIN and kolin are rarely bought. They are non-essential goods. Thus, satisfying the factor of "the conditions under which the article is usually purchased".

With respect to "the channels of trade through which the goods flow, how they are distributed, marketed, displayed and sold", both goods are offered in the same channels, that is, department or appliance stores.

Clearly, the goods covered by KPII and KECI are related and this legal relatedness impacts a finding of likelihood of confusion.

Another ground for finding relatedness of goods/services is their complementarity. The reasoning used in the case of *Hewlett-Packard Development Company, L.P. v. Vudu, Inc.* is also logical and persuasive. In said case, the opposer Hewlett-Packard registered its "VOODOO" mark for, inter alia, "personal and gaming computers" under Class 9. Meanwhile, Vudu, Inc. sought to register its "VUDU" mark for, inter alia, "computer software for use in computers for the transmission, storage and playback of audio and video content" also under Class 9. The tribunal therein pointed out that "the goods of the parties may be used together for the same purposes, may be found in the same channels of trade, and may appeal to the same purchasers. x x x by their descriptions, VUDU's particular type of software for computers and Hewlett-Packard's personal and gaming computers are complementary goods", thus, it granted Hewlett-Packard's opposition of the "VUDU" mark based on the finding that the goods under Class 9 covered by the marks are related and confusion is likely.

Applying this reasoning to the herein dispute, it is clear that the goods covered by KECI's KOLIN are complementary to the goods covered by KPII's **kol*i*n** and could thus be considered as related. This increases the likelihood that consumers will at least think that the goods come from the same source. In other words, confusion of business will likely arise.

The Court also held that there was actual confusion because the consumers of KPII sent complaints, concerns and other information to KECI, instead of KPII.

The presence of actual confusion is not an insignificant circumstance. The evidence of actual confusion is often considered the most persuasive evidence of likelihood of confusion because past confusion is frequently a strong indicator of future confusion. Actual confusion should be considered as strong evidence of likelihood of confusion, especially when there are concurrent findings of resemblance of marks and/or relatedness of the goods/services.

Parenthetically, the presence of this criterion in ascertaining the existence of likelihood of confusion in the multifactor test is yet another reason why the *Taiwan Kolin case* should not be held as a binding precedent here. In the *Taiwan Kolin case*, while there was evidence of actual confusion presented in the IPO-BLA, this was ultimately not considered in resolving the issue of likelihood of confusion.

The factor involving the "likelihood that the plaintiff will bridge the gap" pertains to the possibility that the plaintiff will expand its product offerings to cover the product areas of the defendant. Since the goods covered by KECI and KPII are related, it is likely that the goods of KPII falls within the normal potential expansion of business of KECI.

As stated in *Philip Morris, Inc. v. Fortune Tobacco Corporation*, "the general impression of the ordinary purchaser, buying under the normally prevalent conditions in trade and giving the attention such purchasers usually give in buying that class of goods, is the touchstone."

The goods in this case are not inexpensive goods and consumers may pay more attention in buying these goods. However, this does not eliminate the possibility of confusion, especially since most consumers likely do not frequently purchase Automatic Voltage Regulators, stereo boosters, TV sets, DVD players, etc. Unless they have jobs or hobbies that allow them to frequently purchase these electronic products, it is not farfetched to suppose that they may only encounter the marks in the marketplace itself once they are about to buy said goods once every five years or so.

Even if sophisticated consumers are making a repeat purchase years after they first bought a "KOLIN" product, confusion is still possible because of the degree of similarity of the subject marks. As mentioned above, KECI's mark is a word mark. Stated simply, the goodwill over the products will likely be associated with the "KOLIN" word among consumers' minds, regardless of their sophistication. Thus, these consumers who prefer KECI' s products will likely go into stores asking and looking for the "KOLIN" brand, regardless of its stylization or additional figurative features. If they happen to see KPII's "KOLIN" -branded products, they may not readily know that the products come from another source and mistakenly purchase those products thinking that these products are from KECI. Any perceived visual differences between KECI' s and KPII's "KOLIN" mark will likely be disregarded, especially considering that it is not unusual for companies to rebrand and overhaul their "brand image", including their logos, every so often.

