

UNIVERSITY OF SANTO TOMAS FACULTY OF CIVIL LAW

LIST OF CASES Special Commercial Laws

I. LETTERS OF CREDIT

- 1. Definition and Nature of Letter of Credit
 - A Financial devise to facilitate commercial transaction
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 - Prudential Bank and Trust Company vs. IAC, 216 SCRA 257 (1992)

Security arrangements but not accessory contracts

- Feati Bank & Trust Company vs. Court of Appeals, 196 SCRA 576 (1991)
- MWSS vs. Hon. Daway, 432 SCRA 559 (2004)

A composite of at least three distinct but intertwined relationships, each relationship being concretized in a contract:

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 - Rosario Textile Mills Corp. vs. Home Bankers Savings and Trust Company, 462 SCRA 88 (2005)

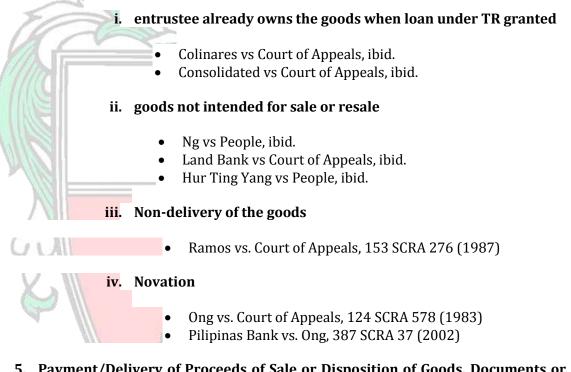
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- Asia Trust Development Bank vs. Carmelo H. Tuble, G.R. No. 183987, July 25, 2012
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 - a. Single Borrower's Limit
 - b. Restrictions on Bank Exposure to DOSRI (Directors, Officers, Stockholders and their Related Interests
 - Banco de Oro vs. Bayuga, 93 SCRA 443 (1979)
 - People vs. Jalandoni, 122 SCRA 588 (1983)
 - Jose C. Go vs. BSP, G.R. No. 178429, October 23, 2009
 - Hilario P. Soriano vs. People of the Philippines, et. al., G.R. No. 162336, February 1, 2010
 - Republic of the Philippines vs. Sandiganbayan, et. al., G.R. No. 166859/G.R.
 No. 169203/G.R. No. 180702, April 12, 2011

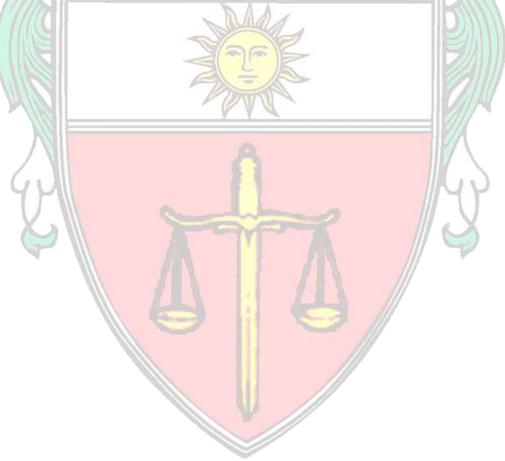
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- Republic of the Philippines vs. Hon. Antonio Eugenio, G.R. No. 174629, February 14, 2008
- REPUBLIC OF THE PHILIPPINES, represented by the ANTI-MONEY LAUNDERING COUNCIL v.JOCELYN I. BOLANTE, OWEN VINCENT D. BOLANTE, MA. CAROL D. BOLANTE, ALEJO LAMERA, CARMEN LAMERA, EDNA CONSTANTINO, ARIEL C. PANGANIBAN, KATHERINE G. BOMBEO, SAMUEL S. BOMBEO, MOLUGAN FOUNDATION, SAMUEL G. BOMBEO, JR., and NATIONAL LIVELIHOOD DEVELOPMENT CORPORATION (Formerly Livelihood Corporation), G.R. No. 186717, April 17, 2017, First Division, SERENO, CJ.
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- Republic of the Philippines vs. Cabrini Green & Ross, Inc., G.R. No. 154522, May 5, 2006
- Ret. Lt. Gen. Jacinto Ligot, et. al. vs. Republic of the Philippines, G.R. No. 176944, March 6, 2013
- SUBIDO PAGENTE CERTEZA MENDOZA and BINAY LAW OFFICES, Petitioner, - versus - THE COURT OF APPEALS, HON. ANDRES B. REYES, JR., in his capacity as Presiding Justice of the Court of Appeals, and the ANTI-MONEY LAUNDERING COUNCIL, represented by its members, HON. AMANDO M. TETANGCO, JR., Governor of the BANGKO SENTRAL NG PILIPINAS, HON. TERESITA J. HERBOSA, Chairperson of the Securities and Exchange Commission, and HON. EMMANUEL F. DOOC, Insurance Commissioner of the Insurance Commission. Respondents. (G.R. No. 216914, EN BANC, December 6, 2016, PEREZ,J.)



CASE OUTLINE IN SPECIAL COMMERCIAL LAWS Dean Nilo T. Divina

I. LETTERS OF CREDIT

1. Definition and Nature of Letter of Credit

- A Financial devise to facilitate commercial transaction
 - Bank of America vs. Court of Appeals, 228 SCRA 357 (1993)

BANK OF AMERICA, NT & SA, PETITIONERS, -versus- COURT OF APPEALS, INTER-RESIN INDUSTRIAL CORPORATION, FRANCISCO TRAJANO, JOHN DOE AND JANE DOE, RESPONDENT. G.R. No. 105395, THIRD DIVISION, December 10, 1993, VITUG J.

A letter of credit is a financial device developed by merchants as a convenient and relatively safe mode of dealing with sales of goods to satisfy the seemingly irreconcilable interests of a seller, who refuses to part with his goods before he is paid, and a buyer, who wants to have control of the goods before paying. To break the impasse, the buyer may be required to contract a bank to issue a letter of credit in favor of the seller so that, by virtue of the latter of credit, the issuing bank can authorize the seller to draw drafts and engage to pay them upon their presentment simultaneously with the tender of documents required by the letter of credit. There would at least be three (3) parties: (a) the buyer, who procures the letter of credit and obliges himself to reimburse the issuing bank upon receipts of the documents of title; (b) the bank issuing the letter of credit, which undertakes to pay the seller **upon receipt of the draft and proper document of titles and to surrender the documents to the buyer upon reimbursement**; and, (c) the seller, who in compliance with the contract of sale ships the goods to the buyer and delivers the documents of title and draft to the issuing bank to recover payment.

In this case, the Bank of America did not incur any liability. It cannot be disputed that the **Bank of** *America has, in fact, only been an advising, not confirming, bank,* and this much is clearly evident, among other things, by the provisions of the letter of credit itself, the petitioner bank's letter of advice, its request for payment of advising fee, and the admission of Inter-Resin that it has paid the same. As an advising or notifying bank, Bank of America did not incur any obligation more than just notifying Inter-Resin of the letter of credit issued in its favor, let alone to confirm the letter of credit. As advising bank, Bank of America is bound only to check the "apparent authenticity" of the letter of credit, which it did. The word "APPARENT suggests appearance to unaided senses that is not or may not be borne out by more rigorous examination or greater knowledge."

FACTS

Bank of America received by registered mail an Irrevocable Letter of Credit No. 20272/81 purportedly issued by Bank of Ayudhya for the account of General Chemicals, Ltd. of Thailand to cover the sale of plastic ropes and "agricultural files," with the Bank of America as advising bank and Inter-Resin Industrial Corporation as beneficiary.

Bank of America wrote Inter-Resin informing the latter of the foregoing and transmitting, along with the bank's communication, the letter of credit. Upon receipt of the letter-advice with the letter of credit, Inter-Resin sent Atty. Emiliano Tanay to Bank of America to have the letter of credit confirmed. The bank did not. Reynaldo Dueñas, bank employee in charge of letters of credit, however, explained to Atty. Tanay that there was no need for confirmation because the letter of credit would not have been transmitted if it were not genuine.

Inter-Resin sought to make a partial availment under the letter of credit by submitting to Bank of America invoices, covering the shipment of 24,000 bales of polyethylene rope to General Chemicals, the corresponding packing list, export declaration and bill of lading. After being satisfied that Inter-Resin's documents conformed with the conditions expressed in the letter of credit, Bank of America issued in favor of Inter-Resin a Cashier's Check. The check was picked up by Inter-Resin's Executive Vice-President. Bank of America wrote Bank of Ayudhya advising the latter of the availment under the letter of credit and sought the corresponding reimbursement therefor.

Inter-Resin presented to Bank of America the documents for the second availment under the same letter of credit consisting of a packing list, bill of lading, invoices, export declaration and bills in set, evidencing the second shipment of goods. Immediately upon receipt of a telex from the Bank of Ayudhya declaring the letter of credit fraudulent, Bank of America stopped the processing of Inter-Resin's documents and sent a telex to its branch office in Bangkok, Thailand, requesting assistance in determining the authenticity of the letter of credit. Bank of America kept Inter-Resin informed of the developments. Sensing a fraud, Bank of America sought the assistance of the NBI. NBI agents discovered that the vans exported by Inter-Resin did not contain ropes but plastic strips, wrappers, rags and waste materials.

Bank of America sued Inter-Resin for the recovery of P10, 219,093.20, the peso equivalent of the draft on the partial availment of the now disowned letter of credit. On the other hand, Inter-Resin claimed that not only was it entitled to retain P10, 219,093.20 on its first shipment but also to the balance covering the second shipment.

The trial court ruled for Inter-Resin, holding that (a) Bank of America made assurances that enticed Inter-Resin to send the merchandise to Thailand; (b) the telex declaring the letter of credit fraudulent was unverified and self-serving, hence, hearsay, but even assuming that the letter of credit was fake, "the fault should be borne by the BA which was careless and negligent" for failing to utilize its modern means of communication to verify with Bank of Ayudhya in Thailand the authenticity of the letter of credit before sending the same to Inter-Resin; (c) xxx; and (d) Bank of America failed to prove the participation of Inter-Resin or its employees in the alleged fraud as, in fact, the complaint for estafa through falsification of documents was dismissed by the Provincial Fiscal of Rizal.

On appeal, the Court of Appeals sustained the trial court; hence, this present recourse by petitioner Bank of America.

ISSUE/s

- 1. Whether Bank of America has incurred any liability to the beneficiary under the letter of credit and, corrolarily, whether it has acted merely as an advising bank or as a confirming bank? (NO)
- 2. Whether Bank of America may recover against Inter-Resin under the draft executed in its partial availment of the letter of credit, following the dishonor of the letter of credit by Bank of Ayudhya? (YES)

RULING

A letter of credit is a financial device developed by merchants as a convenient and relatively safe mode of dealing with sales of goods to satisfy the seemingly irreconcilable interests of a seller, who refuses to part with his goods before he is paid, and a buyer, who wants to have control of the goods before paying. To break the impasse, the buyer may be required to contract a bank to issue a letter of credit in favor of the seller so that, by virtue of the latter of credit, the issuing bank can authorize the seller to draw drafts and engage to pay them upon their presentment simultaneously with the tender of documents required by the letter of credit. The buyer and the seller agree on what documents are to be presented for payment, but ordinarily they are documents of title evidencing or attesting to the shipment of the goods to the buyer.

Once the credit is established, the seller ships the goods to the buyer and in the process secures the required shipping documents or documents of title. To get paid, the seller executes a draft and presents it together with the required documents to the issuing bank. The issuing bank redeems the draft and pays cash to the seller if it finds that the documents submitted by the seller conform with what the letter of credit requires. The bank then obtains possession of the documents upon paying the seller. The transaction is completed when the buyer reimburses the issuing bank and acquires the documents entitling him to the goods. Under this arrangement, the seller gets paid only if he delivers the documents of title over the goods, while the buyer acquires said documents and control over the goods only after reimbursing the bank.

What characterizes letters of credit, as distinguished from other accessory contracts, is the engagement of the issuing bank to pay the seller of the draft and the required shipping documents are presented to it. In turn, this arrangement assures the seller of prompt payment, independent of any breach of the main sales contract. By this so-called "independence principle," the bank determines compliance with the letter of credit only by examining the shipping documents presented; it is precluded from determining whether the main contract is actually accomplished or not.

There would at least be three (3) parties: (a) the buyer, who procures the letter of credit and obliges himself to reimburse the issuing bank upon receipts of the documents of title; (b) the bank issuing the letter of credit, which undertakes to pay the seller upon receipt of the draft and proper document of titles and to surrender the documents to the buyer upon reimbursement; and, (c) the seller, who in compliance with the contract of sale ships the goods to the buyer and delivers the documents of title and draft to the issuing bank to recover payment.

The number of the parties, not infrequently and almost invariably in international trade practice, may be increased. Thus, the services of an advising (notifying) bank 15 may be utilized to convey to the seller the existence of the credit; or, of a confirming bank 16 which will lend credence to the letter of credit issued by a lesser known issuing bank; or, of a paying bank, which undertakes to encash the drafts drawn by the exporter. Further, instead of going to the place of the issuing bank to claim payment, the buyer may approach another bank, termed the negotiating bank, to have the draft discounted.

Being a product of international commerce, the impact of this commercial instrument transcends national boundaries, and it is thus not uncommon to find a dearth of national law that can adequately provide for its governance. This country is no exception. Our own Code of Commerce basically introduces only its concept under Articles 567-572, inclusive, thereof. It is no wonder then why great reliance has been placed on commercial usage and practice, which, in any case, can be justified by the universal acceptance of the autonomy of contract rules. The rules were later developed into what is now known as the Uniform Customs and Practice for Documentary Credits ("U.C.P.") issued by the International Chamber of Commerce. It is by no means a complete text by itself, for, to be sure, there are other principles, which, although part of lex mercatoria, are not dealt with the U.C.P.

In FEATI Bank and Trust Company v. Court of Appeals, we have accepted, to the extent of their pertinency, the application in our jurisdiction of this international commercial credit regulatory set of rules. 20 In Bank of Phil. Islands v. De Nery, we have said that the observances of the U.C.P. is justified by Article 2 of the Code of Commerce which expresses that, in the absence of any particular provision in the Code of Commerce, commercial transactions shall be governed by usages and customs generally observed. We have further observed that there being no specific provisions which govern the legal complexities arising from transactions involving letters of credit not only between or among banks themselves but also between banks and the seller or the buyer, as the case may be, the applicability of the U.C.P. is undeniable.

1.

On the first issue on whether Bank of America incurred any liability in favor of Inter-Resin (the beneficiary of the letter of credit), the Supreme Court ruled in the negative. The Bank of America did not incur any liability. It cannot be disputed that Bank of America has, in fact, only been an advising, not confirming, bank, and this much is clearly evident, among other things, by the provisions of the letter of credit itself, the petitioner bank's letter of advice, its request for payment of advising fee, and the admission of Inter-Resin that it has paid the same. That Bank of America has asked Inter-Resin to submit documents required by the letter of credit and eventually has paid the proceeds thereof, did not obviously make it a confirming bank. The fact, too, that the draft required by the letter of credit is to be drawn under the account of General Chemicals (buyer) only means the same had to be presented to Bank of Ayudhya (issuing bank) for payment. It may be significant to recall that the letter of credit is an engagement of the issuing bank, not the advising bank, to pay the draft.

Bank of America's letter has expressly stated that "the enclosure is solely an advice of credit opened by the abovementioned correspondent and conveys no engagement by us." This written reservation

by Bank of America in limiting its obligation only to being an advising bank is in consonance with the provisions of U.C.P.

As an advising or notifying bank, Bank of America did not incur any obligation more than just notifying Inter-Resin of the letter of credit issued in its favor, let alone to confirm the letter of credit. The bare statement of the bank employees in responding to the inquiry made by Atty. Tanay, Inter-Resin's representative, on the authenticity of the letter of credit certainly did not have the effect of novating the letter of credit and Bank of America's letter of advice, nor can it justify the conclusion that the bank must now assume total liability on the letter of credit. Indeed, Inter-Resin itself cannot claim to have been all that free from fault. As the seller, the issuance of the letter of credit should have obviously been a great concern to it. It would have been strange if it did not, prior to the letter of credit, enter into a contract, or negotiated at the very least, with General Chemicals. In the ordinary course of business, the perfection of contract precedes the issuance of a letter of credit. Bringing the letter of credit to the attention of the seller is the primordial obligation of an advising bank. The view that Bank of America should have first checked the authenticity of the letter of credit with bank of Ayudhya, by using advanced mode of business communications, before dispatching the same to Inter-Resin finds no real support in U.C.P. Article 18 of the U.C.P. states that: "Banks assume no liability or responsibility for the consequences arising out of the delay and/or loss in transit of any messages, letters or documents, or for delay, mutilation or other errors arising in the transmission of any telecommunication" As advising bank, Bank of America is bound only to check the "apparent authenticity" of the letter of credit, which it did. The word "APPARENT suggests appearance to unaided senses that is not or may not be borne out by more rigorous examination or greater knowledge."

2.

On the second issue of whether the wwhether Bank of America may recover against Inter-Resin under the draft executed in its partial availment of the letter of credit, following the dishonor of the letter of credit by Bank of Ayudhya, the Supreme Court ruled in the affirmative. This kind of transaction is what is commonly referred to as a discounting arrangement. Bank of America has acted independently as a negotiating bank, thus saving Inter-Resin from the hardship of presenting the documents directly to Bank of Ayudhya to recover payment. (Inter-Resin, of course, could have chosen other banks with which to negotiate the draft and the documents.) As a negotiating bank, Bank of America has a right to recourse against the issuer bank and until reimbursement is obtained, Inter-Resin, as the drawer of the draft, continues to assume a contingent liability thereon.

While Bank of America has indeed failed to allege material facts in its complaint that might have likewise warranted the application of the Negotiable Instruments Law and possible then allowed it to even go after the indorser of the draft, this failure, nonetheless, does not preclude petitioner bank's right (as negotiating bank) of recovery from Inter-Resin itself. Inter-Resin admits having received P10, 219,093.20 from bank of America on the letter of credit and in having executed the corresponding draft. The payment to Inter-Resin has given, as aforesaid, Bank of America the right of reimbursement from the issuing bank, Bank of Ayudhya which, in turn, would then seek indemnification from the buyer (the General Chemicals of Thailand). Since Bank of Ayudhya disowned the letter of credit, however, Bank of America may now turn to Inter-Resin for restitution. Between the seller and the negotiating bank there does the usual relationship exist between a drawer and purchaser of drafts. Unless drafts drawn in pursuance of the credit are indicated to be without recourse therefore, the negotiating bank has the ordinary right of recourse against the

seller in the event of dishonor by the issuing bank. The fact that the correspondent and the negotiating bank may be one and the same does not affect its rights and obligations in either capacity, although a special agreement is always a possibility.

Prudential Bank and Trust Company vs. IAC, 216 SCRA 257 (1992) PRUDENTIAL BANK, PETITIONER, -VERSUS- INTERMEDIATE APPELLATE COURT, PHILIPPINE RAYON MILLS, INC. AND ANACLETO R. CHI, RESPONDENTS. G.R. No. 74886, THIRD DIVISION, December 8, 1992, DAVIDE, JR., J.

In this case, the relationship existing between the petitioner and Philippine Rayon is governed the letters of credit, the promissory note, the drafts and the trust receipt. Philippine Rayon argued that the Petitioner made an invalid payment when it paid the drafts presented before it by Nissho Co. despite the fact that the said drafts were not presented before Philippine Rayon. On the other hand, the Petitioner argues that the drafts were sight drafts which did not require presentment for acceptance to Philippine Rayon because paragraph 8 of the trust receipt presupposes prior acceptance of the drafts.

The Supreme Court categorically ruled that through a letter of credit, the bank merely substitutes its own promise to pay for one of its customers who in return promises to pay the bank the amount of funds mentioned in the letter of credit plus credit or commitment fees mutually agreed upon. In the instant case then, the drawee was necessarily the herein petitioner. It was to the latter that the drafts were presented for payment. In fact, there was no need for acceptance as the issued drafts are sight drafts pursuant to Section 7 of the NIL, payable on demand.

FACTS

On August 8, 1962, defendant-appellant Philippine Rayon Mills, Inc. entered into a contract with Nissho Co., Ltd. of Japan for the importation of textile machineries under a five-year deferred payment plan. To effect payment for said machineries, the defendant-appellant applied for a commercial letter of credit with the Prudential Bank and Trust Company in favor of Nissho. By virtue of said application, the Prudential Bank opened Letter of Credit for \$128,548.78. Against this letter of credit, drafts were drawn and issued by Nissho, which were all paid by the Prudential Bank through its correspondent in Japan, the Bank of Tokyo, and Ltd.

Upon the arrival of the machineries, the Prudential Bank indorsed the shipping documents to the defendant-appellant which accepted delivery of the same. To enable the defendant-appellant to take delivery of the machineries, it executed, by prior arrangement with the Prudential Bank, a trust receipt which was signed by Anacleto R. Chi in his capacity as President of defendant-appellant company. At the back of the trust receipt is a printed form to be accomplished by two sureties who, by the very terms and conditions thereof, were to be jointly and severally liable to the Prudential Bank should the defendant-appellant fail to pay the total amount or any portion of the drafts issued by Nissho and paid for by Prudential Bank. The defendant-appellant was able to take delivery of the textile machineries and installed the same at its factory site at 69 Obudan Street, Quezon City.

The defendant-appellant ceased business operation. Defendant-appellant's factory was leased by Yupangco Cotton Mills for an annual rental of P200, 000. Subsequently, all the textile machineries in the defendant-appellant's factory were sold to AIC Development Corporation for P300, 000.00

The obligation of the defendant-appellant arising from the letter of credit and the trust receipt remained unpaid and unliquidated. Repeated formal demands for the payment of the said trust receipt yielded no result.

The present action for the collection of the principal amount of P956,384.95 was filed against the defendant-appellant and Anacleto R. Chi. In their respective answers, the defendants interposed identical special defenses, the complaint states no cause of action; if there is, the same has prescribed; and the plaintiff is guilty of laches.

On 15 June 1978, the trial court rendered its decision sentencing the defendant Philippine Rayon Mills, Inc. to pay plaintiff the sum of P153, 645.22. Insofar as defendant Anacleto R. Chi is concerned, the case is dismissed. Plaintiff is ordered to pay defendant Anacleto R. Chi the sum of P20, 000.00 as attorney's fees.

Petitioner appealed the decision to the then Intermediate Appellate Court.

In its decision, public respondent sustained the trial court in all respects. As to the first and last assigned errors, it ruled that the provision on unjust enrichment, Article 2142 of the Civil Code, applies only if there is no express contract between the parties and there is a clear showing that the payment is justified. In the instant case, the relationship existing between the petitioner and Philippine Rayon is governed by specific contracts, namely the application for letters of credit, the promissory note, the drafts and the trust receipt. With respect to the last ten (10) drafts (Exhibits "X-2" to "X-11") which had not been presented to and were not accepted by Philippine Rayon, petitioner was not justified in unilaterally paying the amounts stated therein. The public respondent did not agree with the petitioner's claim that the drafts were sight drafts which did not require presentment for acceptance to Philippine Rayon because paragraph 8 of the trust receipt presupposes prior acceptance of the drafts. Since the ten (10) drafts were not presented and accepted, no valid demand for payment can be made.

Hence, the petitioner elevated the case before the Supreme Court.

ISSUE

Whether presentment for acceptance of the drafts was indispensable to make Philippine Rayon liable thereon? (NO)

RULING

A letter of credit is defined as an engagement by a bank or other person made at the request of a customer that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the credit. Through a letter of credit, the bank merely substitutes its own promise to pay for one of its customers who in return promises to pay the bank the amount of funds mentioned in the letter of credit plus credit or commitment fees mutually agreed upon. In the instant case then, the drawee was necessarily the herein petitioner. It was to the latter that the drafts were presented for payment. In fact, there was no need for acceptance as the issued drafts are sight drafts. Presentment for acceptance is necessary only in the cases expressly provided for in Section 143 of the Negotiable Instruments Law (NIL). Obviously then, sight drafts do not require

presentment for acceptance. **Corrolarily, they are, pursuant to Section 7 of the NIL, payable on demand.**

- Security arrangements but not accessory contracts
 - Feati Bank & Trust Company vs. Court of Appeals, 196 SCRA 576 (1991)

FEATI BANK & TRUST COMPANY (NOW CITYTRUST BANKING CORPORATION), PETITIONER, -VERSUS- THE COURT OF APPEALS, AND BERNARDO E. VILLALUZ, RESPONDENTS. G.R. No. 94209, THIRD DIVISION, April 30, 1991, GUTIERREZ, JR., J.

