The Fiduciary Duties of Directors and Officers Representing the Creditor Pursuant to a Loan Workout Arrangement: Parameters Under Philippine Corporate Setting

Cesar L. Villanueva

35 ATENEO L.J. 1 (1991)

SUBJECT(S): *CORPORATE LAW, BANKING, FIDUCIARY DUTIES OF CORPORATE DIRECTORS*

KEYWORD(S): *CORPORATE LAW, BANKING, LOAN WORKOUT AGREEMENT*

In the Philippines, the usual arrangement entered into by a financially distressed corporation and its creditor, usually a bank, to avoid foreclosure proceedings is to authorize the creditor to elect its representatives to the board of directors, and appoint key officers to the corporation. The Author suggests that such an arrangement leads to a conflict of interests situation wherein the nominees of the creditors have fiduciary obligations to the corporation and the stockholders by virtue of their position and, at the same time, are specifically appointed on behalf of the creditors to pursue the creditor's own interests.

In the Author's assessment, a comparison with the American legal system is made which ultimately serves as a basis for the Author's conclusions. The Author concludes that without proper "legal checks" through SEC regulation, creditor control will lead to abuses that harm the interests of both the financially distressed corporation and the creditor itself. The maintenance of the high fiduciary standards on the role of the nominee directors and officers encourages the best implementation of the loan workout agreement.