Ultimately, there is no need to speculate and imagine how an average consumer would think and act in this hypothetical situation because, as discussed, there is actual proof of confusion among consumers between the KOLIN and kolin goods, it is clear that consumers have actually associated KPII's "KOLIN"-branded products with KECl's business.

With respect to the factor of "strength of plaintiff's mark", this pertains to the degree of distinctiveness of marks, which can be divided into five categories enumerated in decreasing order:

> 1) Coined or fanciful marks - invented words or signs that have no real meaning (e.g., Google, Kodak). These marks are the strongest and have the greatest chance of being registered.
>
> 2) Arbitrary marks - words that have a meaning but have no logical relation to a product (e.g., SUNNY as a mark covering mobile phones, APPLE in relation to computers/phones).
>
> 3) Suggestive marks - marks that hint at the nature, quality or attributes of the product, without describing these attributes (e.g., SUNNY for lamps, which would hint that the product will bring light to homes). If not considered as bordering on descriptive, this may be allowed.

4) Descriptive marks - describe the feature of the product such as quality, type, efficacy, use, shape, etc. The registration of descriptive marks is generally not allowed under the IP Code.

5) Generic marks — words or signs that name the species or object to which they apply (e.g., CHAIR in relation to chairs). They are not eligible for protection as marks under the IP Code.

KECI's KOLIN mark is a fanciful or coined mark. Considering that it is highly distinctive, confusion would be likely if someone else were to be allowed to concurrently use such mark in commerce.

The Court also held that KPII was in bad faith. KPII knew about KECI's registration when it made a trademark application. To recall, the KECI ownership case on July 31, 2006 ruled that KECI is the owner of the ***KOLIN*** mark. Thereafter, KPII (TKC's affiliate) filed a trademark application for **kol*i*n** covering the same goods.

KPII is an instrumentality of TKC and TKC directly participates in the management, supervision, and control of KPII. Furthermore, KPII filed a trademark application for barely **kol*i*n** two months after KECI was declared as the owner of the ***KOLIN*** mark. Also, KECI and KPII may be considered as being in the same line of business and it would have been highly improbable that KPII did not know an existing KOLIN mark owned by KECI, especially since it is an affiliate of TKC.

Thus, there exists relevant evidence and factual findings that a reasonable mind might accept as adequate to support the conclusion that KPII was in bad faith.

BANCO DE ORO UNIBANK, INC. *v.* INTERNATIONAL COPRA EXPORT CORPORATION, INTERCO MANUFACTURING CORPORATION, ICEC LAND CORPORATION, AND KIMEE REALTY CORPORATION

G.R. NOS. 218485-86, 218487, 218488-90, 218491, 218493-97, 218498-503, 218504-07, 218508-13, & 218523-29, 28 APRIL 2021, *THIRD DIVISION*, (LEONEN, *J.*)

DOCTRINE OF THE CASE

Section 9, Article III of the 1987 Constitution provides that "no law impairing the obligation of contracts shall be passed." This refers to the non-impairment clause, which ensures that the integrity of contracts is protected from any unwarranted State inference. It ensures that the terms of a contract mutually agreed upon by the parties are not tampered with or modified by a subsequent law.

This constitutional limitation guarantees non-interference of the State in purely private transactions. However, the non-impairment clause yields to the State's police power. This principle, which shows that the non-impairment clause is not absolute, was reiterated in Victorio-Aquino v. Pacific Plans, Inc. There, the petitioner's invocation of the non-impairment clause in questioning the rehabilitation court's approval of the modified rehabilitation plan was brushed aside. It was held therein that: "the non-impairment clause under the Constitution applies only to the exercise of legislative power. It does not apply to the Rehabilitation Court which exercises judicial power over the rehabilitation proceedings."

FACTS

Anticipating the impossibility of meeting their debts, International Copra Export Corporation (Interco), Interco Manufacturing Corporation (Interco Manufacturing), ICEC Land Corporation (ICEC Land), and Kimee Realty Corporation (Kimee), on September 9, 2010, filed a Petition for Suspension of Payments and Rehabilitation before the Regional Trial Court (RTC).