On the arrangements made and upon the instructions of the consignee, Hanmi Trade Development, Ltd. (Hanmi), the Security Pacific National Bank of Los Angeles, California (SPNB) issued Irrevocable Letter of Credit No. IC-46268 available at sight in favor of Villaluz for the total purchase price of the lauan logs. The letter of credit was mailed to the Feati Bank and Trust Company (Feati Bank, now Citytrust) with the instruction to the latter that it "forward the enclosed letter of credit to the beneficiary." Because of the absence of the certification by Christiansen, the Feati Bank refused to advance the payment on the letter of credit. The letter of credit lapsed without the private respondent receiving any certification from Christiansen. Villaluz, instituted an action for mandamus and specific performance against Christiansen and the Feati Bank before the then Court of First Instance of Rizal. The Supreme Court held that **it is a settled rule in commercial transactions involving letters of credit that the documents tendered must strictly conform to the terms of the letter of credit.** The tender of documents by the beneficiary (seller) must include all documents required by the letter. Since a bank deals only with documents, it is not in a position to determine whether or not the documents required by the letter of credit are material or superfluous. The mere fact that the document was specified therein readily means that the document is of vital importance to the buyer.

FACTS

Bernardo E. Villaluz agreed to sell to Axel Christiansen 2,000 cubic meters of lauan logs. After inspecting the logs, Christiansen issued a purchase order. On the arrangements made and upon the instructions of the consignee, Hanmi Trade Development, Ltd. (Hanmi), the Security Pacific National Bank of Los Angeles, California (SPNB) issued Irrevocable Letter of Credit No. IC-46268 available at sight in favor of Villaluz for the total purchase price of the lauan logs. The letter of credit was mailed to the Feati Bank and Trust Company (Feati Bank, now Citytrust) with the instruction to the latter that it "forward the enclosed letter of credit to the beneficiary."

The logs were thereafter loaded on the vessel "Zenlin Glory" which was chartered by Christiansen. After the loading of the logs was completed, the Chief Mate, Shao Shu Wang issued a mate receipt of the cargo which stated the same are in good condition. However, Christiansen refused to issue the certification as required in the letter of credit, despite several requests made by the private respondent.

Because of the absence of the certification by Christiansen, the Feati Bank refused to advance the payment on the letter of credit. The letter of credit lapsed without the private respondent receiving any certification from Christiansen.

The persistent refusal of Christiansen to issue the certification prompted the private respondent to bring the matter before the Central Bank. In a memorandum, the Central Bank ruled that:

... pursuant to the Monetary Board Resolution No. 1230 dated August 3, 1971, in all log exports, the certification of the lumber inspectors of the Bureau of Forestry ... shall be considered final for purposes of negotiating documents. Any provision in any letter of credit covering log exports requiring certification of buyer's agent or representative that said logs have been approved for shipment as a condition precedent to negotiation of shipping documents shall not be allowed.

Since the demands by the private respondent for Christiansen to execute the certification proved futile, Villaluz, instituted an action for mandamus and specific performance against Christiansen and the Feati Bank before the then Court of First Instance of Rizal. The petitioner was impleaded as defendant before the lower court only to afford complete relief should the court a quo order Christiansen to execute the required certification.

While the case was still pending trial, Christiansen left the Philippines without informing the Court and his counsel. Hence, Villaluz, filed an amended complaint to make the petitioner solidarily liable with Christiansen. The trial court admitted the amended complaint.

After trial, the lower court ruled in favor of the private respondent. The petitioner received a copy of the decision and, thereafter, filed a notice of appeal. The private respondent filed a motion for the immediate execution of the judgment on the ground that the appeal of the petitioner was frivolous and dilatory. The trial court ordered the immediate execution of its judgment upon the private respondent's filing of a bond.

The petitioner then filed a motion for reconsideration and a motion to suspend the implementation of the writ of execution. Both motions were, however, denied. Thus, petitioner filed before the CA a petition for certiorari and prohibition with preliminary injunction to enjoin the immediate execution of the judgment.

The CA granted the petition and nullified the order of execution. A motion for reconsideration was thereafter filed by the private respondent. The CA denied the motion for reconsideration. The CA affirmed the decision of the lower court. Hence, the petition for review.

ISSUE

Whether a correspondent bank (Feati Bank) is to be held liable under the letter of credit despite non-compliance by the beneficiary (Villaluz) with the terms thereof? (NO)

RULING

It is a settled rule in commercial transactions involving letters of credit that the documents tendered must strictly conform to the terms of the letter of credit. The tender of documents by the beneficiary (seller) must include all documents required by the letter. A correspondent bank which departs from what has been stipulated under the letter of credit, as when it accepts a faulty tender,

acts on its own risks and it may not thereafter be able to recover from the buyer or the issuing bank, as the case may be, the money thus paid to the beneficiary thus the rule of strict compliance.

Since a bank deals only with documents, it is not in a position to determine whether or not the documents required by the letter of credit are material or superfluous. The mere fact that the document was specified therein readily means that the document is of vital importance to the buyer.

Moreover, the incorporation of the Uniform Customs and Practice for Documentary Credit (U.C.P.) in the letter of credit resulted in the applicability of the said rules in the governance of the relations between the parties. And even if the U.C.P. was not incorporated in the letter of credit, the Court has already ruled in the affirmative as to the applicability of the U.C.P. Article 2 of the Code of Commerce enunciates that in the absence of any particular provision in the Code of Commerce, commercial transactions shall be governed by the usages and customs generally observed. There being no specific provision which governs the legal complexities arising from transactions involving letters of credit not only between the banks themselves but also between banks and seller and/or buyer, the applicability of the U.C.P. is undeniable.

Under the foregoing provisions of the U.C.P., the bank may only negotiate, accept or pay, if the documents tendered to it are on their face in accordance with the terms and conditions of the documentary credit. And since a correspondent bank, like the petitioner, principally deals only with documents, the absence of any document required in the documentary credit justifies the refusal by the correspondent bank to negotiate, accept or pay the beneficiary, as it is not its obligation to look beyond the documents. It merely has to rely on the completeness of the documents tendered by the beneficiary.

MWSS vs. Hon. Daway, 432 SCRA 559 (2004)

METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM, PETITIONER, -VERSUS- HON. REYNALDO B. DAWAY, IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF QUEZON CITY, BRANCH 90 AND MAYNILAD WATER SERVICES, INC., RESPONDENTS. G.R. No. 160732, FIRST DIVISION, June 21, 2004, AZCUNA J.

MWSS and Maynilad entered a Concession Agreement for which Maynilad undertook to pay the corresponding concession fees on the dates agreed upon in said agreement which, among other things, consisted of payments of petitioners mostly foreign loans. Maynilad was required to put up a bond, bank guarantee or other security acceptable to MWSS. In compliance with this requirement, Maynilad arranged for a three-year facility with a number of foreign banks, led by Citicorp International Limited, for the issuance of an Irrevocable Standby Letter of Credit in favor of MWSS for the full and prompt performance of Maynilad's obligations to MWSS. Maynilad failed to satisfy its obligation under the Concession Agreement. MWSS, thereafter, submitted a written notice to Citicorp International Limited, as agent for the participating banks, that by virtue of Maynilad's failure to perform its obligations under the Concession Agreement, it was drawing on the Irrevocable Standby Letter of Credit and thereby demanded payment in the amount of US\$98,923,640.15. Prior to this, however, Maynilad had filed a petition for rehabilitation before the court a quo which resulted in the issuance of the Stay Order and the disputed Order.

In this case, the Supreme Court ruled that the prohibition under Sec 6 (b) of Rule 4 of the Interim Rules does not apply to herein petitioner as the prohibition is on the enforcement of claims against guarantors or sureties of the debtors whose obligations are not solidary with the debtor. The participating banks obligation are solidary with respondent Maynilad in that it is a primary, direct, definite and an absolute undertaking to pay and is not conditioned on the prior exhaustion of the debtors assets. These are the same characteristics of a surety or solidary obligor. Being solidary, the claims against the participating banks can be pursued separately from and independently of the rehabilitation case.

FACTS

MWSS granted Maynilad under a Concession Agreement a twenty-year period to manage, operate, repair, decommission and refurbish the existing MWSS water delivery and sewerage services in the West Zone Service Area, for which Maynilad undertook to pay the corresponding concession fees on the dates agreed upon in said agreement which, among other things, consisted of payments of petitioners mostly foreign loans.

To secure the concessionaires performance of its obligations under the Concession Agreement, Maynilad was required to put up a bond, bank guarantee or other security acceptable to MWSS. In compliance with this requirement, Maynilad arranged for a three-year facility with a number of foreign banks, led by Citicorp International Limited, for the issuance of an Irrevocable Standby Letter of Credit in favor of MWSS for the full and prompt performance of Maynilad's obligations to MWSS.

Maynilad requested MWSS for a mechanism by which it hoped to recover the losses it had allegedly incurred and would be incurring as a result of the depreciation of the Philippine Peso against the US Dollar. Failing to get what it desired, Maynilad issued a Force Majeure Notice and unilaterally suspended the payment of the concession fees. In an effort to salvage the Concession Agreement, the parties entered into a Memorandum of Agreement (MOA) wherein Maynilad was allowed to recover foreign exchange losses under a formula agreed upon between them. Maynilad again filed another Force Majeure Notice and, since MWSS could not agree with the terms of said Notice, the matter was referred to the Appeals Panel for arbitration.

This resulted in the parties agreeing to resolve the issues through an amendment of the Concession Agreement which was based on the terms set down in MWSS Board of Trustees Resolution No. 457-2001, as amended by MWSS Board of Trustees Resolution No. 487-2001, which provided inter alia for a formula that would allow Maynilad to recover foreign exchange losses it had incurred or would incur under the terms of the Concession Agreement.

However, Maynilad served upon MWSS a Notice of Event of Termination, claiming that MWSS failed to comply with its obligations under the Concession Agreement and Amendment No. 1 regarding the adjustment mechanism that would cover Maynilad's foreign exchange losses. Maynilad filed a Notice of Early Termination of the concession, which was challenged by MWSS. This matter was eventually brought before the Appeals Panel by MWSS. The Appeals Panel ruled that there was no Event of Termination as defined under Art. 10.2 (ii) or 10.3 (iii) of the Concession Agreement and that, therefore, Maynilad should pay the concession fees that had fallen due.

The award of the Appeals Panel became final. MWSS, thereafter, submitted a written notice to Citicorp International Limited, as agent for the participating banks, that by virtue of Maynilad's failure to perform its obligations under the Concession Agreement, it was drawing on the Irrevocable Standby Letter of Credit and thereby demanded payment in the amount of US\$98,923,640.15.

Prior to this, however, Maynilad had filed a petition for rehabilitation before the court a quo which resulted in the issuance of the Stay Order and the disputed Order.

The RTC made a determination that the Petition for Rehabilitation with Prayer for Suspension of Actions and Proceedings filed by Maynilad conformed substantially to the provisions of Sec. 2, Rule 4 of the Interim Rules of Procedure on Corporate Rehabilitation (Interim Rules). It forthwith issued a Stay Order:

2. Staying enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the petitioner, its guarantors and sureties not solidarily liable with the petitioner;

x x x x x x x x x x

Subsequently, public respondent, acting on two Urgent Ex Parte motions filed by Maynilad, issued the herein questioned Order declaring that the act of MWSS in commencing the process for the payment by the banks of standby letter of credit so the banks have to make good such call/drawing of payment by MWSS or any similar act for that matter, is violative of the above-quoted sub-paragraph 2 of the dispositive portion of the Courts Stay Order. It also orders MWSS through its officers/officials to withdraw under pain of contempt the written certification/notice of draw to Citicorp International Limited and declares void any payment by the banks to MWSS in the event such written certification/notice of draw is not withdrawn by MWSS and/or MWSS receives payment by virtue of the aforesaid standby letter of credit.

Aggrieved by this Order, MWSS filed a petition for review by way of certiorari under Rule 65 of the Rules of Court questioning the legality of said order as having been issued without or in excess of the lower court's jurisdiction or that the court a quo acted with grave abuse of discretion amounting to lack or excess of jurisdiction.

ISSUE

1. Whether MWSS may draw on the letter of credit in spite of the stay order? (YES)

2. Whether the commencing of the process for payment under the Standby Letter of Credit violated the immediately executory order of the court? (NO)

RULING

1.

The prohibition under Sec 6 (b) of Rule 4 of the Interim Rules does not apply to herein petitioner as the prohibition is on the enforcement of claims against guarantors or sureties of the debtors whose obligations are not solidary with the debtor. The participating banks obligation are solidary with respondent Maynilad in that it is a primary, direct, definite and an absolute undertaking to pay and is not conditioned on the prior exhaustion of the debtors assets. These are the same characteristics of a surety or solidary obligor.

Being solidary, the claims against them can be pursued separately from and independently of the rehabilitation case, as held in Traders Royal Bank v. Court of Appeals and reiterated in Philippine Blooming Mills, Inc. v. Court of Appeals, where we said that property of the surety cannot be taken into custody by the rehabilitation receiver (SEC) and said surety can be sued separately to enforce his liability as surety for the debts or obligations of the debtor. The debts or obligations for which a surety may be liable include future debts, an amount which may not be known at the time the surety is given.

The terms of the Irrevocable Standby Letter of Credit do not show that the obligations of the banks are not solidary with those of respondent Maynilad. On the contrary, it is issued at the request of and for the account of Maynilad Water Services, Inc., in favor of the MWSS, as a bond for the full and prompt performance of the obligations by the concessionaire under the Concession Agreement and herein petitioner is authorized by the banks to draw on it by the simple act of delivering to the agent a written certification substantially in the form Annex B of the Letter of Credit. It provides further in Sec. 6, that for as long as the Standby Letter of Credit is valid and subsisting, the Banks shall honor any written Certification made by MWSS in accordance with Sec. 2, of the Standby Letter of Credit regardless of the date on which the event giving rise to such Written Certification arose.

Except when a letter of credit specifically stipulates otherwise, the obligation of the banks issuing letters of credit are solidary with that of the person or entity requesting for its issuance, the same being a direct, primary, absolute and definite undertaking to pay the beneficiary upon the presentation of the set of documents required therein.

The public respondent, therefore, exceeded his jurisdiction, in holding that he was competent to act on the obligation of the banks under the Letter of Credit under the argument that this was not a solidary obligation with that of the debtor. Being a solidary obligation, the letter of credit is excluded from the jurisdiction of the rehabilitation court and therefore in enjoining petitioner from proceeding against the Standby Letters of Credit to which it had a clear right under the law and the terms of said Standby Letter of Credit, public respondent acted in excess of his jurisdiction.

2.

It is true that the stay order is immediately executory. It is also true, however, that the Standby Letter of Credit and the banks that issued it were not within the jurisdiction of the rehabilitation court. The call on the Standby Letter of Credit, therefore, could not be considered a violation of the Stay Order.

- A composite of at least three distinct but intertwined relationships, each relationship being concretized in a contract:

 Reliance Commodities, Inc. vs. Daewoo Industrial Co., Ltd., 228 SCRA 545 (1993)

RELIANCE COMMODITIES, INC., PETITIONER,

-VERSUS- DAEWOO INDUSTRIAL CO., LTD., RESPONDENT. G.R. No. L-100831, THIRD DIVISION, December 17, 1993, FELICIANO, J.

The issue raised in the Petition at bar relates principally to the first component contractual relation above: that between account party or importer Reliance and beneficiary or exporter Daewoo.

Examining the actual terms of that relationship as set out in the 31 July 1980 contract, the Court considers that under that instrument, the opening of an L/C upon application of Reliance was not a condition precedent for the birth of the obligation of Reliance to purchase foundry pig iron from Daewoo. We agree with the Court of Appeals that Reliance and Daewoo, having reached "a meeting of minds" in respect of the subject matter of the contract (2000 metric tons of foundry pig iron with a specified chemical composition), the price thereof (US \$380,600.00), and other principal provisions, "they had a perfected contract." The failure of Reliance to open, the appropriate L/C did not prevent the birth of that contract, and neither did such failure extinguish that contract. The opening of the L/C in favor of Daewoo was an obligation of Reliance and the performance of that obligation by Reliance was a condition for enforcement of the reciprocal obligation of Daewoo to ship the subject matter of the contract - the foundry pig iron - to Reliance. But the contract itself between Reliance and Daewoo had already sprung into legal existence and was enforceable.

FACTS

Reliance Commodities and Daewoo entered into a contract of sale under the terms of which the latter undertook to ship and deliver to the former 2,000 metric tons of foundry pig iron for the price of US\$404,000.00. Daewoo shipped from Pohang, Republic of Korea, 2,000 metric tons of foundry pig iron on board the M/S Aurelio III under Bill of Lading No. PIP-1 for carriage to and delivery in Manila to its consignee, Reliance. The shipment was fully paid for. Upon arrival in Manila, the subject cargo was found to be short of 135.655 metric tons as only 1,864.345 metric tons were discharged and delivered to Reliance.

Another contract was entered into between the same parties for the purchase of another 2,000 metric tons of foundry pig iron. Daewoo acknowledged the short shipment of 135.655 metric tons under the 9 January 1980 contract and, to compensate Reliance therefor, bound itself to reduce the price by US\$1 to US\$2 per metric ton of pig iron for succeeding orders. This undertaking was made part of the 2 May 1980 contract. However, that contract was not consummated and was later superseded by still another contract dated 31 July 1980.

Reliance, through its Mr. Samuel Chuason, filed with the China Banking Corporation, an application for a Letter of Credit (L/C) in favor of Daewoo covering the amount of US380,600.00. The application was endorsed to the Iron and Steel Authority (ISA) for approval but the application was denied. Reliance was instead asked to submit purchase orders from end-users to support its

application for a Letter of Credit. However, Reliance was not able to raise purchase orders for 2,000 metric tons. Reliance alleges that it was able to raise purchase orders for 1,900 metric tons. Daewoo, upon the other hand, contends that Reliance was only able to raise purchase orders for 900 metric tons. An examination of the exhibits presented by Reliance in the trial court shows that only purchase orders for 900 metric tons were stamped "Received" by the ISA. The other purchase orders for 1,000 metric tons allegedly sent by prospective end-users to Reliance were not shown to have been duly sent and exhibited to the ISA. Whatever the exact amount of the purchase orders was, Daewoo rejected the proposed L/C for the reason that the covered quantity fell short of the contracted tonnage. Thus, Reliance withdrew the application for the L/C on 14 August 1980.

Daewoo learned that the failure of Reliance to open the L/C stipulated in the 31 July 1980 contract was due to the fact that as early as May 1980, Reliance had already exceeded its foreign exchange allocation for 1980. Because of the failure of Reliance to comply with its undertaking under the 31 July 1980 contract, Daewoo was compelled to sell the 2,000 metric tons to another buyer at a lower price, to cut losses and expenses Daewoo had begun to incur due to its inability to ship the 2000 metric tons to Reliance under their contract.

Reliance, through its counsel, wrote Daewoo requesting payment of the amount of P226,370.48, representing the value of the short delivery of 135.655 metric tons of foundry pig iron under the contract of 9 January 1980. Not being heeded, Reliance filed an action for damages against Daewoo with the trial court. Daewoo responded, inter alia, with a counterclaim for damages, contending that Reliance was guilty of breach of contract when it failed to open an L/C as required in the 31 July 1980 contract.

After trial, the trial court ruled that (1) the 31 July 1980 contract did not extinguish Daewoo's obligation for short delivery pursuant to the 9 January 1980 contract and must therefore pay Reliance P226,370.48 representing the value of the short delivered goods plus interest and attorney's fees; and (2) Reliance is in turn liable for breach of contract for its failure to open a letter of credit in favor of Daewoo pursuant to the 31 July 1980 contract and must therefore pay the latter P331,920.97 as actual damages with legal interest plus attorney's fees. Reliance appealed. CA affirmed the decision of the trial court.

In the present Petition for Review, Reliance assails the award of damages in favor of Daewoo. Reliance contends a) that its failure to open a Letter of Credit was due to the failure of Daewoo to accept the purchase orders for 1,900 metric tons instead of 2,000 metric tons; b) that the opening of the Letter of Credit was a condition precedent to the effectivity of the contract between Reliance and Daewoo; and c) that since such condition had not occurred, the contract never came into existence and, therefore, Reliance should not have been held liable for damages.

ISSUE

Whether or not the failure of an importer (Reliance) to open a letter of credit on the date agreed upon makes him liable to the exporter (Daewoo) for damages? (YES)

RULING

A letter of credit is one of the modes of payment, set out in Sec. 8, Central Bank Circular No. 1389, "Consolidated Foreign Exchange Rules and Regulations," dated 13 April 1993, by which commercial banks sell foreign exchange to service payments for, e.g., commodity imports. The primary purpose of the letter of credit is to substitute for and therefore support the agreement of the buyer/importer to pay money under a contract or other arrangement. 8 It creates in the seller/exporter a secure expectation of payment.

A letter of credit transaction may thus be seen to be a composite of at least three (3) distinct but intertwined relationships being concretized in a contract:

(a) One contract relationship links the party applying for the L/C (the account party or buyer or importer) and the party for whose benefit the L/C is issued (the beneficiary or seller or exporter). In this contract, the account party, here Reliance, agrees, among other things and subject to the terms and conditions of the contract, to pay money to the beneficiary, here Daewoo.

(b) A second contract relationship is between the account party and the issuing bank. Under this contract, (sometimes called the "Application and Agreement" or the "Reimbursement Agreement"), the account party among other things, applies to the issuing bank for a specified L/C and agrees to reimburse the bank for amounts paid by that bank pursuant to the L/C.

(c) The third contract relationship is established between the issuing bank and the beneficiary, in order to support the contract, under

Certain other parties may be added to the foregoing, but the above three are the indispensable ones.

The issue raised in the Petition at bar relates principally to the first component contractual relation above: that between account party or importer Reliance and beneficiary or exporter Daewoo.

Examining the actual terms of that relationship as set out in the 31 July 1980 contract quoted earlier (and not simply the summary inaccurately rendered by the trial court), the Court considers that under that instrument, the opening of an L/C upon application of Reliance was not a condition precedent for the birth of the obligation of Reliance to purchase foundry pig iron from Daewoo. We agree with the Court of Appeals that Reliance and Daewoo, having reached "a meeting of minds" in respect of the subject matter of the contract (2000 metric tons of foundry pig iron with a specified chemical composition), the price thereof (US \$380,600.00), and other principal provisions, "they had a perfected contract." The failure of Reliance to open, the appropriate L/C did not prevent the birth of that contract, and neither did such failure extinguish that contract. The opening of the L/C in favor of Daewoo was an obligation of Reliance and the performance of that obligation by Reliance was a condition for enforcement of the reciprocal obligation of Daewoo to ship the subject matter of the contract - the foundry pig iron - to Reliance. But the contract itself between Reliance and Daewoo had already sprung into legal existence and was enforceable.

The L/C provided for in that contract was the mode or mechanism by which payment was to be effected by Reliance of the price of the pig iron. In undertaking to accept or pay the drafts presented to it by the beneficiary according to the tenor of an L/C, and only later on being reimbursed by the account party, the issuing bank in effect extends a loan to the account party. This loan feature, combined with the bank's undertaking to accept the beneficiary's drafts drawn on the bank, constitutes the L/C as a mode of payment. Logically, before the issuing bank opens an L/C, it will take steps to ensure that it would indeed be reimbursed when the time comes. Before an L/C can be opened, specific legal requirements must be complied with.

The Central Bank of the Philippines has established the following requirements for opening a letter of credit: "All L/C's must be opened on or before the date of shipment with maximum validity of one (1) year. Likewise, only one L/C should be opened for each import transaction. For purposes of opening an L/C, importers shall submit to the commercial bank the following documents: a) the duly accomplished L/C application; b) firm offer/proforma invoice which shall contain information on the specific quantity of the importation, unit cost and total cost, complete description/specification of the commodity and the Philippine Standard Commodity Classification statistical code; c) permits/clearances from the appropriate government agencies, whenever applicable; and d) duly accomplished Import Entry Declaration (IED) form which shall serve as basis for payment of advance duties as required under PD 1853."

The need for permits or clearances from appropriate government agencies arises when regulated commodities are to be imported. Certain commodities are classified as "regulated commodities" for purposes of their importation, "for reasons of public health and safety, national security, international commitments, and development/rationalization of local industry". The petitioner in the instant case entered into a transaction to import foundry pig iron, a regulated commodity. In respect of the importation of this particular commodity, the Iron and Steel Authority (ISA) is the government agency designated to issue the permit or clearance. Prior to the issuance of such permit or clearance, ISA asks the buyer/importer to comply with particular requirements, such as to show the availability of foreign exchange allocations. The issuance of an L/C becomes, among other things, an indication of compliance by the buyer/importer with his own government's regulations relating to imports and to payment thereof.

The record shows that the opening of the L/C in the instant case became very difficult because Reliance had exhausted its dollar allocation. Reliance knew that it had already exceeded its dollar allocation for the year 1980 when it entered into the 31 July 1980 transaction with Daewoo. As a rule, when the importer has exceeded its foreign exchange allocation, his application would be denied. However, ISA could reconsider such application on a case to case basis. Thus, in the instant case, ISA required Reliance to support its application by submitting purchase orders from endusers for the same quantity the latter wished to import. As earlier noted, Reliance was able to present purchase orders for only 900 metric tons of the subject pig iron. For having exceeded its foreign exchange allocation before it entered into the 31 July 1980 contract with Daewoo, petitioner Reliance can hold only itself responsible. For having failed to secure end-users' purchase orders equivalent to 2,000 metric tons, only Reliance should be held responsible.

Daewoo rejected Reliance's proposed reduced tonnage. It had the right to demand compliance with the terms of the basic contract and had no duty to accept any unilateral modification of that contract. Compliance with Philippine legal requirements was the duty of Reliance; it is not disputed

that ISA's requirements were legal and valid, and not arbitrary or capricious. Compliance with such requirements, like keeping within one's dollar allocation and complying with the requirements of ISA, were within the control of Reliance and not of Daewoo. The Court is compelled to agree with the Court of Appeals that the non-opening of the L/C was due to the failure of Reliance to comply with its duty under the contract.

We believe and so hold that failure of a buyer seasonably to furnish an agreed letter of credit is a breach of the contract between buyer and seller. Where the buyer fails to open a letter of credit as stipulated, the seller or exporter is entitled to claim damages for such breach. Damages for failure to open a commercial credit may, in appropriate cases, include the loss of profit which the seller would reasonably have made had the transaction been carried out.

We hold, further, that the Court of Appeals committed no reversible error when it ruled that the damages incurred by Daewoo were sufficiently proved with the testimony of Mr. Ricardo Fernandez and "the various documentary evidence showing the loss suffered by the defendant when it was compelled to sell the subject goods at a lower price"

Not a negotiable instrument



Lee vs. Court of Appeals, 375 SCRA 579 (2002)

CHARLES LEE, CHUA SIOK SUY, MARIANO SIO, ALFONSO YAP, RICHARD VELASCO AND ALFONSO CO, PETITIONERS, -VERSUS- COURT OF APPEALS AND PHILIPPINE BANK OF COMMUNICATIONS, RESPONDENTS. G.R. No. 117913, SECOND DIVISION, February 1, 2002, DE LEON JR. J.

In this case, the Petitioner contends that the alleged promissory notes, trust receipts and surety agreements attached to the complaint filed by PBCom did not ripen into valid and binding contracts inasmuch as there is no evidence of the delivery of money or loan proceeds to MICO or to any of the petitioners-sureties. However, the Supreme Court ruled that pursuant to the NIL, every negotiable instrument is deemed prima facie to have been issued for valuable consideration and every person whose signature appears thereon to have become a party for value. Negotiable instruments include promissory notes, bills of exchange and checks. Letters of credit and trust receipts are, however, not negotiable instruments. But drafts issued in connection with letters of credit are negotiable instruments. While the presumption found under the Negotiable Instruments Law may not necessarily be applicable to trust receipts and letters of credit, the presumption that the drafts drawn in connection with the letters of credit have sufficient consideration. Under Section 3(r), Rule 131 of the Rules of Court there is also a presumption that sufficient consideration was given in a contract. Hence, petitioners should have presented credible evidence to rebut that presumption as well as the evidence presented by private respondent PBCom.

FACTS

Charles Lee, as President of MICO wrote private respondent Philippine Bank of Communications (PBCom) requesting for a grant of a discounting loan/credit line in the sum of Three Million Pesos (₱3,000,000.00) for the purpose of carrying out MICO's line of business as well as to maintain its volume of business.

On the same day, Charles Lee requested for another discounting loan/credit line of Three Million Pesos (₱3,000,000.00) from PBCom for the purpose of opening letters of credit and trust receipts. In connection with the requests for discounting loan/credit lines, PBCom was furnished by MICO a resolution duly authorizing and empowering Mr. Charles Lee and Mariano A. Sio to apply for, negotiate, and secure approval of commerce loans such as letters of credits and trust receipts in behalf of the corporation which was adopted unanimously by MICO's Board of Directors.

MICO availed of the first loan of One Million Pesos (₱1,000,000.00) from PBCom. Upon maturity of the loan, MICO caused the same to be renewed, the last renewal of which was made on May 21, 1982 under Promissory Note BNA No. 26218.

Another loan of One Million Pesos (₱1,000,000.00) was availed of by MICO from PBCom which was likewise later on renewed, the last renewal of which was. To complete MICO's availment of Three Million Pesos (₱3,000,000.00) discounting loan/credit line with PBCom, MICO availed of another loan from PBCom in the sum of One Million Pesos (₱1,000,000.00) on May 24, 1979. As in previous loans, this was rolled over or renewed, the last renewal of which was made on May 25, 1982 under Promissory Note BNA No. 26253.

As security for the loans, MICO through its Vice-President and General Manager, Mariano Sio, executed on May 16, 1979 a Deed of Real Estate Mortgage over its properties situated in Pasig, Metro Manila covered by Transfer Certificates of Title (TCT) Nos. 11248 and 11250.

Charles Lee, Chua SiokSuy, Mariano Sio, Alfonso Yap and Richard Velasco, in their personal capacities executed a Surety Agreement in favor of PBCom whereby the petitioners jointly and severally, guaranteed the prompt payment on due dates or at maturity of overdrafts, letters of credit, trust receipts, and other obligations of every kind and nature, for which MICO may be held accountable by PBCom. It was provided, however, that the liability of the sureties shall not at any one time exceed the principal amount of Three Million Pesos (₱3,000,000.00) plus interest, costs, losses, charges and expenses including attorney's fees incurred by PBCom in connection therewith. On July 14, 1980, petitioner Charles Lee, in his capacity as president of MICO, wrote PBCom and applied for an additional loan in the sum of Four Million Pesos (₱4,000,000.00). The loan was intended for the expansion and modernization of the company's machineries.

As per agreement, the proceeds of all the loan availments were credited to MICO's current checking account with PBCom. To induce the PBCom to increase the credit line of MICO, Charles Lee, Chua SiokSuy, Mariano Sio, Alfonso Yap, Richard Velasco and Alfonso Co executed another surety agreement in favor of PBCom whereby they jointly and severally guaranteed the prompt payment on due dates or at maturity of overdrafts, promissory notes, discounts, drafts, letters of credit, bills of exchange, trust receipts and all other obligations of any kind and nature for which MICO may be held accountable by PBCom. It was provided, however, that their liability shall not at any one time exceed the sum of Seven Million Five Hundred Thousand Pesos (₱7,500,000.00) including interest, costs, charges, expenses and attorney's fees incurred by MICO in connection therewith.

On July 2, 1981, MICO filed with PBCom an application for a domestic letter of credit in the sum of Three Hundred Forty-Eight Thousand Pesos (₱348,000). The corresponding irrevocable letter of credit was approved and opened under LC No. L-16060. Thereafter, the

domestic letter of credit was negotiated and accepted by MICO as evidenced by the corresponding bank draft issued for the purpose. After the supplier of the merchandise was paid, a trust receipt upon MICO's own initiative, was executed in favor of PBCom.

On September 14, 1981, MICO applied for another domestic letter of credit with PBCom in the sum of Two Hundred Ninety Thousand Pesos (₱290,000.00). The corresponding irrevocable letter of credit was issued on September 22, 1981 under LC No. L-16334. After the beneficiary of the said letter of credit was paid by PBCom for the price of the merchandise, the goods were delivered to MICO which executed a corresponding trust receipt in favor of PBCom.

MICO applied for authority to open a foreign letter of credit in favor of Ta Jih Enterprises Co., Ltd., and thus, the corresponding letter of credit was then issued by PBCom with a cable sent to the beneficiary, Ta Jih Enterprises Co., Ltd. advising that said beneficiary may draw funds from the account of PBCom in its correspondent bank's New York Office. PBCom also informed its corresponding bank in Taiwan, the Irving Trust Company, of the approved letter of credit. The correspondent bank acknowledged PBCom's advice through a confirmation letter and by debiting from PBCom's account with the said correspondent bank the sum of Eleven Thousand Nine Hundred Sixty US Dollars (\$11,960.00). As in past transactions, MICO executed in favor of PBCom a corresponding trust receipt.

MICO applied, for authority to open a foreign letter of credit in the sum of One Thousand Nine Hundred US Dollars (\$1,900.00), with PBCom. Upon approval, the corresponding letter of credit denominated as LC No. 62293 was issued whereupon PBCom advised its correspondent bank and MICO of the same. Negotiation and proper acceptance of the letter of credit were then made by MICO. Again, a corresponding trust receipt was executed by MICO in favor of PBCom.

In all the transactions involving foreign letters of credit, PBCom turned over to MICO the necessary documents such as the bills of lading and commercial invoices to enable the latter to withdraw the goods from the port of Manila.

MICO obtained from PBCom another loan in the sum of Three Hundred Seventy-Seven Thousand Pesos (₱377,000.00) covered by Promissory Note BA No. 7458.

Upon maturity of all credit availments obtained by MICO from PBCom, the latter made a demand for payment. For failure of petitioner MICO to pay the obligations incurred despite repeated demands, private respondent PBCom extrajudicially foreclosed MICO's real estate mortgage and sold the said mortgaged properties in a public auction sale held on November 23, 1982. Private respondent PBCom which emerged as the highest bidder in the auction sale, applied the proceeds of the purchase price at public auction of Three Million Pesos (₱3,000,000.00) to the expenses of the foreclosure, interest and charges and part of the principal of the loans, leaving an unpaid balance of Five Million Four Hundred Forty-One Thousand Six Hundred Sixty-Three Pesos and Ninety Centavos (₱5,441,663.90), MICO likewise had another standing obligation in the sum of Four Hundred Sixty-One Thousand Six Hundred Sixty-One Thousand Six Hundred Sixty-Three Pesos and Ninety Centavos (₱5,441,663.90), MICO likewise had another standing obligation in the sum of Four Hundred Sixty-One Thousand Six Hundred Sixty-Three Pesos and Ninety Centavos (₱5,441,663.90), MICO likewise had another standing obligation in the sum of Four Hundred Sixty-One Thousand Six Centavos (₱461,600.06) representing its trust receipts liabilities to private respondent.

PBCom then demanded the settlement of the aforesaid obligations from herein petitioners-sureties who, however, refused to acknowledge their obligations to PBCom under the surety agreements.

PBCom filed a complaint with prayer for writ of preliminary attachment before the Regional Trial Court of Manila, which was raffled to Branch, alleging that MICO was no longer in operation and had no properties to answer for its obligations. PBCom further alleged that petitioner Charles Lee has disposed or concealed his properties with intent to defraud his creditors.

Petitioners (MICO and herein petitioners-sureties) denied all the allegations of the complaint filed by respondent PBCom, and alleged that: a) MICO was not granted the alleged loans and neither did it receive the proceeds of the aforesaid loans; b) Chua SiokSuy was never granted any valid Board Resolution to sign for and in behalf of MICO; c) PBCom acted in bad faith in granting the alleged loans and in releasing the proceeds thereof; d) petitioners were never advised of the alleged grant of loans and the subsequent releases therefor, if any; e) since no loan was ever released to or received by MICO, the corresponding real estate mortgage and the surety agreements signed concededly by the petitioners-sureties are null and void.

The trial court gave credence to the testimonies of herein petitioners and dismissed the complaint filed by PBCom. The trial court likewise declared the real estate mortgage and its foreclosure null and void. In ruling for herein petitioners,

The Court of Appeals reversed the ruling of the trial court, saying that the latter committed an erroneous application and appreciation of the rules governing the burden of proof. Citing Section 24 of the Negotiable Instruments Law which provides that "Every negotiable instrument is deemed prima facie to have been issued for valuable consideration and every person whose signature appears thereon to have become a party thereto for value", the Court of Appeals said that while the subject promissory notes and letters of credit issued by the PBCom made no mention of delivery of cash, it is presumed that said negotiable instruments were issued for valuable consideration. The Court of Appeals also cited the case of Gatmaitan vs. Court of Appeals which holds that "there is a presumption that an instrument sets out the true agreement of the parties thereto and that it was executed for valuable consideration".

ISSUE

Whether or not the Petitioners contention that the alleged promissory notes, trust receipts and surety agreements attached to the complaint filed by PBCom did not ripen into valid and binding contracts inasmuch as there is no evidence of the delivery of money or loan proceeds to MICO or to any of the petitioners-sureties is correct? (NO)

RULING

Under Section 3, Rule 131 of the Rules of Court the following presumptions, among others, is satisfactory if uncontradicted: a) that there was a sufficient consideration for a contract and b) that a negotiable instrument was given or indorsed for sufficient consideration. As observed by the Court of Appeals, a similar presumption is found in Section 24 of the Negotiable Instruments Law which provides that every negotiable instrument is deemed prima facie to have been issued for valuable consideration and every person whose signature appears thereon to have become a party

for value. Negotiable instruments which are meant to be substitutes for money, must conform to the following requisites to be considered as such a) it must be in writing; b) it must be signed by the maker or drawer; c) it must contain an unconditional promise or order to pay a sum certain in money; d) it must be payable on demand or at a fixed or determinable future time; e) it must be payable to order or bearer; and f) where it is a bill of exchange, the drawee must be named or otherwise indicated with reasonable certainty. **Negotiable instruments include promissory notes, bills of exchange and checks. Letters of credit and trust receipts are, however, not negotiable instruments. But drafts issued in connection with letters of credit are negotiable instruments.**

The private respondents presented documents which have not merely created a prima facie case but have actually proved the solidary obligation of MICO and the petitioners, as sureties of MICO, in favor of respondent PBCom. While the presumption found under the Negotiable Instruments Law may not necessarily be applicable to trust receipts and letters of credit, the presumption that the drafts drawn in connection with the letters of credit have sufficient consideration. Under Section 3(r), Rule 131 of the Rules of Court there is also a presumption that sufficient consideration was given in a contract. Hence, petitioners should have presented credible evidence to rebut that presumption as well as the evidence presented by private respondent PBCom.

The letters of credit show that the pertinent materials/merchandise have been received by MICO. The drafts signed by the beneficiary/suppliers in connection with the corresponding letters of credit proved that said suppliers were paid by PBCom for the account of MICO. On the other hand, aside from their bare denials petitioners did not present sufficient and competent evidence to rebut the evidence of private respondent PBCom.

Petitioners-sureties, for their part, presented the By-Laws of Mico Metals Corporation (MICO) to prove that only the president of MICO is authorized to borrow money, arrange letters of credit, execute trust receipts, and promissory notes and consequently, that the loan transactions, letters of credit, promissory notes and trust receipts, most of which were executed by Chua SiokSuy in representation of MICO were not allegedly authorized and hence, are not binding upon MICO. A perusal of the By-Laws of MICO, however, shows that the power to borrow money for the company and issue mortgages, bonds, deeds of trust and negotiable instruments or securities, secured by mortgages or pledges of property belonging to the company is not confined solely to the president of the corporation. The Board of Directors of MICO can also borrow money, arrange letters of credit, execute trust receipts and promissory notes on behalf of the corporation. Significantly, this power of the Board of Directors according to the by-laws of MICO, may be delegated to any of its standing committee, officer or agent. Hence, PBCom had every right to rely on the Certification issued by MICO's corporate secretary, P.B. Barrera, that Chua SiokSuy was duly authorized by its Board of Directors to borrow money and obtain credit facilities in behalf of MICO from PBCom.

Modern letters of credit are usually not made between natural persons. They involve bank to bank transactions. Historically, the letter of credit was developed to facilitate the sale of goods between, distant and unfamiliar buyers and sellers. It was an arrangement under which a bank, whose credit was acceptable to the seller, would at the instance of the buyer agree to pay drafts drawn on it by the seller, provided that certain documents are presented such as bills of lading accompanied the corresponding drafts. Expansion in the use of letters of credit was a natural development in

commercial banking. Parties to a commercial letter of credit include (a) the buyer or the importer, (b) the seller, also referred to as beneficiary, (c) the opening bank which is usually the buyer's bank which actually issues the letter of credit, (d) the notifying bank which is the correspondent bank of the opening bank through which it advises the beneficiary of the letter of credit, (e) negotiating bank which is usually any bank in the city of the beneficiary. The services of the notifying bank must always be utilized if the letter of credit is to be advised to the beneficiary through cable, (f) the paying bank which buys or discounts the drafts contemplated by the letter of credit, if such draft is to be drawn on the opening bank or on another designated bank not in the city of the beneficiary. As a rule, whenever the facilities of the opening bank are used, the beneficiary is supposed to present his drafts to the notifying bank for negotiation and (g) the confirming bank which, upon the request of the beneficiary, confirms the letter of credit issued by the opening bank.

From the foregoing, it is clear that letters of credit, being usually bank to bank transactions, involve more than just one bank. Consequently, there is nothing unusual in the fact that the drafts presented in evidence by respondent bank were not made payable to PBCom. As explained by respondent bank, a draft was drawn on the Bank of Taiwan by Ta Jih Enterprises Co., Ltd. of Taiwan, supplier of the goods covered by the foreign letter of credit. Having paid the supplier, the Bank of Taiwan then presented the bank draft for reimbursement by PBCom's correspondent bank in Taiwan, the Irving Trust Company — which explains the reason why on its face, the draft was made payable to the Bank of Taiwan. Irving Trust Company accepted and endorsed the draft to PBCom. The draft was later transmitted to PBCom to support the latter's claim for payment from MICO. MICO accepted the draft upon presentment and negotiated it to PBCom.

- Different from trust receipt

Bank of Commerce vs. Serrano, 451 SCRA 484 (2005)

BANK OF COMMERCE, PETITIONER, -versus- TERESITA S. SERRANO, RESPONDENT. G.R. NO. 151895, FIRST DIVISION, February 16, 2005, QUISUMBING J.

Via Moda secured a letter of credit from the Petitioner and entered into a trust agreement with the same. Via Moda made several availments from the said letter of credit for the continuous operation of its business. However, Via Moda failed to pay said obligation. The lower court held Via Moda liable to the petitioner. The petitioner, however, insists that Teresita Serrano, (the general manager and treasurer of Via Moda) should be held jointly and severally liable with Via Moda under the guarantee clause of letter of credit secured by trust receipt.

The Supreme Court clarified that a letter of credit is a separate document from a trust receipt. While the trust receipt may have been executed as a security on the letter of credit, still the two documents involve different undertakings and obligations. A letter of credit is an engagement by a bank or other person made at the request of a customer that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the credit. Through a letter of credit, the bank merely substitutes its own promise to pay for the promise to pay of one of its customers who in return promises to pay the bank the amount of funds mentioned in the letter of credit plus credit or commitment fees mutually agreed upon. By contrast, a trust receipt transaction is one where the entruster, who holds an absolute title or security interests over certain goods, documents or instruments, released the same to the entrustee, who executes a trust receipt binding himself to hold the goods, documents or instruments in trust for the entruster and to sell or otherwise dispose of the goods, documents and instruments with the obligation to turn over to the entruster the proceeds thereof to the extent of the amount owing to the entruster, or as appears in the trust receipt, or return the goods, documents or instruments themselves if they are unsold, or not otherwise disposed of, in accordance with the terms and conditions specified in the trust receipt.

FACTS

Petitioner Bank of Commerce (formerly Boston Bank of the Philippines) is a private domestic banking institution. Respondent Teresita S. Serrano is the General Manager and Treasurer of Via Moda International, Inc., a domestic business entity primarily engaged in the import and export of textile materials and fabrics.

Via Moda International, represented by respondent, obtained an export packing loan from petitioner, Bank of Commerce (BOC)-Diliman, Quezon City Branch, in the amount of US\$50,000 (P1,382,250), secured by a Deed of Assignment over Irrevocable Transferable Letter of Credit. Respondent Serrano executed in favor of BOC Promissory Note for US\$50,000. Via Moda then opened a deposit account for the proceeds of the said loan.

BOC issued to Via Moda, an Irrevocable Letter of Credit in the amount of US\$56,735, for the purchase and importation of fabric and textile products from Tiger Ear Fabric Co. Ltd. of Taiwan. To secure the release of the goods covered, respondent, in representation of Via Moda, executed Trust Receipt for US\$55,944.73 (P1,554,424.32).

Under the terms of the trust receipt, Via Moda agreed to hold the goods in trust for petitioner as the latter's property and to sell the same for the latters account. In case of sale, the proceeds are to be remitted to the bank as soon as it is received, but not later than the maturity date. Said proceeds are to be applied to the relative acceptances, with interest at the rate of 26% per annum, with a penalty of 36% per annum of the total amount due until fully paid in case of non-payment of the trust receipt and relative acceptance at maturity date or, in the alternative, to return the goods in case of non-sale.

The goods covered by the trust receipt were shipped by Via Moda to its consignee in New Jersey, USA, who sent an Export Letter of Credit issued by the Bank of New York, in favor of BOC. The Regional Operations Officer of BOC signed the export declarations to show consent to the shipment. The total value of the entrusted goods which were shipped per export declaration was US\$81,987 (P2,246,443.80). The proceeds of the entrusted goods sold were not credited to the trust receipt but, were applied by the bank to the principal, penalties and interest of the export packing loan. The excess P472,114.85 was applied to the trust receipt, leaving a balance of P1,444,802.28 as of November 15, 1994.

Petitioner sent a demand letter to Via Moda to pay the said amount plus interest and penalty charges, or to return the goods covered by Trust Receipt No. 94-22221 within 5 days from receipt. The demand was not heeded. As of December 15, 1998, the outstanding balance of Via Moda was P4, 783,487.15. Respondent was charged with the crime of estafa under Article 315 (b) of the Revised Penal Code in relation to Presidential Decree No. 115

The RTC ruled that Teresita S. Serrano is GUILTY beyond reasonable doubt of the crime charged and ordered her to pay civil liability to Bank of Commerce

The CA Reversed the RTC's decision. The element of misappropriation or conversion in violation of P.D. No. 115, in relation to the crime of estafa, was absent in this case, thereby acquitting the respondent and deleting her civil liability.

Petitioner filed a Motion for Reconsideration which was denied.

ISSUE

Whether respondent is jointly and severally liable with Via Moda under the guarantee clause of letter of credit no. [bcz-940051] secured by trust receipt no. [94-22221]?

RULING

Petitioner contends that the Court of Appeals made a manifestly mistaken inference from its findings or a misapprehension of facts and overlooked a vital piece of evidence on record, particularly, the Guarantee Clause of the Letter of Credit secured by the Trust Receipt. Petitioner further alleges that the said Guarantee Clause provides that the liability of respondent is joint and solidary; hence, she should be held liable on the obligation.

A letter of credit is a separate document from a trust receipt. While the trust receipt may have been executed as a security on the letter of credit, still the two documents involve different undertakings and obligations. A letter of credit is an engagement by a bank or other person made at the request of a customer that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the credit. Through a letter of credit, the bank merely substitutes its own promise to pay for the promise to pay of one of its customers who in return promises to pay the bank the amount of funds mentioned in the letter of credit plus credit or commitment fees mutually agreed upon.By contrast, a trust receipt transaction is one where the entruster, who holds an absolute title or security interests over certain goods, documents or instruments, released the same to the entrustee, who executes a trust receipt binding himself to hold the goods, documents or instruments with the obligation to turn over to the entruster the proceeds thereof to the extent of the amount owing to the entruster, or as appears in the trust receipt, or return the goods, documents or instruments themselves if they are unsold, or not otherwise disposed of, in accordance with the terms and conditions specified in the trust receipt.

However, the question of the liability of respondent based on the Guarantee Clause of the Letter of Credit was not raised either at the trial court or before the Court of Appeals. A question that was never raised in the courts below cannot be allowed to be raised for the first time on appeal without offending basic rules of fair play, justice and due process. Such an issue was not brought to the fore either in the trial court or the appellate court, and would have been disregarded by the latter tribunal for the reasons previously stated. With more reason, the same does not deserve consideration by this Court.

2. Laws governing letter of credit

- Applicability of usage and customs apply in commercial transactions in the absence of any particular provision in the Code of Commerce

• Bank of the Philippine Islands vs. De Reny Fabric Industries, Inc., 35 SCRA 253 (1970)

BANK OF THE PHILIPPINE ISLANDS, plaintiff-appellee, -versus- DE RENY FABRIC INDUSTRIES, INC., AURORA T. TUYO and AURORA CARCERENY alias AURORA C. GONZALES, defendants-appellants.

G.R. No. L-24821, EN BANC, October 16, 1970, CASTRO J.

De Reny secured letter of credits from BPI to cover the purchase by the corporation of goods described in the covering L/C applications as "dyestuffs of various colors" from the J.B. Distributing Company (JBDC).As each shipment arrived in the Philippines, the De Reny made partial payments to the Bank. Further payments were, however, subsequently discontinued by the corporation when it became established, as a result of a chemical test conducted by the National Science Development Board, that the goods that arrived in Manila were colored chalks instead of dyestuffs.

In this case, the Supreme Court held that banks, in providing financing in international business transactions such as those entered into by the appellants, do not deal with the property to be exported or shipped to the importer, but deal only with documents pursuant to the Article 10 of the "Uniform Customs and Practices for Commercial Documentary Credits Fixed for the Thirteenth Congress of International Chamber of Commerce," to which the Philippines is a signatory nation.