The RTC issued a Stay Order after finding the Petition sufficient in form and substance. It also appointed Atty. Julio Elamparo (Atty. Elamparo) as the rehabilitation receiver.

Development Bank of the Philippines (Development Bank), Banco De Oro Unibank, Inc. (BDO), Rizal Commercial Banking Corporation (Rizal

Commercial Banking), Allied Banking Corporation (Allied Banking), and Philippine National Bank, Bank of the Philippine Islands (BPI), some of creditors-claimants filed their rejoinders and comments pursuant to the order of the RTC. The RTC also declared that the 2008 Rules on Corporate Rehabilitation would apply to the case.

The RTC gave due course to the Petition and directed Atty. Elamparo to submit his recommendation. The latter complied and sent a Letter, to the creditors-claimants, requiring them to submit documents evidencing their claims and their proposed commercial terms on the rehabilitation plan. He likewise informed the creditors of a general creditors' meeting to be held on April 6, 2011.

After the April 6, 2011 meeting, Atty. Elamparo submitted to the rehabilitation court the modified version of the proposed rehabilitation plan wherein he found that Interco, et al.'s rehabilitation was "very viable."

Subsequently, the RTC granted the Petition and approved the modified rehabilitation plan. This prompted the creditor-claimants to file their petitions for review in the Court of Appeals (CA).

The CA partially granted the petitions but remanded the case to the rehabilitation court for the purpose of convening the creditors to vote on the Rehabilitation Plan in accordance with the Financial Rehabilitation and Insolvency Act (FRIA). In ruling this, the CA first held that petitions for financial rehabilitation are like proceedings for suspension of payments, and were properly lodged with the RTC, which FRIA did not take away or modify.

It also held the RTC's jurisdiction over petitions for financial rehabilitation was not affected despite the absence of rules implementing FRIA as every law is presumed to be complete and self-executing. Furthermore, FRIA applies to Interco, et al.'s Petition, it being filed after the law had taken effect. It clarified that the discretion to not apply FRIA only applies to cases already pending prior to FRIA's effectivity. It added that while the rehabilitation court erred in declaring that the proceedings would be governed by the 2008 Rules on Corporate Rehabilitation, only acts performed contrary to FRIA should be nullified, while those consistent with FRIA should be sustained.

As a result, the rehabilitation court suspended the implementation of the rehabilitation plan pending the finality of the decision of the CA.

Interco, et al., argued that the CA erred in ruling that FRIA is applicable since the rehabilitation court's decision to apply the 2008 Rules on Corporate Rehabilitation has become the law of the case. They insist that FRIA gives the rehabilitation court a wide latitude to decide whether to apply its provisions. Furthermore, FRIA is inapplicable since its provisions are not self-executory. They allege that this is confirmed by the fact that the law directed the Supreme Court to promulgate rules of procedure governing rehabilitation proceedings.

Interco, et al., add that, assuming that FRIA is self-executory, the voting requirement under Section 64 could not be properly implemented due to the absence of governing rules of procedure. They further assert that supposing that the voting requirement has not been complied with, the creditors were accorded due process when they filed their comments or oppositions to the Petition for Suspension of Payments and Rehabilitation in the April 6, 2011 creditors' meeting, which inputs were considered in the modified rehabilitation plan. Finally, Interco, et al., aver that the CA erred in ruling that Section 146 of FRIA applies only to petitions filed before the law took effect.

The creditor-claimants maintained that the CA correctly applied FRIA, as that the absence of rules and regulations do not render its provisions inoperative. They further contend that the 2008 Rules on Corporate Rehabilitation is rendered inapplicable because the Financial Rehabilitation Rules of Procedure, the implementing rules and regulations of FRIA apply retroactively.

They also alleged that the terms and conditions of the proposed rehabilitation plan are burdensome and prejudicial, depriving them of their contractual rights and claims against Interco, et al. They maintain that the rehabilitation court has no power to modify the contractual stipulations agreed upon by the parties.