FACTS

On four different occasions, the De Reny Fabric Industries, Inc. (De Reny), a Philippine corporation through Aurora Carcereny and Aurora T. Tuyo, president and secretary, respectively of the corporation, applied to the Bank for four (4) irrevocable commercial letters of credit to cover the purchase by the corporation of goods described in the covering L/C applications as "dyestuffs of various colors" from the J.B. Distributing Company (JBDC). All the applications of the corporation were approved, and the corresponding Commercial L/C Agreements were executed pursuant to banking procedures. Under these agreements, the aforementioned officers of the corporation bound themselves personally as joint and solidary debtors with the corporation. Pursuant to banking regulations then in force, the corporation delivered to the Bank peso marginal deposits as each letter of credit was opened.

By virtue of the foregoing transactions, the Bank issued irrevocable commercial letters of credit addressed to its correspondent banks in the United States, with uniform instructions for them to notify the beneficiary thereof, the JBDC, that they have been authorized to negotiate the latter's sight drafts up to the amounts mentioned the respectively, if accompanied, upon presentation, by a full set of negotiable clean "on board" ocean bills of lading covering the merchandise appearing in the LCs. Consequently, the JBDC drew upon, presented to and negotiated with these banks, its sight drafts covering the amounts of the merchandise ostensibly being exported by it, together with clean bills of lading, and collected the full value of the drafts up to the amounts appearing in the L/Cs as

above indicated. These correspondent banks then debited the account of the BPI with them up to the full value of the drafts presented by the JBDC, plus commission thereon, and, thereafter, endorsed and forwarded all documents to the BPI.

As each shipment arrived in the Philippines, the De Reny made partial payments to the Bank. Further payments were, however, subsequently discontinued by the corporation when it became established, as a result of a chemical test conducted by the National Science Development Board, that the goods that arrived in Manila were colored chalks instead of dyestuffs.

The corporation also refused to take possession of these goods, and for this reason, the Bank caused them to be deposited with a bonded warehouse up to the filing of its complaint with the lower court.

The lower court rendered its decision ordering the corporation and its co-defendants (the herein appellants) to pay to the plaintiff-appellee the amount of P291,807.46, with interest thereon, as provided for in the L/C Agreements, at the rate of 7% per annum from October 31, 1962 until fully paid, plus costs.

ISSUE

Whether it is the duty of BPI to take the necessary precaution to insure that the goods shipped under the covering LCs conformed to the item appearing therein? (NO)

RULING

Under the terms of their Commercial Letter of Credit Agreements with the Bank, the appellants agreed that the Bank shall not be responsible for the "existence, character, quality, quantity, conditions, packing, value, or delivery of the property purporting to be represented by documents; for any difference in character, quality, quantity, condition, or value of the property from that expressed in documents," or for "partial or incomplete shipment, or failure or omission to ship any or all of the property referred to in the Credit," as well as "for any deviation from instructions, delay, default or fraud by the shipper or anyone else in connection with the property the shippers or vendors and ourselves [purchasers] or any of us." Having agreed to these terms, the appellants have, therefore, no recourse but to comply with their covenant.

But even without the said stipulation, the appellants cannot shift the burden of loss to the Bank on account of the violation by their vendor of its prestation.

It was uncontrovertibly proven by the Bank during the trial below that banks, in providing financing in international business transactions such as those entered into by the appellants, do not deal with the property to be exported or shipped to the importer, but deal only with documents. The Bank introduced in evidence a provision contained in the "Uniform Customs and Practices for Commercial Documentary Credits Fixed for the Thirteenth Congress of International Chamber of Commerce," to which the Philippines is a signatory nation. Article 10 thereof provides:

In documentary credit operations, all parties concerned deal in documents and not in goods. — Payment, negotiation or acceptance against documents in accordance with the terms and

conditions of a credit by a Bank authorized to do so binds the party giving the authorization to take up the documents and reimburse the Bank making the payment, negotiation or acceptance.

The existence of a custom in international banking and financing circles negating any duty on the part of a bank to verify whether what has been described in letters of credits or drafts or shipping documents actually tallies with what was loaded aboard ship, having been positively proven as a fact, the appellants are bound by this established usage. They were, after all, the ones who tapped the facilities afforded by the Bank in order to engage in international business.

3. Kinds of letter of credit

- d. Commercial and stand by letter of credit
 - Insular Bank of Asia & America vs. Intermediate Appellate Court, 167 SCRA 450 (1988)

INSULAR BANK OF ASIA & AMERICA (NOW PHILIPPINE COMMERCIAL INTERNATIONAL BANK), PETITIONER, -VERSUS- HON. INTERMEDIATE APPELLATE COURT, THE PHILIPPINE AMERICAN LIFE INSURANCE CO., SPS. BEN MENDOZA & JUANITA M. MENDOZA, RESPONDENTS. G.R. No. 74834, SECOND DIVISION, November 17, 1988, MELENCIO-HERRERA J.

Letters of credit and contracts for the issuance of such letters are subject to the same rules of construction as are ordinary commercial contracts. They are to receive a reasonable and not a technical construction and although usage and custom cannot control express terms in letters of credit, they are to be construed with reference to all the surrounding facts and circumstances, to the particular and often varying terms in which they may be expressed, the circumstances and intention of the parties to them, and the usages of the particular trade of business contemplated.

Unequivocally, the subject standby Letters of Credit secure the payment of any obligation of the Mendozas to Philam Life including all interests, surcharges and expenses thereon but not to exceed P600, 000.00. But while they are a security arrangement, they are not converted thereby into contracts of guaranty. That would make them ultra vires rather than a letter of credit, which is within the powers of a bank (Section 74[e], RA 337, General Banking Act). 1 The standby L/Cs are, "in effect an absolute undertaking to pay the money advanced or the amount for which credit is given on the faith of the instrument." (Scribner v. Rutherford, 22 N.W. 670, 65 Iowa 551; Duval v. Trask., 12 Mass. 154, cited in 38 CJS, Sec. 7, p. 1142). They are primary obligations and not accessory contracts. Being separate and independent agreements, the payments made by the Mendozas cannot be added in computing IBAA's liability under its own standby letters of credit. Payments made by the Mendozas directly to Philam Life are in compliance with their own prestation under the loan agreements. And although these payments could result in the reduction of the actual amount which could ultimately be collected from IBAA, the latter's separate undertaking under its L/Cs remains.

FACTS

Sometime in 1976 and 1977 respondent spouses Mendoza obtained two (2) loans from respondent Philippine American Life Insurance Co. (Philam Life) in the total amount of P600, 000.00 to finance the construction of their residential house at Mandaue City. To secure payment, Philam Life

required that amortizations be guaranteed by an irrevocable standby letter of credit of a commercial bank. Thus, the Mendozas contracted with petitioner Insular Bank of Asia and America (IBAA) for the issuance of two (2) irrevocable standby Letters of Credit in favor of Philam Life for the total amount of P600,000.00. The first L/C for P500, 000.00 was to expire on 1 October 1981 and the second for P100,000.00 on 1 January 1982. These two (2) irrevocable standby L/Cs were, in turn, secured by a real estate mortgage for the same amount on the property of Respondent Spouses in favor of IBAA.

On 11 May 1977, the Mendozas executed a promissory note in favor of IBAA promising to pay the sum of P100, 000.00 plus 19% p.a. interest. Respondent Spouses executed another Promissory Note binding themselves to pay IBAA P100, 000.00 plus 19% p.a. interest. Both Notes authorized IBAA "to sell at public or private sale such securities or things for the purpose of applying their proceeds to such payments" of many particular obligation or obligations" the Mendozas may have to IBAA.

The Mendozas failed to pay Philam Life the amortization that fell due on 1 June 1978 so that Philam Life informed IBAA that it was declaring both loans as "entirely due and demandable" and demanded payment of P492,996.30. However, because IBAA contested the propriety of calling ill the entire loan, Philam Life desisted and resumed availing of the L/Cs by drawing on them for five (5) more amortizations.

On 7 September 1979, because the Mendozas defaulted on their amortization due on 1 September 1979, Philam Life again informed IBAA that it was declaring the entire balance outstanding on both loans, including liquidated damages, "immediately due and payable." Philam Life then demanded the payment of P274,779.56 from IBAA but the latter took the position that, as a mere guarantor of the Mendozas who are the principal debtors, its remaining outstanding obligation under the two (2) standby L/Cs was only P30,100.60.

On 21 April 1980 the Real Estate Mortgage, which secured the two (2) standby L/Cs. was extrajudicially foreclosed by, and sold at public auction for P775,000.00, to petitioner IBAA as the lone and highest bidder. Philam Life filed suit against Respondent Spouses and IBAA before the RTC, for the recovery of the sum of P274,779.56, the amount allegedly still owing under the loan. The Court rendered a Decision finding that IBAA had paid Philam Life only P342,127.05 and not P372,227.65, as claimed by IBAA, because of a stale IBAA Manager's check in the amount of P30,100.60, which had to be deducted.

The Trial Court ordered Defendants-spouses Ben S. Mendoza and Juanita M. Mendoza to pay plaintiff Philippine American Life Insurance Company the sum of P322,000.00, Plaintiff Philippine American Life Insurance Company to refund the sum of P22,420.16 to the defendant Insular Bank of Asia and America and Dismissal of the counterclaim and crossclaim filed by the defendants-spouses against the plaintiff and the defendant IBAA, as well as the counterclaim filed by defendant IBAA against the plaintiff. RTC took the position that IBAA, "as surety" was discharged of its liability to the extent of the payment made by the Mendozas, as the principal debtors, to the creditor, Philam Life.

The Appellate Court reversed the Trial Court and ruled instead that IBAA's liability was not reduced by virtue of the payments made by the Mendozas.

ISSUE

Whether or not the partial payments made by the principal obligors (respondent MENDOZAS) would have the corresponding effect of reducing the liability of the petitioner as guarantor or surety under the terms of the standby LCs in question? (NO)

RULING

IBAA stresses that it has no more liability to Philam Life under the two (2) standby Letters of Credit and, instead, is entitled to a refund. Whereas Philam Life and the Mendoza spouses separately maintain that IBAA's obligation under said two (2) L/Cs is original and primary and is not reduced by the direct payments made by the Mendozas to Philam Life.

1. In construing the terms of a Letter of Credit, as in other contracts, it is the intention of the parties that must govern.

Letters of credit and contracts for the issuance of such letters are subject to the same rules of construction as are ordinary commercial contracts. They are to receive a reasonable and not a technical construction and although usage and custom cannot control express terms in letters of credit, they are to be construed with reference to all the surrounding facts and circumstances, to the particular and often varying terms in which they may be expressed, the circumstances and intention of the parties to them, and the usages of the particular trade of business contemplated. (International Banking Corp. vs. Irving National Bank, CCA N.Y. 283 F. 103, affirming DC 274 F. 122; Old Colony Trust Co. vs. Lawyers' Title and Trust Co., CAA NY, 297 F. 152, cited in Vol. 72, CJS sec. 178, pp. 387-388).<ärel|an^o•1àw>

The terms of the subject Irrevocable Standby Letters of Credit read, in part, as follows:

This credit secures the payment of any obligation of the accountee to you under that Loan Agreement hereto attached as Annex 'A' and made a part hereof, including those pertaining to (a) surcharges on defaulted account; installments, (b) increased interest charges (in the event the law should authorize this increase), and (c) liabilities connected with taxes stipulated to be for Accountee's and provided however, that our maximum liabilities hereunder shall not exceed the amount of P500,000.00 (Pl00.000.00 for the other LC).

Each drawing under this credit shall be available at any time after one (1) day from due date of the obligations therein secured. Each drawing under this credit shall be accomplished by your signed statement in duplicate that the amount drawn represents payment due and unpaid by the accountee.

Unequivocally, the subject standby Letters of Credit secure the payment of any obligation of the Mendozas to Philam Life including all interests, surcharges and expenses thereon but not to exceed P600, 000.00. But while they are a security arrangement, they are not converted thereby into contracts of guaranty. That would make them ultra vires rather than a letter of credit, which is within the powers of a bank (Section 74[e], RA 337, General Banking Act). 1 The standby L/Cs are, "in effect an absolute undertaking to pay the money advanced or the amount for which credit is given on the faith of the instrument." (Scribner v. Rutherford, 22 N.W. 670, 65 Iowa 551; Duval v. Trask, 12 Mass. 154, cited in 38 CJS, Sec. 7, p. 1142). They are primary obligations and not

accessory contracts. Being separate and independent agreements, the payments made by the Mendozas cannot be added in computing IBAA's liability under its own standby letters of credit. Payments made by the Mendozas directly to Philam Life are in compliance with their own prestation under the loan agreements. And although these payments could result in the reduction of the actual amount which could ultimately be collected from IBAA, the latter's separate undertaking under its L/Cs remains.

Both the Trial Court and the Appellate Court found, as a fact, that there still remains a balance on the loan, Pursuant to its absolute undertaking under the L/Cs, therefore, IBAA cannot escape the obligation to pay Philam Life for this unexpended balance. The Appellate Court found it to be P222, 000.00, arrived at by the Trial Court and adopted by the Appellate Court.

The amount of P222, 000.00, therefore, considered as "any obligation of the accountee" under the L/Cs will still have to be paid by IBAA under the explicit terms thereof, which IBAA had itself supplied. Letters of credit are strictly construed to the end that the rights of those directly parties to them may be preserved and their interest safeguarded. Like any other writing, it will be construed most strongly against the writer and so as to be reasonable and consistent with honest intentions. On the whole, the construction will be generally a strict one. As found by the Appellate Court, however, the amount payable should not exceed P296,294,05 (P600,000.00 less P303,705.95, the total amount found by the Appellate Court to have been paid by IBAA to Philam Life).

• Bank of America vs Court of Appeals 228 SCRA 357

BANK OF AMERICA, NT & SA, PETITIONERS, -versus- COURT OF APPEALS, INTER-RESIN INDUSTRIAL CORPORATION, FRANCISCO TRAJANO, JOHN DOE AND JANE DOE, RESPONDENT. G.R. No. 105395, THIRD DIVISION, December 10, 1993, VITUG J.

As an advising or notifying bank, Bank of America did not incur any obligation more than just notifying Inter-Resin of the letter of credit issued in its favor, let alone to confirm the letter of credit. The bare statement of the bank employees in responding to the inquiry made by Atty. Tanay, Inter-Resin's representative, on the authenticity of the letter of credit certainly did not have the effect of novating the letter of credit and Bank of America's letter of advice, nor can it justify the conclusion that the bank must now assume total liability on the letter of credit. Indeed, Inter-Resin itself cannot claim to have been all that free from fault. As the seller, the issuance of the letter of credit should have obviously been a great concern to it. It would have been strange if it did not, prior to the letter of credit, enter into a contract, or negotiated at the very least, with General Chemicals. In the ordinary course of business, the perfection of contract precedes the issuance of a letter of credit.

Bringing the letter of credit to the attention of the seller is the primordial obligation of an advising bank. The view that Bank of America should have first checked the authenticity of the letter of credit with bank of Ayudhya, by using advanced mode of business communications, before dispatching the same to Inter-Resin finds no real support in U.C.P. Article 18 of the U.C.P. states that: "Banks assume no liability or responsibility for the consequences arising out of the delay and/or loss in transit of any messages, letters or documents, or for delay, mutilation or other errors arising in the transmission of any telecommunication . . . " As advising bank, Bank of America is bound only to check the "apparent authenticity" of the letter of credit, which it did. The word "APPARENT suggests appearance to unaided senses that is not or may not be borne out by more rigorous examination or greater knowledge."

FACTS

Bank of America received by registered mail an Irrevocable Letter of Credit No. 20272/81 purportedly issued by Bank of Ayudhya for the account of General Chemicals, Ltd. of Thailand to cover the sale of plastic ropes and "agricultural files," with the Bank of America as advising bank and Inter-Resin Industrial Corporation as beneficiary.

Bank of America wrote Inter-Resin informing the latter of the foregoing and transmitting, along with the bank's communication, the letter of credit. Upon receipt of the letter-advice with the letter of credit, Inter-Resin sent Atty. Emiliano Tanay to Bank of America to have the letter of credit confirmed. The bank did not. Reynaldo Dueñas, bank employee in charge of letters of credit, however, explained to Atty. Tanay that there was no need for confirmation because the letter of credit would not have been transmitted if it were not genuine.

Inter-Resin sought to make a partial availment under the letter of credit by submitting to Bank of America invoices, covering the shipment of 24,000 bales of polyethylene rope to General Chemicals, the corresponding packing list, export declaration and bill of lading. After being satisfied that Inter-Resin's documents conformed with the conditions expressed in the letter of credit, Bank of America issued in favor of Inter-Resin a Cashier's Check. The check was picked up by Inter-Resin's Executive Vice-President. Bank of America wrote Bank of Ayudhya advising the latter of the availment under the letter of credit and sought the corresponding reimbursement therefor.

Inter-Resin presented to Bank of America the documents for the second availment under the same letter of credit consisting of a packing list, bill of lading, invoices, export declaration and bills in set, evidencing the second shipment of goods. Immediately upon receipt of a telex from the Bank of Ayudhya declaring the letter of credit fraudulent, Bank of America stopped the processing of Inter-Resin's documents and sent a telex to its branch office in Bangkok, Thailand, requesting assistance in determining the authenticity of the letter of credit. Bank of America kept Inter-Resin informed of the developments. Sensing a fraud, Bank of America sought the assistance of the NBI. NBI agents discovered that the vans exported by Inter-Resin did not contain ropes but plastic strips, wrappers, rags and waste materials.

Bank of America sued Inter-Resin for the recovery of P10, 219,093.20, the peso equivalent of the draft on the partial availment of the now disowned letter of credit. On the other hand, Inter-Resin claimed that not only was it entitled to retain P10, 219,093.20 on its first shipment but also to the balance covering the second shipment.

The trial court ruled for Inter-Resin, holding that (a) Bank of America made assurances that enticed Inter-Resin to send the merchandise to Thailand; (b) the telex declaring the letter of credit fraudulent was unverified and self-serving, hence, hearsay, but even assuming that the letter of credit was fake, "the fault should be borne by the BA which was careless and negligent" for failing to utilize its modern means of communication to verify with Bank of Ayudhya in Thailand the authenticity of the letter of credit before sending the same to Inter-Resin; (c) xxx; and (d) Bank of America failed to prove the participation of Inter-Resin or its employees in the alleged fraud as, in

fact, the complaint for estafa through falsification of documents was dismissed by the Provincial Fiscal of Rizal.

On appeal, the Court of Appeals sustained the trial court; hence, this present recourse by petitioner Bank of America.

ISSUE/s

1. Whether Bank of America has incurred any liability to the beneficiary under the letter of credit and, corrolarily, whether it has acted merely as an advising bank or as a confirming bank? (NO)

2. Whether Bank of America may recover against Inter-Resin under the draft executed in its partial availment of the letter of credit, following the dishonor of the letter of credit by Bank of Ayudhya? (YES)

RULING

A letter of credit is a financial device developed by merchants as a convenient and relatively safe mode of dealing with sales of goods to satisfy the seemingly irreconcilable interests of a seller, who refuses to part with his goods before he is paid, and a buyer, who wants to have control of the goods before paying. To break the impasse, the buyer may be required to contract a bank to issue a letter of credit in favor of the seller so that, by virtue of the latter of credit, the issuing bank can authorize the seller to draw drafts and engage to pay them upon their presentment simultaneously with the tender of documents required by the letter of credit. The buyer and the seller agree on what documents are to be presented for payment, but ordinarily they are documents of title evidencing or attesting to the shipment of the goods to the buyer.

Once the credit is established, the seller ships the goods to the buyer and in the process secures the required shipping documents or documents of title. To get paid, the seller executes a draft and presents it together with the required documents to the issuing bank. The issuing bank redeems the draft and pays cash to the seller if it finds that the documents submitted by the seller conform with what the letter of credit requires. The bank then obtains possession of the documents upon paying the seller. The transaction is completed when the buyer reimburses the issuing bank and acquires the documents entitling him to the goods. Under this arrangement, the seller gets paid only if he delivers the documents of title over the goods, while the buyer acquires said documents and control over the goods only after reimbursing the bank.

What characterizes letters of credit, as distinguished from other accessory contracts, is the engagement of the issuing bank to pay the seller of the draft and the required shipping documents are presented to it. In turn, this arrangement assures the seller of prompt payment, independent of any breach of the main sales contract. By this so-called "independence principle," the bank determines compliance with the letter of credit only by examining the shipping documents presented; it is precluded from determining whether the main contract is actually accomplished or not.

There would at least be three (3) parties: (a) the buyer, who procures the letter of credit and obliges himself to reimburse the issuing bank upon receipts of the documents of title; (b) the bank issuing the letter of credit, which undertakes to pay the seller upon receipt of the draft and proper document of titles and to surrender the documents to the buyer upon reimbursement; and, (c) the seller, who in compliance with the contract of sale ships the goods to the buyer and delivers the documents of title and draft to the issuing bank to recover payment.

The number of the parties, not infrequently and almost invariably in international trade practice, may be increased. Thus, the services of an advising (notifying) bank 15 may be utilized to convey to the seller the existence of the credit; or, of a confirming bank 16 which will lend credence to the letter of credit issued by a lesser known issuing bank; or, of a paying bank, which undertakes to encash the drafts drawn by the exporter. Further, instead of going to the place of the issuing bank to claim payment, the buyer may approach another bank, termed the negotiating bank, to have the draft discounted.

Being a product of international commerce, the impact of this commercial instrument transcends national boundaries, and it is thus not uncommon to find a dearth of national law that can adequately provide for its governance. This country is no exception. Our own Code of Commerce basically introduces only its concept under Articles 567-572, inclusive, thereof. It is no wonder then why great reliance has been placed on commercial usage and practice, which, in any case, can be justified by the universal acceptance of the autonomy of contract rules. The rules were later developed into what is now known as the Uniform Customs and Practice for Documentary Credits ("U.C.P.") issued by the International Chamber of Commerce. It is by no means a complete text by itself, for, to be sure, there are other principles, which, although part of lex mercatoria, are not dealt with the U.C.P.

In FEATI Bank and Trust Company v. Court of Appeals, we have accepted, to the extent of their pertinency, the application in our jurisdiction of this international commercial credit regulatory set of rules. 20 In Bank of Phil. Islands v. De Nery, we have said that the observances of the U.C.P. is justified by Article 2 of the Code of Commerce which expresses that, in the absence of any particular provision in the Code of Commerce, commercial transactions shall be governed by usages and customs generally observed. We have further observed that there being no specific provisions which govern the legal complexities arising from transactions involving letters of credit not only between or among banks themselves but also between banks and the seller or the buyer, as the case may be, the applicability of the U.C.P. is undeniable.

1.

On the first issue on whether Bank of America may recover against Inter-Resin under the draft executed in its partial availment of the letter of credit, following the dishonor of the letter of credit by Bank of Ayudhya, the Supreme Court ruled in the negative. The Bank of America did not incur any liability. It cannot be disputed that Bank of America has, in fact, only been an advising, not confirming, bank, and this much is clearly evident, among other things, by the provisions of the letter of credit itself, the petitioner bank's letter of advice, its request for payment of advising fee, and the admission of Inter-Resin that it has paid the same. That Bank of America has asked Inter-Resin to submit documents required by the letter of credit and eventually has paid the proceeds thereof, did not obviously make it a confirming bank. The fact, too, that the draft required by the letter of credit is to be drawn under the account of General Chemicals (buyer) only means the same

had to be presented to Bank of Ayudhya (issuing bank) for payment. It may be significant to recall that the letter of credit is an engagement of the issuing bank, not the advising bank, to pay the draft. Bank of America's letter has expressly stated that "[t]he enclosure is solely an advise of credit opened by the abovementioned correspondent and conveys no engagement by us." This written reservation by Bank of America in limiting its obligation only to being an advising bank is in consonance with the provisions of U.C.P.

As an advising or notifying bank, Bank of America did not incur any obligation more than just notifying Inter-Resin of the letter of credit issued in its favor, let alone to confirm the letter of credit. The bare statement of the bank employees in responding to the inquiry made by Atty. Tanay, Inter-Resin's representative, on the authenticity of the letter of credit certainly did not have the effect of novating the letter of credit and Bank of America's letter of advice, nor can it justify the conclusion that the bank must now assume total liability on the letter of credit. Indeed, Inter-Resin itself cannot claim to have been all that free from fault. As the seller, the issuance of the letter of credit should have obviously been a great concern to it. It would have been strange if it did not, prior to the letter of credit, enter into a contract, or negotiated at the very least, with General Chemicals. In the ordinary course of business, the perfection of contract precedes the issuance of a letter of credit. Bringing the letter of credit to the attention of the seller is the primordial obligation of an advising bank. The view that Bank of America should have first checked the authenticity of the letter of credit with bank of Avudhya, by using advanced mode of business communications, before dispatching the same to Inter-Resin finds no real support in U.C.P. Article 18 of the U.C.P. states that: "Banks assume no liability or responsibility for the consequences arising out of the delay and/or loss in transit of any messages, letters or documents, or for delay, mutilation or other errors arising in the transmission of any telecommunication" As advising bank, Bank of America is bound only to check the "apparent authenticity" of the letter of credit, which it did. The word "APPARENT suggests appearance to unaided senses that is not or may not be borne out by more rigorous examination or greater knowledge."

2.

On the second issue of whether the Bank of America may recover against Inter-Resin under the draft executed in its partial availment of the letter of credit, following the dishonor of the letter of credit by Bank of Ayudhya, the Supreme Court ruled in the affirmative. This kind of transaction is what is commonly referred to as a discounting arrangement. Bank of America has acted independently as a negotiating bank, thus saving Inter-Resin from the hardship of presenting the documents directly to Bank of Ayudhya to recover payment. (Inter-Resin, of course, could have chosen other banks with which to negotiate the draft and the documents.) As a negotiating bank, Bank of America has a right to recourse against the issuer bank and until reimbursement is obtained, Inter-Resin, as the drawer of the draft, continues to assume a contingent liability thereon. While Bank of America has indeed failed to allege material facts in its complaint that might have likewise warranted the application of the Negotiable Instruments Law and possible then allowed it to even go after the indorser of the draft, this failure, nonetheless, does not preclude petitioner bank's right (as negotiating bank) of recovery from Inter-Resin itself. Inter-Resin admits having received P10, 219,093.20 from bank of America on the letter of credit and in having executed the corresponding draft. The payment to Inter-Resin has given, as aforesaid, Bank of America the right of reimbursement from the issuing bank, Bank of Ayudhya which, in turn, would then seek indemnification from the buyer (the General Chemicals of Thailand). Since Bank of Avudhva disowned the letter of credit, however, Bank of America may now turn to Inter-Resin for restitution.

Between the seller and the negotiating bank there does the usual relationship exist between a drawer and purchaser of drafts. Unless drafts drawn in pursuance of the credit are indicated to be without recourse therefore, the negotiating bank has the ordinary right of recourse against the seller in the event of dishonor by the issuing bank. The fact that the correspondent and the negotiating bank may be one and the same does not affect its rights and obligations in either capacity, although a special agreement is always a possibility.

• Transfield Philippines, Inc. vs. Luzon Hydro Corp. 443 SCRA 307 (2004)

TRANSFIELD PHILIPPINES, INC., PETITIONER -versus-. LUZON HYDRO CORPORATION, AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED AND SECURITY BANK CORPORATION, RESPONDENTS.

G.R. NO. 146717, SPECIAL SECOND DIVISION, May 19, 2006, TINGA, J.

Transfield Philippines, Inc. (Transfield) and Luzon Hydro Corporation (LHC) entered into a Turnkey Contract. To secure performance of petitioner's obligation on or before the target completion date, or such time for completion as may be determined by the parties' agreement, petitioner opened in favor of LHC two (2) standby letters of credit. Transfield failed to satisfy its obligation under the Turnkey Contract. In turn, LHC tried to call on the standby letter of credits. However, Transfield asserts that the dispute between the parties must first be resolved, through negotiations or arbitration, before the beneficiary is entitled to call on the letter of credit.

In this case, the Supreme Court explained the difference between a Surety Contract and a standby letter of credit. In the surety contract setting, there is no duty to indemnify the beneficiary until the beneficiary establishes the fact of the obligor's performance. The beneficiary may have to establish that fact in litigation. During the litigation, the surety holds the money and the beneficiary bears most of the cost of delay in performance.

In the standby credit case, however, the beneficiary avoids that litigation burden and receives his money promptly upon presentation of the required documents. It may be that the applicant has, in fact, performed and that the beneficiary's presentation of those documents is not rightful. In that case, the applicant may sue the beneficiary in tort, in contract, or in breach of warranty; but, during the litigation to determine whether the applicant has in fact breached the obligation to perform, the beneficiary, not the applicant, holds the money. Parties that use a standby credit and courts construing such a credit should understand this allocation of burdens. There is a tendency in some quarters to overlook this distinction between surety contracts and standby credits and to reallocate burdens by permitting the obligor or the issuer to litigate the performance question before payment to the beneficiary.

FACTS

Transfield Philippines, Inc. (Transfield) and Luzon Hydro Corporation (LHC) entered into a Turnkey Contract whereby Transfield undertook to construct a hydro-electric power station at the Bakun River in the provinces of Benguet and IlocosSur (hereinafter, the Project).

To secure performance of petitioners obligation on or before the target completion date, or such time for completion as may be determined by the parties agreement, petitioner opened in favor of

LHC two (2) standby letters of credit (hereinafter referred to as the Securities), with Australia and New Zealand Banking Group Limited (ANZ Bank), and with Security Bank Corporation (SBC).

Transfield sought various extensions of time to complete the Project. The extensions were requested allegedly due to several factors which prevented the completion of the Project on target date, such as force majeure occasioned by typhoon Zeb, barricades and demonstrations. LHC denied the requests, however. This gave rise to a series of legal actions between the parties which culminated in the instant petition.

The first of the actions was a Request for Arbitration which LHC filed before the Construction Industry Arbitration Commission (CIAC). This was followed by another Request for Arbitration, this time filed by petitioner before the International Chamber of Commerce (ICC).

Foreseeing that LHC would call on the Securities pursuant to the pertinent provisions of the Turnkey Contract, petitioner in two separate letters advised respondent banks of the arbitration proceedings already pending before the CIAC and ICC in connection with its alleged default in the performance of its obligations. Asserting that LHC had no right to call on the Securities until the resolution of disputes before the arbitral tribunals, petitioner warned respondent banks that any transfer, release, or disposition of the Securities in favor of LHC or any person claiming under LHC would constrain it to hold respondent banks liable for liquidated damages.

Transfield as plaintiff filed a Complaint for Injunction, with prayer for temporary restraining order and writ of preliminary injunction, against herein respondents as defendants before the RTC of Makati.

The RTC denied petitioners application for a writ of preliminary injunction. It ruled that petitioner had no legal right and suffered no irreparable injury to justify the issuance of the writ. Employing the principle of independent contract in letters of credit, the trial court ruled that LHC should be allowed to draw on the Securities for liquidated damages. It debunked petitioners contention that the principle of independent contract could be invoked only by respondent banks since according to it respondent LHC is the ultimate beneficiary of the Securities. The trial court further ruled that the banks were mere custodians of the funds and as such they were obligated to transfer the same to the beneficiary for as long as the latter could submit the required certification of its claims.

Petitioner elevated the case to the CA via a Petition for Certiorari under Rule 65, with prayer for the issuance of a temporary restraining order and writ of preliminary injunction. Petitioner submitted to the appellate court that LHCs call on the Securities was premature considering that the issue of its default had not yet been resolved with finality by the CIAC and/or the ICC. It asserted that until the fact of delay could be established, LHC had no right to draw on the Securities for liquidated damages.

LHC claimed that petitioner had no right to restrain its call on and use of the Securities as payment for liquidated damages. It averred that the Securities are independent of the main contract between them as shown on the face of the two Standby Letters of Credit which both provide that the banks have no responsibility to investigate the authenticity or accuracy of the certificates or the declarants capacity or entitlement to so certify. The CA issued a temporary restraining order, enjoining LHC from calling on the Securities or any renewals or substitutes thereof and ordering respondent banks to cease and desist from transferring, paying or in any manner disposing of the Securities.

The appellate court dismissed the petition for certiorari. The appellate court expressed conformity with the trial court's decision that LHC could call on the Securities pursuant to the first principle in credit law that the credit itself is independent of the underlying transaction and that as long as the beneficiary complied with the credit, it was of no moment that he had not complied with the underlying contract. Further, the appellate court held that even assuming that the trial courts denial of petitioners application for a writ of preliminary injunction was erroneous, it constituted only an error of judgment which is not correctible by certiorari, unlike error of jurisdiction.

Petitioner contends that the courts below improperly relied on the independence principle on letters of credit when this case falls squarely within the fraud exception rule. Respondent LHC deliberately misrepresented the supposed existence of delay despite its knowledge that the issue was still pending arbitration, petitioner continues.

Petitioner asserts that LHC should be ordered to return the proceeds of the Securities pursuant to the principle against unjust enrichment and that, under the premises, injunction was the appropriate remedy obtainable from the competent local courts.

LHC filed a Counter-Manifestation stating that petitioners Manifestation enlarges the scope of its Petition for Review of the Decision of the Court of Appeals. LHC notes that the Petition for Review essentially dealt only with the issue of whether injunction could issue to restrain the beneficiary of an irrevocable letter of credit from drawing thereon.

In its Comment to petitioners Motion for Leave to File Addendum to Petitioners Memorandum, LHC stresses that the question of whether the funds it drew on the subject letters of credit should be returned is outside the issue in this appeal. At any rate, LHC adds that the action to enforce the ICCs partial award is now fully within the Makati RTCs jurisdiction in Civil Case No. 04-332. LHC asserts that petitioner is engaged in forum-shopping by keeping this appeal and at the same time seeking the suit for enforcement of the arbitral award before the Makati court.

Respondent SBC in its Memorandum contends that the Court of Appeals correctly dismissed the petition for certiorari. Invoking the independence principle, SBC argues that it was under no obligation to look into the validity or accuracy of the certification submitted by respondent LHC or into the latter's capacity or entitlement to so certify. It adds that the act sought to be enjoined by petitioner was already fait accompli and the present petition would no longer serve any remedial purpose.

In a similar fashion, respondent ANZ Bank in its Memorandum posits that its actions could not be regarded as unjustified in view of the prevailing independence principle under which it had no obligation to ascertain the truth of LHCs allegations that petitioner defaulted in its obligations. Moreover, it points out that since the Standby Letter of Credit No. E001126/8400 had been fully drawn, petitioners prayer for preliminary injunction had been rendered moot and academic.

Petitioner insists that the independence principle does not apply to the instant case and assuming it is so, it is a defense available only to respondent banks. LHC, on the other hand, contends that it would be contrary to common sense to deny the benefit of an independent contract to the very party for whom the benefit is intended. As beneficiary of the letter of credit, LHC asserts it is entitled to invoke the principle.

ISSUE/s

1. Whether the independence principle on letters of credit may be invoked by a beneficiary thereof where the beneficiary's call thereon is wrongful or fraudulent? (YES)

2. Whether a dispute must first be resolved, through negotiations or arbitration, before the beneficiary is entitled to call on the letter of credit? (NO)

RULING

1.

The independence principle on letters of credit may be invoked. In a letter of credit transaction, such as in this case, where the credit is stipulated as irrevocable, there is a definite undertaking by the issuing bank to pay the beneficiary provided that the stipulated documents are presented and the conditions of the credit are complied with. Precisely, the independence principle liberates the issuing bank from the duty of ascertaining compliance by the parties in the main contract. As the principles nomenclature clearly suggests, the obligation under the letter of credit is independent of the related and originating contract. In brief, the letter of credit is separate and distinct from the underlying transaction.

Given the nature of letters of credit, petitioner's argument that it is only the issuing bank that may invoke the independence principle on letters of credit does not impress this Court. To say that the independence principle may only be invoked by the issuing banks would render nugatory the purpose for which the letters of credit are used in commercial transactions. As it is, the independence doctrine works to the benefit of both the issuing bank and the beneficiary.

Letters of credit are employed by the parties desiring to enter into commercial transactions, not for the benefit of the issuing bank but mainly for the benefit of the parties to the original transactions. With the letter of credit from the issuing bank, the party who applied for and obtained it may confidently present the letter of credit to the beneficiary as a security to convince the beneficiary to enter into the business transaction. On the other hand, the other party to the business transaction, i.e., the beneficiary of the letter of credit, can be rest assured of being empowered to call on the letter of credit as a security in case the commercial transaction does not push through, or the applicant fails to perform his part of the transaction. It is for this reason that the party who is entitled to the proceeds of the letter of credit is appropriately called beneficiary.

While it is the bank which is bound to honor the credit, it is the beneficiary who has the right to ask the bank to honor the credit by allowing him to draw thereon. The situation itself emasculates petitioner's posture that LHC cannot invoke the independence principle and highlights its puerility, more so in this case where the banks concerned were impleaded as parties by petitioner itself. Respondent banks had squarely raised the independence principle to justify their releases of the amounts due under the Securities. Owing to the nature and purpose of the standby letters of credit, this Court rules that the respondent banks were left with little or no alternative but to honor the credit and both of them in fact submitted that it was ministerial for them to honor the call for payment.

Furthermore, LHC has a right rooted in the Contract to call on the Securities.

A careful perusal of the Turnkey Contract reveals the intention of the parties to make the Securities answerable for the liquidated damages occasioned by any delay on the part of petitioner. The call upon the Securities, while not an exclusive remedy on the part of LHC, is certainly an alternative recourse available to it upon the happening of the contingency for which the Securities have been proffered. Thus, even without the use of the independence principle, the Turnkey Contract itself bestows upon LHC the right to call on the Securities in the event of default.

Next, petitioner invokes the fraud exception principle. It avers that LHCs call on the Securities is wrongful because it fraudulently misrepresented to ANZ Bank and SBC that there is already a breach in the Turnkey Contract knowing fully well that this is yet to be determined by the arbitral tribunals. It asserts that the fraud exception exists when the beneficiary, for the purpose of drawing on the credit, fraudulently presents to the confirming bank, documents that contain, expressly or by implication, material representations of fact that to his knowledge are untrue. In such a situation, petitioner insists, injunction is recognized as a remedy available to it.

Citing Dolans treatise on letters of credit, petitioner argues that the independence principle is not without limits and it is important to fashion those limits in light of the principles purpose, which is to serve the commercial function of the credit. If it does not serve those functions, application of the principle is not warranted, and the common law principles of contract should apply.

It is worthy of note that the propriety of LHCs call on the Securities is largely intertwined with the fact of default which is the self-same issue pending resolution before the arbitral tribunals. To be able to declare the call on the Securities wrongful or fraudulent, it is imperative to resolve, among others, whether petitioner was in fact guilty of delay in the performance of its obligation. Unfortunately for petitioner, this Court is not called upon to rule upon the issue of default such issue having been submitted by the parties to the jurisdiction of the arbitral tribunals pursuant to the terms embodied in their agreement.

2.

The argument that any dispute must first be resolved by the parties, whether through negotiations or arbitration, before the beneficiary is entitled to call on the letter of credit in essence would convert the letter of credit into a mere guarantee. Jurisprudence has laid down a clear distinction between a letter of credit and a guarantee in that the settlement of a dispute between the parties is not a pre-requisite for the release of funds under a letter of credit. In other words, the argument is incompatible with the very nature of the letter of credit. If a letter of credit is drawable only after settlement of the dispute on the contract entered into by the applicant and the beneficiary, there would be no practical and beneficial use for letters of credit in commercial transactions.

Professor John F. Dolan, the noted authority on letters of credit, sheds more light on the issue:

The standby credit is an attractive commercial device for many of the same reasons that commercial credits are attractive. Essentially, these credits are inexpensive and efficient. Often they replace surety contracts, which tend to generate higher costs than credits do and are usually triggered by a factual determination rather than by the examination of documents.

Because parties and courts should not confuse the different functions of the surety contract on the one hand and the standby credit on the other, the distinction between surety contracts and credits merits some reflection. The two commercial devices share a common purpose. Both ensure against the obligors nonperformance. They function, however, in distinctly different ways.

Traditionally, upon the obligors default, the surety undertakes to complete the obligors' performance, usually by hiring someone to complete that performance. Surety contracts, then, often involve costs of determining whether the obligor defaulted (a matter over which the surety and the beneficiary often litigate) plus the cost of performance. The benefit of the surety contract to the beneficiary is obvious. He knows that the surety, often an insurance company, is a strong financial institution that will perform if the obligor does not. The beneficiary also should understand that such performance must await the sometimes lengthy and costly determination that the obligor has defaulted. In addition, the surety's performance takes time.

The standby credit has different expectations. He reasonably expects that he will receive cash in the event of nonperformance, that he will receive it promptly, and that he will receive it before any litigation with the obligor (the applicant) over the nature of the applicant's performance takes place. The standby credit has this opposite effect of the surety contract: it reverses the financial burden of parties during litigation.

In the surety contract setting, there is no duty to indemnify the beneficiary until the beneficiary establishes the fact of the obligor's performance. The beneficiary may have to establish that fact in litigation. During the litigation, the surety holds the money and the beneficiary bears most of the cost of delay in performance.

In the standby credit case, however, the beneficiary avoids that litigation burden and receives his money promptly upon presentation of the required documents. It may be that the applicant has, in fact, performed and that the beneficiary's presentation of those documents is not rightful. In that case, the applicant may sue the beneficiary in tort, in contract, or in breach of warranty; but, during the litigation to determine whether the applicant has in fact breached the obligation to perform, the beneficiary, not the applicant, holds the money. Parties that use a standby credit and courts construing such a credit should understand this allocation of burdens. There is a tendency in some quarters to overlook this distinction between surety contracts and standby credits and to reallocate burdens by permitting the obligor or the issuer to litigate the performance question before payment to the beneficiary.

e. Irrevocable and revocable letter of credit

• Philippine Virginia Tobacco Administration vs. De Los Angeles, 164 SCRA 543 (1988)

PHILIPPINE VIRGINIA TOBACCO ADMINISTRATION, PETITIONER, -VERSUS- HON. WALFRIDO DE LOS ANGELES, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, BRANCH IV (QUEZON CITY) AND TIMOTEO A. SEVILLA, DOING BUSINESS UNDER THE NAME AND STYLE OF PHILIPPINE ASSOCIATED RESOURCES AND PRUDENTIAL BANK AND TRUST COMPANY, RESPONDENTS. G.R. No. L-27829, SECOND DIVISION, August 19, 1988, PARAS J.

An irrevocable letter of credit cannot during its lifetime be cancelled or modified without the express permission of the beneficiary. Consequently, if the finding after the trial on the merits is that respondent Sevilla has an unpaid balance due to the petitioner, such unpaid obligation would be unsecured.

In the case at bar there appears no urgency for the issuance of the writs of preliminary mandatory injunctions in the Orders of July 17, 1967 and November 3, 1967; much less was there a clear legal right of respondent Sevilla that has been violated by petitioner. Indeed, it was alleged abuse of discretion on the part of respondent Judge to order the dissolution of the letter of credit on the basis of assumptions that cannot be established except by a hearing on the merits nor was there a showing that R.A. 4155 applies retroactively to respondent in this case, modifying his importation / exportation contract with petitioner. Furthermore, a writ of preliminary injunction's enjoining any withdrawal from Letter of Credit 6232 would have been sufficient to protect the rights of respondent Sevilla should the finding be that he has no more unpaid obligations to petitioner.

FACTS

Respondent Timoteo Sevilla, proprietor and General Manager of the Philippine Associated Resources (PAR) together with two other entities, namely, the Nationwide Agro-Industrial Development Corp. and the Consolidated Agro-Producers Inc. were awarded in a public bidding the right to import Virginia leaf tobacco for blending purposes and exportation by them of PVTA and farmer's low-grade tobacco at a rate of one (1) kilo of imported tobacco for every nine (9) kilos of leaf tobacco actually exported. Subsequently, the other two entities assigned their rights to PVTA and respondent remained the only private entity accorded the privilege.

Their contract was for the importation of 85 million kilos of Virginia Tobacco and a counterpart exportation of 2.53 million kilos of PVTA and 5.1 million kilos of farmer's and/or PVTA at 3 pesos/kilo. In accordance with their contract respondent Sevilla purchased from petitioner and actually exported 2,101.470 kilos of tobacco, paying the PVTA the sum of P2, 482,938.50 and leaving a balance of P3, 713,908.91. Before respondent Sevilla could import the counterpart blending Virginia tobacco, amounting to 525,560 kilos, Republic Act No. 4155 was passed and took effect on June 20, 1964, authorizing the PVTA to grant import privileges at the ratio of 4 to 1 instead of 9 to 1 and to dispose of all its tobacco stock at the best price available.

The amended contract was further amended to grant the respondent privileges under the said law and the provisions included in the amendment are as follows:

(1) that on the 2,101.470 kilos already purchased, and exported, the purchase price of about P3.00 a kilo was maintained; (2) that the unpaid balance of P3,713,908.91 was to be liquidated by paying PVTA the sum of P4.00 for every kilo of imported Virginia blending tobacco and; (3) that respondent Sevilla would open an irrevocable letter of credit No. 6232 with the Prudential Bank

and Trust Co. in favor of the PVTA to secure the payment of said balance, drawable upon the release from the Bureau of Customs of the imported Virginia blending tobacco.

While respondent was trying to negotiate the reduction of the procurement cost of the 2,101.479 kilos of PVTA tobacco already exported which attempt was denied by petitioner and also by the Office of the President, petitioner prepared two drafts to be drawn against said letter of credit for amounts which have already become due and demandable.

Respondent filed a complaint with preliminary injunction against the petitioner in the amount of 5 million pesos. Writ of preliminary injunction was issued. On motion of the respondent, the lower court dismissed the complaint without prejudice and lifted the writ. Motion for reconsideration was granted and the order was set aside. Sevilla issued a motion for reconsideration praying for the reinstatement of the decision but pending the resolution of the same, respondent judge issued an order directing the Prudential Bank and Trust Co. to make the questioned release of funds from the letter of credit. Before petitioner could file a motion for reconsideration of said order, respondent Sevilla was able to secure the release of P300, 000.00 and the rest of the amount. Hence this petition, followed by the supplemental petition when respondent filed with the lower court an urgent ex-parte petition for the issuance of preliminary mandatory and preventive injunction which was granted.

The Supreme Court required respondent to file an answer to the petition within 10 days from notice thereof and upon petitioner's posting a bond of fifty thousand pesos (P50, 000.00), a writ of preliminary mandatory injunction was issued enjoining respondent Judge from enforcing and implementing his Order of July 17, 1967 and private respondents Sevilla and Prudential Bank and Trust Co. from complying with and implementing said order.

Respondent Sevilla filed an answer to the supplemental petition and so did respondent bank. Thereafter, all the parties filed their respective memoranda. Petitioners filed a rejoinder and respondent Sevilla filed an Amended Reply Memorandum. Thereafter the case was submitted for decision' in September, 1968.

ISSUE

Whether or not the respondent Judge violated the irrevocability of the letter of credit issued by respondent Bank in favor of petitioner? (Yes)

RULING

In issuing the Order of July 17, 1967, respondent Judge violated the irrevocability of the letter of credit issued by respondent Bank in favor of petitioner. An irrevocable letter of credit cannot during its lifetime be cancelled or modified without the express permission of the beneficiary. Consequently, if the finding after the trial on the merits is that respondent Sevilla has an unpaid balance due to the petitioner, such unpaid obligation would be unsecured.

More specifically, Section 5 of Rule 58 requires notice to the defendant before a preliminary injunction is granted unless it shall appear from facts shown by affidavits or by the verified

complaint that great or irreparable injury would result to the applicant before the matter can be heard on notice.

In the issuance of the Order of November 3, 1967, with notice and hearing notwithstanding the discretionary power of the trial court to Issue a preliminary mandatory injunction is not absolute as the issuance of the writ is the exception rather than the rule. The party appropriate for it must show a clear legal right the violation of which is so recent as to make its vindication an urgent one. It is granted only on a showing that (a) the invasion of the right is material and substantial; (b) the right of the complainant is clear and unmistakable; and (c) there is alleged urgent and permanent necessity for the writ to prevent serious decision

In the case at bar there appears no urgency for the issuance of the writs of preliminary mandatory injunctions in the Orders of July 17, 1967 and November 3, 1967; much less was there a clear legal right of respondent Sevilla that has been violated by petitioner. Indeed, it was alleged abuse of discretion on the part of respondent Judge to order the dissolution of the letter of credit on the basis of assumptions that cannot be established except by a hearing on the merits nor was there a showing that R.A. 4155 applies retroactively to respondent in this case, modifying his importation / exportation contract with petitioner. Furthermore, a writ of preliminary injunction's enjoining any withdrawal from Letter of Credit 6232 would have been sufficient to protect the rights of respondent Sevilla should the finding be that he has no more unpaid obligations to petitioner.

f. Confirmed and unconfirmed letter of credit

• Feati Bank & Trust Company vs. Court of Appeals, 196 SCRA 576 (1991)

FEATI BANK & TRUST COMPANY (NOW CITYTRUST BANKING CORPORATION), PETITIONER, -VERSUS- THE COURT OF APPEALS, AND BERNARDO E. VILLALUZ, RESPONDENTS. G.R. No. 94209, THIRD DIVISION, April 30, 1991, GUTIERREZ, JR., J.