Furthermore, they contend that the CA should have dismissed the petition because no commencement order was issued by the rehabilitation court, in disregard of the mandatory language of Section 16 of FRIA. Thus, the rehabilitation proceeding never began. They also claim April 6, 2011 creditors' meeting does not equate to the voting requirement, thus, there is non-compliance with the conditions under Section 64 of FRIA.

ISSUE

(1) Does FRIA apply despite the absence of its Implementing Rules and Regulations (IRR) at the time of the filing of the petition?
(2) Did the CA err in not dismissing the petition despite the absence of a commencement order?
(3) Does the non-impairment clause apply to rehabilitation proceedings?
(4) Should the rehabilitation plan be approved despite the absence of the voting requirement under FRIA?

RULING

(1) **YES.** The FRIA took effect on August 31, 2010, but its implementing rule, the Financial Rehabilitation Rules of Procedure (FR Rules), was only promulgated on August 27, 2013.

Here, the Petition for Suspension of Payments and Rehabilitation was filed before the rehabilitation court on September 9, 2010, after FRIA had taken effect. Nonetheless, Interco, et al., cannot insist that FRIA cannot apply absent its implementing rules.

At the outset, Interco, et al., themselves filed the Petition pursuant to the provisions of FRIA. By invoking FRIA, they should be deemed estopped from contending that its provisions are inapplicable to their case. Furthermore, the absence of an implementing rule alone cannot render a law inoperative. Every law is presumed valid, until and unless judicially declared invalid. The mere absence of implementing rules cannot effectively invalidate provisions of law, where a reasonable construction that will support the law may be given.

Furthermore, Interco, et al., misread Section 146 of FRIA in insisting that the law's provisions do not apply to their case. Section 146 provides: "This Act shall govern all petitions filed after it has taken effect. All further proceedings in insolvency, suspension of payments and rehabilitation cases then pending, except to the extent that in the opinion of the court their application would not be feasible or would work injustice, in which event the procedures set forth in prior laws and regulations shall apply."

As the CA correctly found, the discretion given to rehabilitation courts in applying the 2008 Rules on Corporate Rehabilitation instead of FRIA pertains only to petitions for rehabilitation filed before and are pending at the time FRIA took effect. In cases involving petitions for rehabilitation filed after FRIA's effectivity, the rehabilitation court has no option and is mandated to apply the provisions of FRIA.

In addition, if the promulgation of the rules of procedure is a precondition for the effectivity of FRIA, it would confer on the judiciary the power to suspend the effectivity of a legislative act by simply refusing to promulgate guidelines for its implementation.

Besides, even if some of FRIA's provisions require an implementing rule for its proper execution, the Court has already applied the 2008 Rules on Corporate Rehabilitation to support and supply the wordings of FRIA. In *Philippine Asset Growth Two, Inc. v. Fastech Synergy Philippines, Inc.*, the Court used the 2008 Rules on Corporate Rehabilitation despite the petition for rehabilitation having been filed on April 8, 2011.

The 2008 Rules on Corporate Rehabilitation's suppletory application is reinforced by Rule 1, Section 2 of the 2013 FR Rules, which states:

> SECTION 2. Scope. — These Rules shall apply to petitions for rehabilitation of corporations, partnerships, and sole proprietorships, filed pursuant to Republic Act No. 10142, otherwise known as the Financial Rehabilitation and Insolvency Act (FRIA) of 2010.
>
> These Rules shall similarly govern all further proceedings in suspension of payments and rehabilitation cases already pending, except to the extent that, in the opinion of the court, its application would not be feasible or would work injustice, in which event the procedures originally applicable shall continue to govern.

Rule 1, Section 2 reveals that the discretion given to courts in deciding not to apply the FR Rules pertains to cases for suspension of payments and rehabilitation already pending before FRIA took effect. The first paragraph mandates that the FR Rules shall apply to petitions for rehabilitation filed pursuant to FRIA. The second paragraph provides that rehabilitation courts may still apply the FR Rules to cases filed before FRIA took effect, except when its application would work injustice to the parties.