On the arrangements made and upon the instructions of the consignee, Hanmi Trade Development, Ltd. (Hanmi), the Security Pacific National Bank of Los Angeles, California (SPNB) issued Irrevocable Letter of Credit No. IC-46268 available at sight in favor of Villaluz for the total purchase price of the lauan logs. The letter of credit was mailed to the Feati Bank and Trust Company (Feati Bank, now Citytrust) with the instruction to the latter that it "forward the enclosed letter of credit to the beneficiary." Because of the absence of the certification by Christiansen, the Feati Bank refused to advance the payment on the letter of credit. The letter of credit lapsed without the private respondent receiving any certification from Christiansen. Villaluz, instituted an action for mandamus and specific performance against Christiansen and the Feati Bank before the then Court of First Instance of Rizal. The Supreme Court held that it is a settled rule in commercial transactions involving letters of credit that the documents tendered must strictly conform to the terms of the letter of credit. The tender of documents by the beneficiary (seller) must include all documents required by the letter. Since a bank deals only with documents, it is not in a position to determine whether or not the document sequired by the letter of credit are material or superfluous. The mere fact that the document was specified therein readily means that the document is of vital importance to the buyer.

FACTS

Bernardo E. Villaluz agreed to sell to Axel Christiansen 2,000 cubic meters of lauan logs. After inspecting the logs, Christiansen issued a purchase order. On the arrangements made and upon the instructions of the consignee, Hanmi Trade Development, Ltd. (Hanmi), the Security Pacific National Bank of Los Angeles, California (SPNB) issued Irrevocable Letter of Credit No. IC-46268 available at sight in favor of Villaluz for the total purchase price of the lauan logs. The letter of credit was mailed to the Feati Bank and Trust Company (Feati Bank, now Citytrust) with the instruction to the latter that it "forward the enclosed letter of credit to the beneficiary."

The logs were thereafter loaded on the vessel "Zenlin Glory" which was chartered by Christiansen. After the loading of the logs was completed, the Chief Mate, Shao Shu Wang issued a mate receipt of the cargo which stated the same are in good condition. However, Christiansen refused to issue the certification as required in the letter of credit, despite several requests made by the private respondent.

Because of the absence of the certification by Christiansen, the Feati Bank refused to advance the payment on the letter of credit. The letter of credit lapsed without the private respondent receiving any certification from Christiansen.

The persistent refusal of Christiansen to issue the certification prompted the private respondent to bring the matter before the Central Bank. In a memorandum, the Central Bank ruled that:

... pursuant to the Monetary Board Resolution No. 1230 dated August 3, 1971, in all log exports, the certification of the lumber inspectors of the Bureau of Forestry . . . shall be considered final for purposes of negotiating documents. Any provision in any letter of credit covering log exports requiring certification of buyer's agent or representative that said logs have been approved for shipment as a condition precedent to negotiation of shipping documents shall not be allowed.

Since the demands by the private respondent for Christiansen to execute the certification proved futile, Villaluz, instituted an action for mandamus and specific performance against Christiansen and the Feati Bank before the then Court of First Instance of Rizal. The petitioner was impleaded as defendant before the lower court only to afford complete relief should the court a quo order Christiansen to execute the required certification.

While the case was still pending trial, Christiansen left the Philippines without informing the Court and his counsel. Hence, Villaluz, filed an amended complaint to make the petitioner solidarily liable with Christiansen. The trial court admitted the amended complaint.

After trial, the lower court ruled in favor of the private respondent. The petitioner received a copy of the decision and, thereafter, filed a notice of appeal. The private respondent filed a motion for the immediate execution of the judgment on the ground that the appeal of the petitioner was frivolous and dilatory. The trial court ordered the immediate execution of its judgment upon the private respondent's filing of a bond.

The petitioner then filed a motion for reconsideration and a motion to suspend the implementation of the writ of execution. Both motions were, however, denied. Thus, petitioner filed before the CA a

petition for certiorari and prohibition with preliminary injunction to enjoin the immediate execution of the judgment.

The CA granted the petition and nullified the order of execution. A motion for reconsideration was thereafter filed by the private respondent. The CA denied the motion for reconsideration. The CA affirmed the decision of the lower court. Hence, the petition for review.

ISSUE

Whether a correspondent bank (Feati Bank) is to be held liable under the letter of credit despite non-compliance by the beneficiary (Villaluz) with the terms thereof? (NO)

RULING

It is a settled rule in commercial transactions involving letters of credit that the documents tendered must strictly conform to the terms of the letter of credit. The tender of documents by the beneficiary (seller) must include all documents required by the letter. A correspondent bank which departs from what has been stipulated under the letter of credit, as when it accepts a faulty tender, acts on its own risks and it may not thereafter be able to recover from the buyer or the issuing bank, as the case may be, the money thus paid to the beneficiary thus the rule of strict compliance. Since a bank deals only with documents, it is not in a position to determine whether or not the document was specified therein readily means that the document is of vital importance to the buyer.

Moreover, the incorporation of the Uniform Customs and Practice for Documentary Credit (U.C.P.) in the letter of credit resulted in the applicability of the said rules in the governance of the relations between the parties. And even if the U.C.P. was not incorporated in the letter of credit, the Court has already ruled in the affirmative as to the applicability of the U.C.P. Article 2 of the Code of Commerce enunciates that in the absence of any particular provision in the Code of Commerce, commercial transactions shall be governed by the usages and customs generally observed. There being no specific provision which governs the legal complexities arising from transactions involving letters of credit not only between the banks themselves but also between banks and seller and/or buyer, the applicability of the U.C.P. is undeniable.

Under the foregoing provisions of the U.C.P., the bank may only negotiate, accept or pay, if the documents tendered to it are on their face in accordance with the terms and conditions of the documentary credit. And since a correspondent bank, like the petitioner, principally deals only with documents, the absence of any document required in the documentary credit justifies the refusal by the correspondent bank to negotiate, accept or pay the beneficiary, as it is not its obligation to look beyond the documents. It merely has to rely on the completeness of the documents tendered by the beneficiary.

4. Parties to a Letter of Credit

b. Rights and Obligations of Parties

- i. Applicant
- ii. Issuing Bank
- iii. Beneficiary
- Reliance Commodities, Inc. vs. Daewoo Industrial Co., Ltd., 228 SCRA 545 (1993)

RELIANCE COMMODITIES, INC., PETITIONER,

-VERSUS- DAEWOO INDUSTRIAL CO., LTD., RESPONDENT. G.R. No. L-100831, THIRD DIVISION, December 17, 1993, FELICIANO, J.

The issue raised in the Petition at bar relates principally to the first component contractual relation above: that between account party or importer Reliance and beneficiary or exporter Daewoo.

Examining the actual terms of that relationship as set out in the 31 July 1980 contract, the Court considers that under that instrument, the opening of an L/C upon application of Reliance was not a condition precedent for the birth of the obligation of Reliance to purchase foundry pig iron from Daewoo. We agree with the Court of Appeals that Reliance and Daewoo, having reached "a meeting of minds" in respect of the subject matter of the contract (2000 metric tons of foundry pig iron with a specified chemical composition), the price thereof (US \$380,600.00), and other principal provisions, "they had a perfected contract." The failure of Reliance to open, the appropriate L/C did not prevent the birth of that contract, and neither did such failure extinguish that contract. The opening of the L/C in favor of Daewoo was an obligation of Reliance and the performance of that obligation by Reliance was a condition for enforcement of the reciprocal obligation of Daewoo to ship the subject matter of the contract itself between Reliance and Daewoo had already sprung into legal existence and was enforceable.

FACTS

Reliance Commodities and Daewoo entered into a contract of sale under the terms of which the latter undertook to ship and deliver to the former 2,000 metric tons of foundry pig iron for the price of US\$404,000.00. Daewoo shipped from Pohang, Republic of Korea, 2,000 metric tons of foundry pig iron on board the M/S Aurelio III under Bill of Lading No. PIP-1 for carriage to and delivery in Manila to its consignee, Reliance. The shipment was fully paid for. Upon arrival in Manila, the subject cargo was found to be short of 135.655 metric tons as only 1,864.345 metric tons were discharged and delivered to Reliance.

Another contract was entered into between the same parties for the purchase of another 2,000 metric tons of foundry pig iron. Daewoo acknowledged the short shipment of 135.655 metric tons under the 9 January 1980 contract and, to compensate Reliance therefor, bound itself to reduce the price by US\$1 to US\$2 per metric ton of pig iron for succeeding orders. This undertaking was made part of the 2 May 1980 contract. However, that contract was not consummated and was later superseded by still another contract dated 31 July 1980.

Reliance, through its Mr. Samuel Chuason, filed with the China Banking Corporation, an application for a Letter of Credit (L/C) in favor of Daewoo covering the amount of US\$380,600.00. The application was endorsed to the Iron and Steel Authority (ISA) for approval but the application was denied. Reliance was instead asked to submit purchase orders from end-users to support its

application for a Letter of Credit. However, Reliance was not able to raise purchase orders for 2,000 metric tons. Reliance alleges that it was able to raise purchase orders for 1,900 metric tons. Daewoo, upon the other hand, contends that Reliance was only able to raise purchase orders for 900 metric tons. An examination of the exhibits presented by Reliance in the trial court shows that only purchase orders for 900 metric tons were stamped "Received" by the ISA. The other purchase orders for 1,000 metric tons allegedly sent by prospective end-users to Reliance were not shown to have been duly sent and exhibited to the ISA. Whatever the exact amount of the purchase orders was, Daewoo rejected the proposed L/C for the reason that the covered quantity fell short of the contracted tonnage. Thus, Reliance withdrew the application for the L/C on 14 August 1980.

Daewoo learned that the failure of Reliance to open the L/C stipulated in the 31 July 1980 contract was due to the fact that as early as May 1980, Reliance had already exceeded its foreign exchange allocation for 1980. Because of the failure of Reliance to comply with its undertaking under the 31 July 1980 contract, Daewoo was compelled to sell the 2,000 metric tons to another buyer at a lower price, to cut losses and expenses Daewoo had begun to incur due to its inability to ship the 2000 metric tons to Reliance under their contract.

Reliance, through its counsel, wrote Daewoo requesting payment of the amount of P226,370.48, representing the value of the short delivery of 135.655 metric tons of foundry pig iron under the contract of 9 January 1980. Not being heeded, Reliance filed an action for damages against Daewoo with the trial court. Daewoo responded, inter alia, with a counterclaim for damages, contending that Reliance was guilty of breach of contract when it failed to open an L/C as required in the 31 July 1980 contract.

After trial, the trial court ruled that (1) the 31 July 1980 contract did not extinguish Daewoo's obligation for short delivery pursuant to the 9 January 1980 contract and must therefore pay Reliance P226,370.48 representing the value of the short delivered goods plus interest and attorney's fees; and (2) Reliance is in turn liable for breach of contract for its failure to open a letter of credit in favor of Daewoo pursuant to the 31 July 1980 contract and must therefore pay the latter P331,920.97 as actual damages with legal interest plus attorney's fees. Reliance appealed. CA affirmed the decision of the trial court.

In the present Petition for Review, Reliance assails the award of damages in favor of Daewoo. Reliance contends a) that its failure to open a Letter of Credit was due to the failure of Daewoo to accept the purchase orders for 1,900 metric tons instead of 2,000 metric tons; b) that the opening of the Letter of Credit was a condition precedent to the effectivity of the contract between Reliance and Daewoo; and c) that since such condition had not occurred, the contract never came into existence and, therefore, Reliance should not have been held liable for damages.

ISSUE

Whether or not the failure of an importer (Reliance) to open a letter of credit on the date agreed upon makes him liable to the exporter (Daewoo) for damages? (YES)

RULING

A letter of credit is one of the modes of payment, set out in Sec. 8, Central Bank Circular No. 1389, "Consolidated Foreign Exchange Rules and Regulations," dated 13 April 1993, by which commercial banks sell foreign exchange to service payments for, e.g., commodity imports. The primary purpose of the letter of credit is to substitute for and therefore support, the agreement of the buyer/importer to pay money under a contract or other arrangement. 8 It creates in the seller/exporter a secure expectation of payment.

A letter of credit transaction may thus be seen to be a composite of at least three (3) distinct but intertwined relationships being concretized in a contract:

(a) One contract relationship links the party applying for the L/C (the account party or buyer or importer) and the party for whose benefit the L/C is issued (the beneficiary or seller or exporter). In this contract, the account party, here Reliance, agrees, among other things and subject to the terms and conditions of the contract, to pay money to the beneficiary, here Daewoo.

(b) A second contract relationship is between the account party and the issuing bank. Under this contract, (sometimes called the "Application and Agreement" or the "Reimbursement Agreement"), the account party among other things, applies to the issuing bank for a specified L/C and agrees to reimburse the bank for amounts paid by that bank pursuant to the L/C.

(c) The third contract relationship is established between the issuing bank and the beneficiary, in order to support the contract, under

Certain other parties may be added to the foregoing, but the above three are the indispensable ones.

The issue raised in the Petition at bar relates principally to the first component contractual relation above: that between account party or importer Reliance and beneficiary or exporter Daewoo.

Examining the actual terms of that relationship as set out in the 31 July 1980 contract quoted earlier (and not simply the summary inaccurately rendered by the trial court), the Court considers that under that instrument, the opening of an L/C upon application of Reliance was not a condition precedent for the birth of the obligation of Reliance to purchase foundry pig iron from Daewoo. We agree with the Court of Appeals that Reliance and Daewoo, having reached "a meeting of minds" in respect of the subject matter of the contract (2000 metric tons of foundry pig iron with a specified chemical composition), the price thereof (US \$380,600.00), and other principal provisions, "they had a perfected contract." The failure of Reliance to open, the appropriate L/C did not prevent the birth of that contract, and neither did such failure extinguish that contract. The opening of the L/C in favor of Daewoo was an obligation of Reliance and the performance of that obligation by Reliance was a condition for enforcement of the reciprocal obligation of Daewoo to ship the subject matter of the contract - the foundry pig iron - to Reliance. But the contract itself between Reliance and Daewoo had already sprung into legal existence and was enforceable.

The L/C provided for in that contract was the mode or mechanism by which payment was to be effected by Reliance of the price of the pig iron. In undertaking to accept or pay the drafts presented to it by the beneficiary according to the tenor of an L/C, and only later on being reimbursed by the account party, the issuing bank in effect extends a loan to the account party. This loan feature, combined with the bank's undertaking to accept the beneficiary's drafts drawn on the bank, constitutes the L/C as a mode of payment. Logically, before the issuing bank opens an L/C, it will take steps to ensure that it would indeed be reimbursed when the time comes. Before an L/C can be opened, specific legal requirements must be complied with.

The Central Bank of the Philippines has established the following requirements for opening a letter of credit: "All L/C's must be opened on or before the date of shipment with maximum validity of one (1) year. Likewise, only one L/C should be opened for each import transaction. For purposes of opening an L/C, importers shall submit to the commercial bank the following documents: a) the duly accomplished L/C application; b) firm offer/proforma invoice which shall contain information on the specific quantity of the importation, unit cost and total cost, complete description/specification of the commodity and the Philippine Standard Commodity Classification statistical code; c) permits/clearances from the appropriate government agencies, whenever applicable; and d) duly accomplished Import Entry Declaration (IED) form which shall serve as basis for payment of advance duties as required under PD 1853."

The need for permits or clearances from appropriate government agencies arises when regulated commodities are to be imported. Certain commodities are classified as "regulated commodities" for purposes of their importation, "for reasons of public health and safety, national security, international commitments, and development/rationalization of local industry". The petitioner in the instant case entered into a transaction to import foundry pig iron, a regulated commodity. In respect of the importation of this particular commodity, the Iron and Steel Authority (ISA) is the government agency designated to issue the permit or clearance. Prior to the issuance of such permit or clearance, ISA asks the buyer/importer to comply with particular requirements, such as to show the availability of foreign exchange allocations. The issuance of an L/C becomes, among other things, an indication of compliance by the buyer/importer with his own government's regulations relating to imports and to payment thereof.

The record shows that the opening of the L/C in the instant case became very difficult because Reliance had exhausted its dollar allocation. Reliance knew that it had already exceeded its dollar allocation for the year 1980 when it entered into the 31 July 1980 transaction with Daewoo. As a rule, when the importer has exceeded its foreign exchange allocation, his application would be denied. However, ISA could reconsider such application on a case to case basis. Thus, in the instant case, ISA required Reliance to support its application by submitting purchase orders from endusers for the same quantity the latter wished to import. As earlier noted, Reliance was able to present purchase orders for only 900 metric tons of the subject pig iron. For having exceeded its foreign exchange allocation before it entered into the 31 July 1980 contract with Daewoo, petitioner Reliance can hold only itself responsible. For having failed to secure end-users' purchase orders equivalent to 2,000 metric tons, only Reliance should be held responsible.

Daewoo rejected Reliance's proposed reduced tonnage. It had the right to demand compliance with the terms of the basic contract and had no duty to accept any unilateral modification of that contract. Compliance with Philippine legal requirements was the duty of Reliance; it is not disputed

that ISA's requirements were legal and valid, and not arbitrary or capricious. Compliance with such requirements, like keeping within one's dollar allocation and complying with the requirements of ISA, were within the control of Reliance and not of Daewoo. The Court is compelled to agree with the Court of Appeals that the non-opening of the L/C was due to the failure of Reliance to comply with its duty under the contract.

We believe and so hold that failure of a buyer seasonably to furnish an agreed letter of credit is a breach of the contract between buyer and seller. Where the buyer fails to open a letter of credit as stipulated, the seller or exporter is entitled to claim damages for such breach. Damages for failure to open a commercial credit may, in appropriate cases, include the loss of profit which the seller would reasonably have made had the transaction been carried out.

We hold, further, that the Court of Appeals committed no reversible error when it ruled that the damages incurred by Daewoo were sufficiently proved with the testimony of Mr. Ricardo Fernandez and "the various documentary evidence showing the loss suffered by the defendant when it was compelled to sell the subject goods at a lower price"

• Prudential Bank & Trust Company vs. IAC, 216 SCRA 257 (1992)

PRUDENTIAL BANK, PETITIONER, -VERSUS- INTERMEDIATE APPELLATE COURT, PHILIPPINE RAYON MILLS, INC. AND ANACLETO R. CHI, RESPONDENTS. G.R. No. 74886, THIRD DIVISION, December 8, 1992, DAVIDE, JR., J.

In this case, the relationship existing between the petitioner and Philippine Rayon is governed the letters of credit, the promissory note, the drafts and the trust receipt. Philippine Rayon argued that the Petitioner made an invalid payment when it paid the drafts presented before it by Nissho Co. despite the fact that the said drafts were not presented before Philippine Rayon. On the other hand, the Petitioner argues that the drafts were sight drafts which did not require presentment for acceptance to Philippine Rayon because paragraph 8 of the trust receipt presupposes prior acceptance of the drafts.

The Supreme Court categorically ruled that through a letter of credit, the bank merely substitutes its own promise to pay for one of its customers who in return promises to pay the bank the amount of funds mentioned in the letter of credit plus credit or commitment fees mutually agreed upon. In the instant case then, the drawee was necessarily the herein petitioner. It was to the latter that the drafts were presented for payment. In fact, there was no need for acceptance as the issued drafts are sight drafts pursuant to Section 7 of the NIL, payable on demand.

FACTS

On August 8, 1962, defendant-appellant Philippine Rayon Mills, Inc. entered into a contract with Nissho Co., Ltd. of Japan for the importation of textile machineries under a five-year deferred payment plan. To effect payment for said machineries, the defendant-appellant applied for a commercial letter of credit with the Prudential Bank and Trust Company in favor of Nissho. By virtue of said application, the Prudential Bank opened Letter of Credit for \$128,548.78. Against this letter of credit, drafts were drawn and issued by Nissho, which were all paid by the Prudential Bank through its correspondent in Japan, the Bank of Tokyo, and Ltd.

Upon the arrival of the machineries, the Prudential Bank indorsed the shipping documents to the defendant-appellant which accepted delivery of the same. To enable the defendant-appellant to take delivery of the machineries, it executed, by prior arrangement with the Prudential Bank, a trust receipt which was signed by Anacleto R. Chi in his capacity as President of defendant-appellant company. At the back of the trust receipt is a printed form to be accomplished by two sureties who, by the very terms and conditions thereof, were to be jointly and severally liable to the Prudential Bank should the defendant-appellant fail to pay the total amount or any portion of the drafts issued by Nissho and paid for by Prudential Bank. The defendant-appellant was able to take delivery of the textile machineries and installed the same at its factory site at 69 Obudan Street, Quezon City.

The defendant-appellant ceased business operation. Defendant-appellant's factory was leased by Yupangco Cotton Mills for an annual rental of P200, 000. Subsequently, all the textile machineries in the defendant-appellant's factory were sold to AIC Development Corporation for P300, 000.00 The obligation of the defendant-appellant arising from the letter of credit and the trust receipt remained unpaid and unliquidated. Repeated formal demands for the payment of the said trust receipt yielded no result.

The present action for the collection of the principal amount of P956,384.95 was filed against the defendant-appellant and Anacleto R. Chi. In their respective answers, the defendants interposed identical special defenses, the complaint states no cause of action; if there is, the same has prescribed; and the plaintiff is guilty of laches.

On 15 June 1978, the trial court rendered its decision sentencing the defendant Philippine Rayon Mills, Inc. to pay plaintiff the sum of P153, 645.22. Insofar as defendant Anacleto R. Chi is concerned, the case is dismissed. Plaintiff is ordered to pay defendant Anacleto R. Chi the sum of P20, 000.00 as attorney's fees.

Petitioner appealed the decision to the then Intermediate Appellate Court.

In its decision, public respondent sustained the trial court in all respects. As to the first and last assigned errors, it ruled that the provision on unjust enrichment, Article 2142 of the Civil Code, applies only if there is no express contract between the parties and there is a clear showing that the payment is justified. In the instant case, the relationship existing between the petitioner and Philippine Rayon is governed by specific contracts, namely the application for letters of credit, the promissory note, the drafts and the trust receipt. With respect to the last ten (10) drafts (Exhibits "X-2" to "X-11") which had not been presented to and were not accepted by Philippine Rayon, petitioner was not justified in unilaterally paying the amounts stated therein. The public respondent did not agree with the petitioner's claim that the drafts were sight drafts which did not require presentment for acceptance to Philippine Rayon because paragraph 8 of the trust receipt presupposes prior acceptance of the drafts. Since the ten (10) drafts were not presented and accepted, no valid demand for payment can be made.

Public respondent also disagreed with the petitioner's contention that private respondent Chi is solidarily liable with Philippine Rayon pursuant to Section 13 of P.D. No. 115 and based on his signature on the solidary guaranty clause at the dorsal side of the trust receipt. As to the first contention, the public respondent ruled that the civil liability provided for in said Section 13

attaches only after conviction. As to the second, it expressed misgivings as to whether Chi's signature on the trust receipt made the latter automatically liable thereon because the so-called solidary guaranty clause at the dorsal portion of the trust receipt is to be signed not by one (1) person alone, but by two (2) persons; the last sentence of the same is incomplete and unsigned by witnesses; and it is not acknowledged before a notary public. Besides, even granting that it was executed and acknowledged before a notary public, Chi cannot be held liable therefor because the records fail to show that petitioner had either exhausted the properties of Philippine Rayon or had resorted to all legal remedies as required in Article 2058 of the Civil Code. As provided for under Articles 2052 and 2054 of the Civil Code, the obligation of a guarantor is merely accessory and subsidiary, respectively. Chi's liability would therefore arise only when the principal debtor fails to comply with his obligation.

Hence, the petitioner elevated the case before the Supreme Court.

ISSUE

Whether private respondent Chi is jointly and severally liable with Philippine Rayon for the obligation sought to be enforced and if not, whether he may be considered a guarantor; in the latter situation, whether the case should have been dismissed on the ground of lack of cause of action as there was no prior exhaustion of Philippine Rayon's properties? (N0)

RULING

Our own reading of the questioned solidary guaranty clause yields no other conclusion than that the obligation of Chi is only that of a guarantor. This is further bolstered by the last sentence which speaks of waiver of exhaustion, which, nevertheless, is ineffective in this case because the space therein for the party whose property may not be exhausted was not filled up. Under Article 2058 of the Civil Code, the defense of exhaustion (excussion) may be raised by a guarantor before he may be held liable for the obligation. Petitioner likewise admits that the questioned provision is a solidary guaranty clause, thereby clearly distinguishing it from a contract of surety. It, however, described the guaranty as solidary between the guarantors; this would have been correct if two (2) guarantors had signed it. The clause "we jointly and severally agree and undertake" refers to the undertaking of the two (2) parties who are to sign it or to the liability existing between themselves. It does not refer to the undertaking between either one or both of them on the one hand and the petitioner on the other with respect to the liability described under the trust receipt. Elsewise stated, their liability is not divisible as between them, i.e., it can be enforced to its full extent against any one of them.

Furthermore, any doubt as to the import, or true intent of the solidary guaranty clause should be resolved against the petitioner. The trust receipt, together with the questioned solidary guaranty clause, is on a form drafted and prepared solely by the petitioner; Chi's participation therein is limited to the affixing of his signature thereon. It is, therefore, a contract of adhesion; as such, it must be strictly construed against the party responsible for its preparation. Neither can we agree with the reasoning of the public respondent that this solidary guaranty clause was effectively disregarded simply because it was not signed and witnessed by two (2) persons and acknowledged before a notary public. By his signing, Chi became the sole guarantor. The attestation by witnesses

and the acknowledgement before a notary public are not required by law to make a party liable on the instrument.

• Rodzssen Supply Company, Inc. vs. Far East Bank and Trust Company, 357 SCRA 618 (2001)

RODZSSEN SUPPLY CO. INC., PETITIONER, -VERSUS- FAR EAST BANK & TRUST CO., RESPONDENT. G.R. No. 109087, THIRD DIVISION, May 9, 2001, PANGANIBAN, J.

Rodzssen Supply, Inc. opened with plaintiff Far East Bank and Trust Co. a 30-day domestic letter of credit, LC No. 52/0428/79-D, in the amount of P190,000.00 in favor of Ekman and Company, Inc. (Ekman) for the purchase from the latter of five units of hydraulic loaders, to expire on February 15, 1979. After the respondent paid Ekman, the defendant refused to pay the respondent alleging that there was a breach of contract by plaintiff who in bad faith paid Ekman, knowing that the two units of hydraulic loaders had been delivered to defendant after the expiry date of subject LC.

The Supreme Court ruled that the subject Letter of Credit had become invalid upon the lapse of the period fixed therein. Thus, respondent should not have paid Ekman; it was not obliged to do so. In the same vein, of no moment was Ekmans presentation, within the prescribed period, of all the documents necessary for collection, as the Letter of Credit had already expired and had in fact been cancelled.

However, the petitioner should still pay respondent bank the amount the latter expended for the equipment belatedly delivered by Ekman and voluntarily received and kept by petitioner. Respondent banks right to seek recovery from petitioner is anchored, not upon the inefficacious Letter of Credit, but on the doctrine of unjust enrichment under the Civil code.

FACTS

On January 15, 1979, defendant Rodzssen Supply, Inc. opened with plaintiff Far East Bank and Trust Co. a 30-day domestic letter of credit, LC No. 52/0428/79-D, in the amount of P190,000.00 in favor of Ekman and Company, Inc. (Ekman) for the purchase from the latter of five units of hydraulic loaders, to expire on February 15, 1979; that subsequent amendments extended the validity of said LC up to October 16, 1979; that on March 16, 1979, three units of the hydraulic loaders were delivered to defendant for which plaintiff on March 26, 1979, paid Ekman the sum of P114,000.00, which amount defendant paid plaintiff before the expiry date of the LC; that the shipment of the remaining two units of hydraulic loaders valued at P76,000.00 sent by Ekman was readily received by the defendant before the expiry date of subject LC; that upon Ekmans presentation of the documents for the P76,000.00 representing final negotiation on the LC before the expiry date, and after a series of negotiations, plaintiff paid to Ekman the amount of P76,000.00; and that upon plaintiffs demand on defendant to pay for said amount (P76,000.00), defendant refused to pay ... without any valid reason. Plaintiff prays for judgment ordering defendant to pay the abovementioned P76, 000.00 plus due interest thereon, plus 25% of the amount of the award as attorney's fees.

Defendant contends that plaintiff had no cause of action against defendant; that there was a breach of contract by plaintiff who in bad faith paid Ekman, knowing that the two units of hydraulic loaders had been delivered to defendant after the expiry date of subject LC; and that in view of the

breach of contract, defendant offered to return to plaintiff the two units of hydraulic loaders, presently still with the defendant but plaintiff refused to take possession thereof.

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, assailing the January 21, 1993 Decision of the Court of Appeals which affirmed with modification the ruling of the Regional Trial Court of Bacolod City the trial court which ordered the defendant to pay the plaintiff the sum of P76,000.00, representing the principal amount being claimed in this action, plus interest thereon at the rate of 12% per annum counted from October 1979 until fully paid and the defendant to pay the plaintiff the sum equivalent to 25% of the total amount due and collectible.

The CA rejected petitioners' imputation of bad faith and negligence to respondent bank for paying for the two hydraulic loaders, which had been delivered after the expiration of the subject letter of credit. The appellate court pointed out that petitioner received the equipment after the letter of credit had expired. To absolve defendant from liability for the price of the same, the CA explained, is to allow it to get away with its unjust enrichment at the expense of the plaintiff.

ISSUE

1. Whether or not it is proper for a banking institution to pay a letter of credit which has long expired or been cancelled? (NO)

2. Whether or not respondent courts were correct in their conclusion that there was a consummated sale between petitioner and Ekman Co.? (YES)

3. Whether or not Respondent Court of Appeals was correct in evading the issues raised in the appeal that under the trust receipt, petitioner was merely the depositary of private respondent with respect to the goods covered by the trust receipt? (YES)

RULING

1.

The bank paid Ekman when the former was no longer bound to do so under the subject Letter of Credit. The records show that respondent paid the latter P76,000 for the last two hydraulic loaders on March 14, 1980,] five months after the expiration of the Letter of Credit on October 16, 1979.] In fact, on December 27, 1979, the bank had informed Rodzssen of the cancellation of the commercial paper and credited P22,800 to the account of the latter. The amount represented the marginal deposit, which petitioner had been required to put up for the unnegotiated portion of the Letter of Credit --P76,000 for the two hydraulic loaders.

The subject Letter of Credit had become invalid upon the lapse of the period fixed therein. Thus, respondent should not have paid Ekman; it was not obliged to do so. In the same vein, of no moment was Ekmans presentation, within the prescribed period, of all the documents necessary for collection, as the Letter of Credit had already expired and had in fact been cancelled.

2.

We agree with the CA that petitioner should pay respondent bank the amount the latter expended for the equipment belatedly delivered by Ekman and voluntarily received and kept by petitioner.

Respondent banks right to seek recovery from petitioner is anchored, not upon the inefficacious Letter of Credit, but on the doctrine of unjust enrichment under the Civil code. Indeed, equitable considerations behoove us to allow recovery by respondent. True, it erred in paying Ekman, but petitioner itself was not without fault in the transaction. It must be noted that the latter had voluntarily received and kept the loaders since October 1979.

3.

Granting that petitioner was bound under such arrangement to accept the late delivery of the equipment, we note its unexplained inaction for almost four years with regard to the status of the ownership or possession of the loaders. Bewildering was its lack of action to validate the ownership and possession of the loaders, as well as its stolidity over the purported failed sales transaction. Significant too is the fact that it formalized its offer to return the two pieces of equipment only after respondents demand for payment, which came more than three years after it accepted delivery.

When both parties to a transaction are mutually negligent in the performance of their obligations, the fault of one cancels the negligence of the other and, as in this case, their rights and obligations may be determined equitably under the law proscribing unjust enrichment.

• Abad vs. Court of Appeals, 181 SCRA 191 (1990);

RAMON L. ABAD, PETITIONER, -VERSUS- HON. COURT OF APPEALS & THE PHILIPPINE COMMERCIAL AND INDUSTRIAL BANK, RESPONDENTS. G.R. No. L-42735, FIRST DIVISION, January 22, 1990.

TOMCO issued a letter of credit from PCIB and paid a marginal deposit in favor of the latter. TOMCO failed to pay its obligation to PCIB. PCIB filed a collection suit against TOMCO and the latter did not deny its liability but it alleged that inasmuch as it made a marginal deposit of P28,000, this amount should have been deducted from its principal obligation, leaving a balance of P52,000 only, on which the bank should have computed the interest, bank charges, and attorney's fees.

The marginal deposit requirement is a Central Bank measure to cut off excess currency liquidity which would create inflationary pressure. It is a collateral security given by the debtor, and is supposed to be returned to him upon his compliance with his secured obligation. Consequently, the bank pays no interest on the marginal deposit, unlike an ordinary bank deposit which earns interest in the bank. Therefore, the Supreme Court ruled thatit is only fair then that the importer's marginal deposit (if one was made, as in this case), should be set off against his debt, for while the importer earns no interest on his marginal deposit, the bank, apart from being able to use said deposit for its own purposes, also earns interest on the money it loaned to the importer. It would be onerous to compute interest and other charges on the face value of the letter of credit which the bank issued, without first crediting or setting off the marginal deposit which the importer paid to the bank.

FACTS

TOMCO, Inc., now known as Southeast Timber Co. (Phils.), Inc., applied for, and was granted by the Philippine Commercial and Industrial Bank (hereafter called "PCIB"), a domestic letter of credit for P 80,000 in favor of its supplier, Oregon Industries, Inc., to pay for one Skagit Yarder with accessories. PCIB paid to Oregon Industries the cost of the machinery against a bill of exchange for P 80,000, with recourse, presentment and notice of dishonor waived, and with date of maturity on January 4, 1964.

After making the required marginal deposit of P28, 000, TOMCO, Inc. signed and delivered to the bank a trust receipt acknowledging receipt of the merchandise in trust for the bank, with the obligation "to hold the same in storage" as property of PCIB, with a right to sell the same for cash provided that the entire proceeds thereof are turned over to the bank, to be applied against acceptance(s) and any other indebtedness of TOMCO, Inc.

In consideration of the release to TOMCO, Inc. by PCIB of the machinery covered by the trust receipt, petitioner Ramon Abad signed an undertaking entitled, "Deed of Continuing Guaranty" appearing on the back of the trust receipt, whereby he promised to pay the obligation jointly and severally with TOMCO, Inc.

Except for TOMCO's P28, 000 marginal deposit in the bank, no payment has been made to PCIB by either TOMCO, Inc. or its surety, Abad, on the P80, 000 letter of credit.

Consequently, the bank sued TOMCO, Inc. and Abad in Civil Case No. 75767-CFI Manila entitled, "Philippine Commercial and Industrial Bank vs. TOMCO, Inc. and Ramon Abad." PCIB presented in evidence a "Statement of Draft Drawn" showing that TOMCO was obligated to it in the total sum of P125, 766.13 as of August 26, 1970.

TOMCO did not deny its liability to PCIB under the letter of credit but it alleged that inasmuch as it made a marginal deposit of P28,000, this amount should have been deducted from its principal obligation, leaving a balance of P52,000 only, on which the bank should have computed the interest, bank charges, and attorney's fees.

On February 5, 1972, the trial court rendered judgment in favor of PCIB ordering TOMCO, Inc. and Abad to pay jointly and severally to the bank the sum of P125, 766.13 as of August 26, 1970, with interest and other charges until complete payment is made, plus attorney's fees and costs. Abad appealed to the Court of Appeals which, in a decision dated November 21, 1975, affirmed in toto the decision of the trial court.

Abad filed this petition for review raising the issue of whether TOMCO's marginal deposit of P28, 000 in the possession of the bank should first be deducted from its principal indebtedness before computing the interest and other charges due. Petitioner alleges that by not deducting the marginal deposit from TOMCO's indebtedness, the bank unjustly enriched itself at the expense of the debtor (TOMCO) and its surety (Abad).

ISSUE

Whether the debtor (or its surety) is entitled to deduct the debtor's cash marginal deposit from the principal obligation under a letter of credit and to have the interest charges computed only on the balance of the said obligation? (YES)

RULING

The marginal deposit requirement is a Central Bank measure to cut off excess currency liquidity which would create inflationary pressure. It is a collateral security given by the debtor, and is supposed to be returned to him upon his compliance with his secured obligation. Consequently, the bank pays no interest on the marginal deposit, unlike an ordinary bank deposit which earns interest in the bank. As a matter of fact, the marginal deposit requirement for letters of credit has been discontinued, except in those cases where the applicant for a letter of credit is not known to the bank or does not maintain a good credit standing therein (Bankers Associations of the Philippines Policy, Rules 6 and 7).

It is only fair then that the importer's marginal deposit (if one was made, as in this case), should be set off against his debt, for while the importer earns no interest on his marginal deposit, the bank, apart from being able to use said deposit for its own purposes, also earns interest on the money it loaned to the importer. It would be onerous to compute interest and other charges on the face value of the letter of credit which the bank issued, without first crediting or setting off the marginal deposit which the importer paid to the bank. Compensation is proper and should take effect by operation of law because the requisites in Article 1279 of the Civil Code are present and should extinguish both debts to the concurrent amount (Art. 1290, Civil Code). Although Abad is only a surety, he may set up compensation as regards what the creditor owes the principal debtor, TOMCO (Art. 1280, Civil Code).

It is not farfetched to assume that the bank used TOMCO's marginal deposit to partially fund the P80, 000 letter of credit it issued to TOMCO, hence, the interests and other charges on said letter of credit should be levied only on the balance of P52, 000 which was the portion that was actually funded or loaned by the bank from its own funds. Requiring the importer to pay interest on the entire letter of credit without deducting first him marginal deposit, would be a clear case of unjust enrichment by the bank.

 Consolidated Bank & Trust Corporation vs. Court of Appeals, 356 SCRA 671 (2001)

THE COSOLIDATED BANK AND TRUST CORPORATION (SOLIDBANK), PETITIONER -VERSUS- THE COURT OF APPEALS, CONTINENTAL CEMENT CORPORATION, GREGORY T. LIM AND SPOUSE, RESPONDENTS.

G.R. No. 114286, FIRST DIVISION, April 19, 2001, YNARES-SANTIAGO, J.

The Respondent obtained a letter of credit from the petitioner and paid a marginal deposit to the latter. The respondent argues that the marginal deposit should be deducted outright from the amount of the letter of credit. The Supreme Court ruled that Petitioner's contention that the marginal deposit made by Respondent Corporation should not be deducted outright from the amount of the letter of credit is untenable. Petitioner argues that the marginal deposit should be considered only after computing the principal plus accrued interest and other charges. However, to sustain petitioner on this score would be to countenance a clear case of unjust enrichment, for while a marginal deposit earns no interest in favor of the debtor-depositor, the bank is not only able to use the same for its own purposes, interest-free, but is also able to earn interest on the money loaned to Respondent Corporation.

FACTS

Continental Cement Corporation (hereinafter, respondent Corporation) and Gregory T. Lim (hereinafter, respondent Lim) obtained from petitioner Consolidated Bank and Trust Corporation Letter of Credit No. DOM-23277 in the amount of P1, 068,150.00. On the same date, respondent Corporation paid a marginal deposit of P320, 445.00 to petitioner. The letter of credit was used to purchase around five hundred thousand liters of bunker fuel oil from Petrophil Corporation, which the latter delivered directly to respondent Corporation in its Bulacan plant. In relation to the same transaction, a trust receipt for the amount of P1, 001,520.93 was executed by respondent Corporation, with respondent Lim as signatory.

Claiming that respondents failed to turn over the goods covered by the trust receipt or the proceeds thereof, petitioner filed a complaint for sum of money with application for preliminary attachment before the Regional Trial Court of Manila. In answer to the complaint, respondents averred that the transaction between them was a simple loan and not a trust receipt transaction, and that the amount claimed by petitioner did not take into account payments already made by them. Respondent Lim also denied any personal liability in the subject transactions. In a Supplemental Answer, respondents prayed for reimbursement of alleged overpayment to petitioner of the amount of P490, 228.90.

At the pre-trial conference, the parties agreed on the following issues: 1) Whether or not the transaction involved is a loan transaction or a trust receipt transaction;2) Whether or not the interest rates charged against the defendants by the plaintiff are proper under the letter of credit, trust receipt and under existing rules or regulations of the Central Bank;3) Whether or not the plaintiff properly applied the previous payment of P300,456.27 by the defendant corporation on July 13, 1982 as payment for the latters account; and4) Whether or not the defendants are personally liable under the transaction sued for in this case.

The RTC dismissed the Complaint and ordered petitioner to pay respondents.

The CA partially modified the Decision by deleting the award of attorney's fees in favor of respondents and, instead, ordering respondent Corporation to pay petitioner P37, 469.22 as and for attorney's fees and litigation expenses.

ISSUE

Whether or not the marginal deposit should be deducted outright from the amount of the letter of credit? (YES)

RULING

Petitioner's contention that the marginal deposit made by respondent Corporation should not be deducted outright from the amount of the letter of credit is untenable. Petitioner argues that the marginal deposit should be considered only after computing the principal plus accrued interest and other charges. However, to sustain petitioner on this score would be to countenance a clear case of unjust enrichment, for while a marginal deposit earns no interest in favor of the debtor-depositor, the bank is not only able to use the same for its own purposes, interest-free, but is also able to earn

interest on the money loaned to Respondent Corporation. Indeed, it would be onerous to compute interest and other charges on the face value of the letter of credit which the petitioner issued, without first crediting or setting off the marginal deposit which the respondent Corporation paid to it. Compensation is proper and should take effect by operation of law because the requisites in Article 1279 of the Civil Code are present and should extinguish both debts to the concurrent amount.

Hence, the interests and other charges on the subject letter of credit should be computed only on the balance of P681, 075.93, which was the portion actually loaned by the bank to respondent Corporation.

• MARPHIL EXPORT CORPORATION and IRENEO LIM, Petitioners, - versus - ALLIED BANKING CORPORATION, substituted by PHILIPPINE NATIONAL BANK, Respondent. (G.R. No. 187922, September 21, 2016, THIRD DIVISION, JARDELEZA, J.)

MARPHIL EXPORT CORPORATION AND IRENEO LIM, PETITIONERS, V. ALLIED BANKING CORPORATION, SUBSTITUTED BY PHILIPPINE NATIONAL BANK, RESPONDENT. G.R. No. 187922, THIRD DIVISION, September 21, 2016, JARDALEZA J.

Allied Bank did not act as confirming bank in L/C No. 21970.

In finding that Allied Bank, as correspondent bank, did not act as confirming bank; the CA reviewed the instructions of Nanyang Bank to Allied Bank in L/C No. 21970. It found that based on the instructions, there is nothing to support Marphil's argument that Allied Bank undertook, as its own, In the case of [Bank of America], the functions assumed by a correspondent bank are classified according to the obligations taken up by it. In the case of a notifying bank, the correspondent bank assumes no liability except to notify and/or transmit to the beneficiary the existence of the L/C. A negotiating bank is a correspondent bank which buys or discounts a draft under the L/C. Its liability is dependent upon the stage of the negotiation. If before negotiation, it has no liability with respect to the seller but after negotiation, a contractual relationship will then prevail between the negotiation to the seller. A confirming bank is a correspondent bank which assumes a direct obligation to the seller and its liability is a primary one as if the correspondent bank itself had issued the L/C.

In the instant case, the letter of Nanyang to Allied provided the following instructions: 1) the negotiating bank is kindly requested to forward all documents to Nanyang in one lot; 2) in reimbursement for the negotiation(s), Nanyang shall remit cover to Allied upon receipt of documents in compliance with the terms and conditions of the credit; 3) the drafts drawn must be marked "drawn under Nanyang Commercial Bank"; and 4) to advise beneficiary.

From the above-instructions, it is clear that Allied did not undertake to assume the obligation of Nanyang to Marphil as its own, as if it had itself issued the L/C. At most, it can only be a discounting bank which bought the drafts under the L/C. Following then the rules laid down in the case of Bank of America, a negotiating bank has a right of recourse against the issuing bank, and until reimbursement is obtained, the drawer of the draft continues to assume a contingent liability thereon. Nanyang Bank's obligations in the letter of credit.

FACTS

To finance its purchase and export of these products, **Allied Bank granted Marphil a credit line from which Marphil availed of several loans evidenced by promissory notes (PN).** These loans were in the nature of advances to finance the exporter's working capital requirements and export bills. The loans were secured by three (3) Continuing Guaranty or Continuing Surety (CG/CS) Agreements executed by Lim, Lim Shiao Tong and Enrique Ching. Apart from the CG/CS Agreements, irrevocable letters of credits also served as collaterals for the loans obtained to pay export bills. In turn, Allied Bank required Marphil, through its authorized signatories Lim and Rebecca Lim So, to execute a Letter of Agreement where they undertake to reimburse Allied Bank in the event the export bills/drafts covering the letters of credit are refused by the drawee. Upon negotiations of export bills/drafts that Allied Bank purchases from Marphil, the amount of the face value of the letters of credit is credited in favor of the latter.13chanrobleslaw

The transaction involved in this petition is the export of cashew nuts to Intan Trading Ltd. Hongkong (Intan) in Hong Kong. Upon application of Intan, Nanyang Commercial Bank (Nanyang Bank), a bank based in China, issued irrevocable letters of credit. These were Letter of Credit (L/C) No. 22518 and L/C No. 21970, with Marphil as beneficiary and Allied Bank as correspondent bank.14 These covered two (2) separate purchase contracts/orders for cashew nuts made by Intan. The first order of cashew nuts was covered by L/C No. 22518. After the first shipment was made, Marphil presented export documents including drafts to Allied Bank. The latter credited Marphil's credit line the peso equivalent of the face value of L/C No. 22518. There were no problems encountered for the shipment covered by L/C No. 22518. It was the second order covered by L/C No. 21970 that encountered problems.

When Intan placed a second order for cashew nuts, Marphil availed additional loans in their credit line. Similar to the previous transaction, Intan applied for and opened L/C No. 21970 with Nanyang Bank in the amount of US\$185,000.00, with Marphil as the beneficiary and Allied Bank as correspondent bank. After receiving the export; documents including the draft issued by Marphil, Allied Bank credited Marphil in the amount of P1, 913,763.45, the peso value of the amount in the letter of credit.

However, on July 2, 1988, Allied Bank informed Marphil that it received a cable from Nanyang Bank noting some discrepancies in the shipping documents. On July 16, 1988, Allied Bank again informed Marphil that it received another cable from Nanyang Bank still noting the discrepancies and that Intan refused to accept the discrepancies. Consequently, Nanyang Bank refused to reimburse Allied Bank the amount the latter had credited in Marphil's credit line. In its debit memo, Allied Bank informed Marphil of the dishonor of L/C No. 21970 and that it was reversing the earlier credit entry of P1, 913,763.45. Lim was made to sign a blank promissory note to cover for the amount. This was later filled up by Allied Bank in the amount of P1, 505,391.36.

On March 6, 1990, Marphil filed a Complaint for declaratory relief and damages against Allied Bank (Declaratory' Relief Case) raffled to Branch 61 of RTC Makati. In its Complaint, Marphil asked the court to declare PN No. 4202 void, to declare as fully paid its other obligations to Allied Bank, and to award it actual, moral and exemplary damages, and attorney's fees. Marphil maintained that it had fully paid its account with Allied Bank, and that PN No. 4202, which Lim executed on September 9, 1988, was void for lack of consideration. Marphil alleged that it was constrained to send back the

shipment to the Philippines thereby incurring expenses and tremendous business losses. It attributed bad faith to Allied Bank because the latter did nothing to protect its interest; Allied Bank merely accepted Nanyang Bank's position despite L/C No. 21970 being irrevocable, and Allied Bank allegedly confirmed Nanyang Bank's revocation.

On May 7, 1990, Allied Bank filed its Answer with Compulsory Counterclaim and Petition for Writ of Preliminary Attachment. Allied Bank maintained that PN No. 4202 was supported by consideration, and denied that Marphil has fully paid its obligation to it. As counterclaim, Allied bank sought to collect on three (3) promissory notes, PN Nos. 2463, 2730 and 4202.

On September 14, 1990, Allied Bank filed a Complaint with Petition for Writ of Preliminary Attachment (Collection Case) against Lim and Lim Shao Tong which was raffled to Branch 145 of RTC Makati. Allied Bank sued them as sureties under the CG/CS Agreements for the loan obligations of Marphil under three (3) promissory notes, PN Nos. 2463, 2730 and 4202, in the total amount of P2,505,391.36. It also prayed for the issuance of a writ of preliminary attachment on the ground that Lim was guilty of fraud in contracting his obligations.

On February 7, 1992, Lim filed his Answer in the Collection Case. He raised as defense that Marphil had fully paid the loans covered by PN Nos. 2463, 2730, while PN No. 4202 is null and void.32 He likewise maintained he could not be held personally liable for the CG/CS Agreements because he could not remember signing them. Lim claimed that the issuance of the writ of preliminary attachment was improper because he never had any preconceived intention not to pay his obligations with the bank. He had been transacting with the bank for six (6) years arid the gross value of the thirty-two (32) transactions between them amounted to US\$640,188.51.

RTC rendered an Omnibus Decision. The RTC granted Marphil's complaint for declaratory relief, and declared PN No. 4202 void. However, it held Marphil and/or Ireneo Lim jointly and severally liable for any balance due on their obligation under PN Nos. 2463 and 2730, and additionally for the amount of P1, 913,763.45 with interest rate fixed at 12% per annum until fully paid.