Accordingly, the rehabilitation court correctly applied FRIA and, suppletorily, the 2008 Rules on Corporate Rehabilitation in Interco, et al.'s Petition for Suspension of Payments and Rehabilitation. The 2008 Rules shall apply to the Petition, provided that it is not inconsistent with FRIA.

(2) **NO.** FRIA provides that after a petition is found to be sufficient in form and substance, the rehabilitation court shall issue a commencement order to signify the beginning of the rehabilitation proceedings. The commencement order shall include "a declaration that the debtor is under rehabilitation, the appointment of a rehabilitation receiver, a directive for all creditors to file their verified notices of claim, and an order staying claims against the [petitioning] debtor."

Here, after the rehabilitation court had found the Petition to be sufficient in form and substance, it issued a Stay Order which provided for, among others, the appointment of Atty. Elamparo as rehabilitation receiver, the suspension of all claims against Interco, et al., and the date of the initial hearing. Its denomination as "Stay Order" is immaterial, since it provided the basic requirements of a commencement order required by FRIA.

To clarify, the liberality in the nomenclature of the commencement order should apply only in cases where such order was issued before the FR Rules' promulgation. This is an aspect of equity; otherwise, strict adherence to procedural niceties would prevent substantive relief. **However, for cases where the commencement order is issued after the effectivity of the FR Rules, the order must be properly designated as a "commencement order."** (Emphasis supplied)

(3) **NO.** Section 9, Article III of the 1987 Constitution provides that "no law impairing the obligation of contracts shall be passed." This refers to the non-impairment clause, which ensures that the integrity of contracts is protected from any unwarranted State inference. It ensures that the terms of a contract mutually agreed upon by the parties are not tampered with or modified by a subsequent law.

This constitutional limitation guarantees non-interference of the State in purely private transactions. However, the non-impairment clause yields to the State's police power. *In Pryce Corporation v. China Banking Corporation:*

In *Pacific Wide Realty and Development Corporation v. Puerto Azul Land, Inc.* which similarly involved corporate rehabilitation, this court found no merit in Pacific Wide's invocation of the nonimpairment clause, explaining as follows:

> xxx Section 10, Article III of the Constitution mandates that no law impairing the obligations of contract shall be passed. This case does not involve a law or an executive issuance declaring the modification of the contract among debtor PALI, its creditors and its accommodation mortgagors. Thus, the non-impairment clause may not be invoked. Furthermore, as held in *Oposa v. Factoran, Jr.* even assuming that the same may be invoked, the nonimpairment clause must yield to the police power of the State. Property rights and contractual rights are not absolute. The constitutional guaranty of non-impairment of obligations is limited by the exercise of the police power of the State for the common good of the general public.
>
> Successful rehabilitation of a distressed corporation will benefit its debtors, creditors, employees, and the economy in general. The court may approve a rehabilitation plan even over the opposition of creditors holding a majority of the total liabilities of the debtor if, in its judgment, the rehabilitation of the debtor is feasible and the opposition of the creditors is manifestly unreasonable.

This principle, which shows that the non-impairment clause is not absolute, was reiterated in *Victorio-Aquino v. Pacific Plans, Inc.* There, the petitioner's invocation of the non-impairment clause in questioning the rehabilitation court's approval of the modified rehabilitation plan was brushed aside. It was held therein that: "the non-impairment clause under the Constitution applies only to the exercise of legislative power. It does not apply to the Rehabilitation Court which exercises judicial power over the rehabilitation proceedings."

(4) **YES.** One of the salient changes introduced by FRIA is the rehabilitation receiver's duty to notify the creditors of the petitioning debtor that

the rehabilitation plan is ready for examination. Section 64 and 65 of FRIA provides:

> SECTION 64. Creditor Approval of Rehabilitation Plan. — The rehabilitation receiver shall notify the creditors and stakeholders that the Plan is ready for their examination. Within twenty (20) days from the said notification, the rehabilitation receiver shall convene the creditors, either as a whole or per class, for purposes of voting on the approval of the Plan. The Plan shall be deemed rejected unless approved by all classes of creditors whose rights are adversely modified or affected by the Plan. For purposes of this section, the Plan is deemed to have been approved by a class of creditors if members of the said class holding more than fifty percent (50%) of the total claims of the said class vote in favor of the Plan. The votes of the creditors shall be based solely on the amount of their respective claims based on the registry of claims submitted by the rehabilitation receiver pursuant to Section 44 hereof.
>
> Notwithstanding the rejection of the Rehabilitation Plan, the court may confirm the Rehabilitation Plan if all of the following circumstances are present:
>
> > (a) The Rehabilitation Plan complies with the requirements specified in this Act;
> > (b) The rehabilitation receiver recommends the confirmation of the Rehabilitation Plan;
> > (c) The shareholders, owners or partners of the juridical debtor lose at least their controlling interest as a result of the Rehabilitation Plan; and
> > (d) The Rehabilitation Plan would likely provide the objecting class of creditors with compensation which has a net present value greater than that which they would have received if the debtor were under liquidation.
>
> SECTION 65. Submission of Rehabilitation Plan to the Court. — If the Rehabilitation Plan is approved, the rehabilitation

> receiver shall submit the same to the court for confirmation. Within five (5) days from receipt of the Rehabilitation Plan, the court shall notify the creditors that the Rehabilitation Plan has been submitted for confirmation, that any creditor may obtain copies of the Rehabilitation Plan and that any creditor may file an objection thereto.

If the plan is rejected by the creditors, the rehabilitation court may still confirm the rehabilitation plan, subject to certain conditions provided under Section 64. This power to override the creditor's disapproval of the rehabilitation plan refers to the rehabilitation court's "cram-down" power.

However, as the CA pointed out, the exercise of the cram-down power is not absolute. The rehabilitation court must ensure that all circumstances provided under the second paragraph of Section 64 are present. Failure to comply with these conditions violates the creditors' right to due process.

Notably, one of the requirements provided under Section 64 is the rehabilitation receiver's act of convening the creditors for purposes of voting on the proposed rehabilitation plan. Yet, here, the rehabilitation court confirmed the rehabilitation plan despite the creditors' failure to vote. Thus, the CA decreed that the confirmation was premature and ordered the remand of the case to the rehabilitation court to convene the creditors and comply with the voting requirement.

Here, the CA did not definitively conclude whether the rehabilitation plan was viable. It did not decide the matter on the merits. On the contrary, and as expressly provided in the dispositive portion of its Decision, the CA remanded the matter to the rehabilitation court, for the rehabilitation receiver to convene the creditors for the purpose of complying with the voting requirement under FRIA.

However, the Court noted that Interco, et al., filed the Petition for Suspension of Payments and Rehabilitation in 2010. The case has been pending ever since. In the interest of judicial economy and efficiency, and given that the creditors were given ample opportunities to raise their objections to the Petition and the viability of the proposed rehabilitation plan, the Court found a remand of the case unnecessary.

To recall, during the rehabilitation proceedings, Interco, et al.'s creditors filed their notice of claims and Comments or Oppositions to the Petition. Some of them likewise submitted their letter-compliance in response to the March 3, 2011 letter of the rehabilitation receiver.

Further, the creditors admitted that a general creditors' meeting was held on April 6, 2011. The creditors do not deny that during this meeting, they conveyed their comments and suggestions on the proposed rehabilitation plan.

Finally, the creditors filed before the rehabilitation court their comment or opposition to the revised rehabilitation plan submitted by the rehabilitation receiver. Notwithstanding the creditors' oppositions, the rehabilitation court found "the petition to be well grounded, proper and in order" and the rehabilitation of Interco, et al., feasible.

The Court stressed that the rehabilitation court can best decide on the rehabilitation plan's feasibility and viability. Owing to its technical expertise and in-depth knowledge on rehabilitation proceedings, the rehabilitation court is in the most advantageous position to receive and scrutinize the evidence submitted by the parties. Having witnessed firsthand the manner and decorum of the parties involved, the rehabilitation court has insight on nonverbal cues exhibited during the proceedings.