The CA modified the RTC decision. The CA declared PN Nos. 2463 and 2730 fully paid, but held petitioners liable for the amount of P1, 913,763.45, the amount equal to the face value of L/C No. 21970. The CA found that Allied Bank is not directly liable for the P1, 913,763.45 under L/C No. 21970 because it was not a confirming bank and did not undertake to assume the obligation of Nanyang Bank to Marphil as its own. At most, it could only be a discounting bank which bought drafts under the letter of credit. Following the ruling in Bank of America, NT & SA v. Court of Appeals, it held that Allied Bank, as the negotiating bank, has the ordinary right of recourse against the exporter in the event of dishonor by the issuing bank. A negotiating bank has a right of recourse against the issuing bank, and until reimbursement is obtained, the drawer of the draft continues to assume a contingent liability on the draft. That there is no assumption of direct obligation is further affirmed by the terms of the Letter Agreement. The CA also declared PN Nos. 2463 and 2730 as fully paid. The CA held that with these payments, the only obligation left of Marphil was the amount of the reversed credit of P1, 913,763.45. On the writ of preliminary attachment, the CA noted that petitioners did not file any motion to discharge it on the ground of irregular issue. The CA found that no forum shopping existed because the causes of actions for declaratory relief and collection suit are different. Hence, this petition.

ISSUE

Whether or not Allied Bank is a confirming bank which undertakes Nanyang Bank's obligation as issuing bank?

RULING

We affirm the RTC and CA's findings that Allied Bank did not act as confirming bank in L/C No. 21970.

As noted by the CA, Feati is not in all fours with this case. The correspondent bank in that case refused to negotiate the letter of credit precisely because of the beneficiary's non-compliance with its terms. Here, it is Nanyang Bank, the issuing bank, which refused to make payment on L/C No. 21970 because there was no strict compliance by Marphil.

Further, while we said in Feati that a correspondent bank may be held liable for accepting a faulty tender under the rule of strict compliance, its liability is necessarily defined by the role it assumed under the terms of the letter of credit. In order to consider a correspondent bank as a confirming bank, it must have assumed a direct obligation to the seller as if it had issued the letter of credit itself.53 We said that "[i]f the [correspondent bank] was a confirming bank, then a categorical declaration should have been stated in the letter of credit that the [correspondent bank] is to honor all drafts drawn in conformity with the letter of credit."54 Thus, if we were to hold Allied Bank liable to Marphil (which would result in a finding that the former's debit from the latter's account is wrong) based on the rule of strict compliance, it must be because Allied Bank acted as confirming bank under the language of L/C No. 21970.

In finding that Allied Bank, as correspondent bank, did not act as confirming bank; the CA reviewed the instructions of Nanyang Bank to Allied Bank in L/C No. 21970. It found that based on the instructions, there is nothing to support Marphil's argument that Allied Bank undertook, as its own, Nanyang Bank's obligations in the letter of credit.

In the case of [Bank of America], the functions assumed by a correspondent bank are classified according to the obligations taken up by it. In the case of a notifying bank, the correspondent bank assumes no liability except to notify and/or transmit to the beneficiary the existence of the L/C. A negotiating bank is a correspondent bank which buys or discounts a draft under the L/C. Its liability is dependent upon the stage of the negotiation. If before negotiation, it has no liability with respect to the seller but after negotiation, a contractual relationship will then prevail between the negotiating bank and the seller. A confirming bank is a correspondent bank which assumes a direct obligation to the seller and its liability is a primary one as if the correspondent bank itself had issued the L/C.

In the instant case, the letter of Nanyang to Allied provided the following instructions: 1) the negotiating bank is kindly requested to forward all documents to Nanyang in one lot; 2) in reimbursement for the negotiation(s), Nanyang shall remit cover to Allied upon receipt of documents in compliance with the terms and conditions of the credit; 3) the drafts drawn must be marked "drawn under Nanyang Commercial Bank"; and 4) to advise beneficiary.

From the above-instructions, it is clear that Allied did not undertake to assume the obligation of Nanyang to Marphil as its own, as if it had itself issued the L/C. At most, it can only be a discounting bank which bought the drafts under the L/C. Following then the rules laid down in the case of Bank of America, a negotiating bank has a right of recourse against the issuing bank, and until reimbursement is obtained, the drawer of the draft continues to assume a contingent liability thereon.

In this regard, this issue of whether Allied Bank confirmed L/C No. 21970 and assumed direct obligation on it is a question of fact that was resolved by both RTC and CA in the negative. This Court is not a trier of facts and does not normally undertake the re-examination of the evidence.56 This is especially true where the trial court's factual findings are adopted and affirmed by the CA.57 Factual findings of the trial court affirmed by the CA are final and conclusive and may not be reviewed on appeal.58 Here, there is no reason to deviate from these findings of the RTC and CA. In any event, we find that Allied Bank may seek reimbursement of the amount credited to Marphil's account on an independent obligation it undertook under the Letter Agreement.

The case of Velasquez v. Solidbank Corporation60 is instructive as to the nature of obligations arising from this form of undertaking. In that case, we ruled that the obligation under a letter of undertaking, where the drawer undertakes to pay the full amount of the draft in case of dishonor, is independent from the liability under the sight draft.61 The letter of undertaking of this tenor is a separate contract the consideration for which is the promise to pay the bank the value of the sight draft if it was dishonored for any reason.62 The liability provided is direct and primary, without need to establish collateral facts such as the violation of the letter of credit connected to it.63chanrobleslaw

Similarly, the Letter of Agreement is a contract between Marphil and Allied Bank where the latter agreed to purchase the draft and credit the former its value on the undertaking that Allied Bank will be reimbursed in case the draft is dishonored. This obligation is direct, and is independent, not only from the obligation under the draft, but also from the obligation under L/C No. 21970. In this connection, the CA is incorrect to say that the Letter Agreement bolsters the bank's claim that it did not undertake direct obligation under the letter of credit. The Letter Agreement simply creates a separate obligation on Marphil's part to refund the amount of the proceeds, in case of dishonor. As an independent obligation, Marphil is bound to fulfill this obligation to reimburse Allied Bank.

- iv. Advising/Notifying Bank
- v. Paying Bank
- vi. Confirming Bank
 - Bank of America vs. Court of Appeals, ibid.
 - Feati Bank and Trust Company vs. Court of Appeals, ibid.
- 5. Basic Principles of Letter of Credit
 - d. Doctrine of Independence

iii. In commercial letter of credit

- BPI vs. De reny Fabrics, ibid..
- Land Bank of the Philippines vs. Monet's Export and Manufacturing Corp., 453 SCRA 173 (2005)

LAND BANK OF THE PHILIPPINES, PETITIONER, VS. MONETS EXPORT AND MANUFACTURING CORPORATION, SPOUSES VICENTE V. TAGLE, SR. AND MA. CONSUELO G. TAGLE, RESPONDENTS.G.R. No. 161865, FIRST DIVISION, March 10, 2005YNARES-SANTIAGO, J.

Land Bank did not fail to protect Monet's interest when it paid the Beautilike account despite discrepancies in the shipment vis--vis the order specifications of Monet. Land Bank, as the issuing bank in the Beautilike transaction involving an import letter of credit, it only deals in documents and it is not involved in the contract between the parties. The relationship between the beneficiary and the issuer of a letter of credit is not strictly contractual, because both privity and a meeting of the minds are lacking. Thus, upon receipt by Land Bank of the documents of title which conform with what the letter of credit requires, it is duty bound to pay the seller, as it did in this case

FACTS

Land Bank of the Philippines Land Bank and Monets executed an Export Packing Credit Line Agreement under which Monet was given a credit line in the amount of P250,000.00, secured by the proceeds of its export letters of credit the continuing guaranty of the spouses Vicente and Ma. Consuelo Tagle, and the third party mortgage executed by Pepita Mendigoria.

The credit line agreement was renewed and amended several times until it was increased to P5, 000,000.00. Owing to the continued failure and refusal of Monet, notwithstanding repeated demands, to pay its indebtedness to Land Bank, which have ballooned to P11, 464,246.19 by August 31, 1992, a complaint for collection of sum of money with prayer for preliminary attachment was filed by Land Bank with the Regional Trial Court of Manila, docketed as Civil Case No. 93-64350.

In their joint Answer with Compulsory Counterclaim, Monet and the Tagle spouses alleged that Land Bank failed and refused to collect the receivables on their export letter of credit against Wishbone Trading Company of Hong Kong in the sum of US\$33,434.00, while it made unauthorized payments on their import letter of credit to Beautilike (H.K.) Ltd. in the amount of US\$38,768.40, which seriously damaged the business interests of Monet.

The trial court rendered decision recognizing the obligation of the defendants as stated in the Schedule of Amortization from the Loans and Discount Department of LAND BANK as well as the interest mentioned therein, but deleting the penalty thereof as no penalty should be charged and sentencing defendants jointly and severally to pay the amounts stated therein as verified. It also granted the counterclaim interposed by the defendants in the amount of US\$30,000.00 payable in Philippine Pesos at the official exchange rate when payment is to be made, to compensate for the defendants lost income opportunities occasioned by defendants transaction with Wishbone Trading Corporation and with Beautilike, the same to be deducted from the confirmed and computed obligation mentioned in No. 1 hereof.

Land Bank appealed and the Court of Appeals affirmed the trial court finding that Land Bank was responsible for the mismanagement of the Wishbone and Beautilike accounts of Monet. It held that because of the non-collection and unauthorized payment made by Land Bank on behalf of Monet, and considering that the latter could no longer draw from its credit line with Land Bank, it suffered from lack of financial resources sufficient to buy the needed materials to fill up the standing orders from its customers.

Land Bank's Motion for Reconsideration was denied by the Court of Appeals.

Hence, the Petitioner filed a petition for review on certiorari under Rule 45 of the Rules of Court assailing the October 9, 2003 Decision of the Court of Appeals in CA-G.R. CV No. 57436, and its January 20, 2004 Resolution denying petitioner's motion for reconsideration.

ISSUE

Whether or not Landbank is liable for making unauthorized payments in favor of Beautilike? (NO)

RULING

As regards the Beautilike account, the trial court and the CA erred in holding that Land Bank failed to protect Monet's interest when it paid the suppliers despite discrepancies in the shipment vis--vis the order specifications of Monet.

Our ruling in Bank of America, NT & SA v. Court of Appeals is pertinent:

What characterizes letters of credit, as distinguished from other accessory contracts, is the engagement of the issuing bank to pay the seller once the draft and the required shipping documents are presented to it. In turn, this arrangement assures the seller of prompt payment, independent of any breach of the main sales contract. By this so-called independence principle, the bank determines compliance with the letter of credit only by examining the shipping documents presented; it is precluded from determining whether the main contract is actually accomplished or not.

Moreover, Article 3 of the Uniform Customs and Practice (UCP) for Documentary Credits provides that credits, by their nature, are separate transactions from the sales or other contract(s) on which they may be based and banks are in no way concerned with or bound by such contract(s), even if any reference whatsoever to such contract(s) is included in the credit. Consequently, the undertaking of a bank to pay, accept and pay draft(s) or negotiate and/or fulfill any other obligation under the credit is not subject to claims or defenses by the applicant resulting from his relationships with the issuing bank or the beneficiary.

In particular, Article 15 of the UCP states:

Banks assume no liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any documents, or for the general and/or particular conditions stipulated in the documents or superimposed thereon; nor do they assume any liability or

responsibility for the description, weight, quality, condition, packing, delivery, value or existence of the goods represented by any documents, or for the good faith or acts and/or omissions, solvency, performance or standing of the consignor, the carriers, or the insurers of the goods, or any other person whomsoever. (Emphasis supplied)

In Transfield Philippines, Inc. v. Luzon Hydro Corporation, et al., we held that the engagement of the issuing bank is to pay the seller or beneficiary of the credit once the draft and the required documents are presented to it. The so-called independence principle assures the seller or the beneficiary of prompt payment independent of any breach of the main contract and precludes the issuing bank from determining whether the main contract is actually accomplished or not.

Land Bank, as the issuing bank in the Beautilike transaction involving an import letter of credit, it only deals in documents and it is not involved in the contract between the parties. The relationship between the beneficiary and the issuer of a letter of credit is not strictly contractual, because both privity and a meeting of the minds are lacking. Thus, upon receipt by Land Bank of the documents of title which conform with what the letter of credit requires, it is duty bound to pay the seller, as it did in this case.

Thus, no fault or acts of mismanagement can be attributed to Land Bank relative to Monet's import letter of credit.

• Philippine National Bank vs. San Miguel Corporation, G.R. No. 186063, January 15, 2014

PHILIPPINE NATIONAL BANK, Petitioner, -versus- SAN MIGUEL CORPORATION, Respondent. G.R. No. 186063, THIRD DIVISION, January 15, 2014, PERALTA J.

The appeal of Goroza, assailing the judgment of the RTC finding him liable, will not prevent the continuation of the ongoing trial between SMC and PNB. The RTC retains jurisdiction insofar as PNB is concerned, because the appeal made by Goroza was only with respect to his own liability. In fact, PNB itself, in its Reply to respondent's Comment, admitted that the May 10, 2005 judgment of the RTC was "decided solely against defendant Rodolfo Goroza."

In a letter of credit transaction, such as in this case, where the credit is stipulated as irrevocable, there is a definite undertaking by the issuing bank to pay the beneficiary provided that the stipulated documents are presented and the conditions of the credit are complied with. Precisely, the independence principle liberates the issuing bank from the duty of ascertaining compliance by the parties in the main contract. As the principle's nomenclature clearly suggests, the obligation under the letter of credit is independent of the related and originating contract. In brief, the letter of credit is separate and distinct from the underlying transaction.

In other words, PNB cannot evade responsibility on the sole ground that the RTC judgment found Goroza liable and ordered him to pay the amount sought to be recovered by SMC. PNB's liability, if any, under the letter of credit is yet to be determined.

FACTS

Respondent San Miguel Corporation (SMC, for brevity) entered into an Exclusive Dealership Agreement with a certain Rodolfo R. Goroza wherein the latter was given by SMC the right to trade, deal, market or otherwise sell its various beer products. Goroza applied for a credit line with SMC, but one of the requirements for the credit line was a letter of credit. Thus, Goroza applied for and was granted a letter of credit by the PNB in the amount of two million pesos (P2,000,000.00). Under the credit agreement, the PNB has the obligation to release the proceeds of Goroza's credit line to SMC upon presentation of the invoices and official receipts of Goroza's purchases of SMC beer products to the PNB, Butuan Branch. Goroza availed of his credit line with PNB and started selling SMC's beer products. Goroza applied for an additional credit line with the PNB. The latter granted Goroza a one (1) year revolving credit line in the amount not exceeding two million four hundred thousand pesos (P2,400,000.00). Goroza started to become delinquent with his accounts.

Demands to pay the amount of three million seven hundred twenty-two thousand four hundred forty pesos and 88/100 (₱3,722,440.88) were made by SMC against Goroza and PNB, but neither of them paid. Thus, on April 23, 2003, SMC filed a Complaint for collection of sum of money against PNB and Goroza with the respondent Regional Trial Court Branch 3, Butuan City.

RTC ordered defendant Rodolfo Goroza to pay plaintiff the principal amount of P3,722,440.00. The trial court amended its Decision by increasing the award of litigation expenses to P90,652.50. Goroza was declared in default. PNB filed an Urgent Motion to Terminate Proceedings on the ground that a decision was already rendered on May 10, 2005 finding Goroza solely liable. The RTC issued a Supplemental Judgment, thus: The Court omitted by inadvertence to insert in its decision the phrase "without prejudice to the decision that will be made against the other co-defendant, PNB, which was not declared. The CA affirmed the assailed Resolution of the RTC.

PNB also argues that the CA erred in ruling that proceedings against it may continue in the RTC, despite the trial court's complete adjudication of relief in favor of SMC. PNB avers that the Decision of the RTC, finding Goroza solely liable to pay the entire amount sought to be recovered by SMC, has settled the obligation of both Goroza and PNB, and that there is no longer any ground to hold PNB for trial and make a separate judgment against it; otherwise, SMC will recover twice for the same cause of action.

ISSUE

Whether the Court of Appeals erred in holding that proceedings may continue against PNB despite the complete adjudication of relief in favor of SMC? (NO)

ISSUE

The petition lacks merit. It is clear from the proceedings held before and the orders issued by the RTC that the intention of the trial court is to conduct separate proceedings to determine the respective liabilities of Goroza and PNB, and thereafter, to render several and separate judgments for or against them. While ideally, it would have been more prudent for the trial court to render a single decision with respect to Goroza and PNB, the procedure adopted the RTC is, nonetheless,

allowed under Section 4, Rule 36 of the Rules of Court, which provides that "in an action against several defendants, the court may, when a several judgment is proper, render judgment against one or more of them, leaving the action to proceed against the others." Thus, the appeal of Goroza, assailing the judgment of the RTC finding him liable, will not prevent the continuation of the ongoing trial between SMC and PNB. The RTC retains jurisdiction insofar as PNB is concerned, because the appeal made by Goroza was only with respect to his own liability. In fact, PNB itself, in its Reply to respondent's Comment, admitted that the May 10, 2005 judgment of the RTC was "decided solely against defendant Rodolfo Goroza."

The propriety of a several judgment is borne by the fact that SMC's cause of action against PNB stems from the latter's alleged liability under the letters of credit which it issued. On the other hand, SMC's cause of action against Goroza is the latter's failure to pay his obligation to the former. As to the separate judgment, PNB has a counterclaim against SMC which is yet to be resolved by the RTC. The RTC judgment against Goroza did not make any determination as to whether or not PNB is liable under the letter of credit it issued and, if so, up to what extent is its liability. In fact, contrary to PNB's claim, there is nothing in the RTC judgment which ruled that Goroza is "solely liable" to pay the amount which SMC seeks to recover.

In this regard, this Court's disquisition on the import of a letter of credit, in the case of Transfield Philippines, Inc. v. Luzon Hydro Corporation, as correctly cited by the CA, is instructive, to wit:

By definition, a letter of credit is a written instrument whereby the writer requests or authorizes the addressee to pay money or deliver goods to a third person and assumes responsibility for payment of debt therefor to the addressee. A letter of credit, however, changes its nature as different transactions occur and if carried through to completion ends up as a binding contract between the issuing and honoring banks without any regard or relation to the underlying contract or disputes between the parties thereto.

Thus, the engagement of the issuing bank is to pay the seller or beneficiary of the credit once the draft and the required documents are presented to it. The so-called "independence principle" assures the seller or the beneficiary of prompt payment independent of any breach of the main contract and precludes the issuing bank from determining whether the main contract is actually accomplished or not. Under this principle, banks assume no liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any documents, or for the general and/or particular conditions stipulated in the documents or superimposed thereon, nor do they assume any liability or responsibility for the description, quantity, weight, quality, condition, packing, delivery, value or existence of the goods represented by any documents, or for the good faith or acts and/or omissions, solvency, performance or standing of the consignor, the carriers, or the insurers of the goods, or any other person whomsoever.

As discussed above, in a letter of credit transaction, such as in this case, where the credit is stipulated as irrevocable, there is a definite undertaking by the issuing bank to pay the beneficiary provided that the stipulated documents are presented and the conditions of the credit are complied with. Precisely, the independence principle liberates the issuing bank from the duty of ascertaining compliance by the parties in the main contract. As the principle's nomenclature clearly suggests, the obligation under the letter of credit is independent of the related and originating contract. In brief, the letter of credit is separate and distinct from the underlying transaction.

In other words, PNB cannot evade responsibility on the sole ground that the RTC judgment found Goroza liable and ordered him to pay the amount sought to be recovered by SMC. PNB's liability, if any, under the letter of credit is yet to be determined.

• THE HONGKONG & SHANGHAI BANKING CORPORATION, LIMITED, Petitioner, v. NATIONAL STEEL CORPORATION AND CITYTRUST BANKING CORPORATION (NOW BANK OF THE PHILIPPINE ISLANDS), Respondents. (G.R. No. 183486, February 24, 2016, JARDELEZA, J.)

THE HONGKONG & SHANGHAI BANKING CORPORATION, LIMITED, PETITIONER, -VERSUS-NATIONAL STEEL CORPORATION AND CITYTRUST BANKING CORPORATION (NOW BANK OF THE PHILIPPINE ISLANDS), RESPONDENTS.

G.R. No. 183486, THIRD DIVISION, February 24, 2016, JARDALEZA J.

For the purpose of clarity, letters of credit are governed primarily by their own provisions, by laws specifically applicable to them, and by usage and custom. Consistent with our rulings in several cases, 100 usages and custom refers to UCP 400. When the particular issues are not covered by the provisions of the letter of credit, by laws specifically applicable to them and by UCP 400, our general civil law finds suppletory application.

Applying this set of laws and rules, this Court rules that HSBC is liable under the provisions of the Letter of Credit, in accordance with usage and custom as embodied in UCP 400, and under the provisions of general civil law.

From the moment that HSBC agreed to the terms of the Letter of Credit - which states that UCP 400 applies - its actions in connection with the transaction automatically became bound by the rules set in UCP 400. Even assuming that URC 322 is an international custom that has been recognized in commerce, this does not change the fact that HSBC, as the issuing bank of a letter of credit, undertook certain obligations dictated by the terms of the Letter of Credit itself and by UCP 400. In Feati, this Court applied UCP 400 even when there is no express stipulation in the letter of credit that it governs the transaction. 103 On the strength of our ruling in Feati, we have the legal duty to apply UCP 400 in this case independent of the parties' agreement to be bound by it.

FACTS

Respondent National Steel Corporation (NSC) entered into an Export Sales Contract (the Contract) with Klockner East Asia Limited (Klockner). NSC sold 1,200 metric tons of prime cold rolled coils to Klockner under FOB ST Iligan terms. In accordance with the requirements in the Contract, Klockner applied for an irrevocable letter of credit with HSBC in favor of NSC as the beneficiary in the amount of US\$468,000. HSBC issued an irrevocable and onsight letter of credit (the Letter of Credit) in favor of NSC. The Letter of Credit stated that it is governed by the International Chamber of Commerce Uniform Customs and Practice for Documentary Credits, Publication No. 400 (UCP 400). Under UCP 400, HSBC as the issuing bank, has the obligation to immediately pay NSC upon presentment of the documents listed in the Letter of Credit. The Letter of Credit was amended twice to reflect changes in the terms of delivery. NSC coursed the collection of its payment from Klockner through Citytrust

Banking Corporation (CityTrust). NSC had earlier obtained a loan from CityTrust secured by the proceeds of the Letter of Credit issued by HSBC.

CityTrust sent a collection order (Collection Order) to HSBC respecting the collection of payment from Klockner. On the same date, CityTrust also presented to HSBC the necessary documents under the terms of the Letter of Credit.

HSBC sent a cablegram to CityTrust acknowledging receipt of the Collection Order. It also stated that the documents will be presented to "the drawee against payment subject to UCP 322 [Uniform Rules for Collection (URC) 322] as instructed ... " SCB-M then sent a cablegram to HSBC requesting the latter to urgently remit the proceeds to its account. It further asked that HSBC inform it "if unable to pay" and of the "reasons thereof." Neither CityTrust nor SCB-M objected to HSBC's statement that the collection will be handled under the Uniform Rules for Collection (URC 322).

HSBC sent another cablegram to SCB-M advising it that Klockner had refused payment. In a cablegram, CityTrust requested HSBC to inform it of Klockner's reason for refusing payment so that it may refer the matter to NSC. HSBC did not respond and CityTrust thus sent a follow-up cablegram to HSBC. In this cablegram, CityTrust insisted that a demand for payment must be made from Klockner since the documents "were found in compliance with LC terms and conditions." HSBC replied on the same day stating that in accordance with CityTrust's instruction in its Collection Order, HSBC treated the transaction as a matter under URC 322. Thus, it demanded payment from Klockner which unfortunately refused payment for unspecified reasons. It then noted that under URC 322, Klockner has no duty to provide a reason for the refusal. Hence, HSBC requested for further instructions as to whether it should continue to press for payment or return the documents. CityTrust responded that as advised by its client, HSBC should continue to press for payment.

Klockner continued to refuse payment and HSBC notified CityTrust in a cablegram dated that should Klockner still refuse to accept the bill by January 12, 1994, it will return the full set of documents to CityTrust with all the charges for the account of the drawer.

Meanwhile, CityTrust sent a letter to NSC stating that it executed NSC's instructions "to send, ON COLLECTION BASIS, the export documents. CityTrust also explained that its act of sending the export documents on collection basis has been its usual practice in response to NSC's instructions in its transactions.

NSC responded to this in a letter and expressed its disagreement with CityTrust's contention that it sent the export documents to HSBC on collection basis. It highlighted that it "negotiated with CityTrust the export documents pertaining to LC No. HKH 239409 of HSBC and it was CityTrust, which wrongfully treated the negotiation, as 'on collection basis." NSC further claimed that CityTrust used its own mistake as an excuse against payment under the Letter of Credit. Thus, NSC argued that CityTrust remains liable under the Letter of Credit. It also stated that it presumes that CityTrust has preserved whatever right of reimbursement it may have against HSBC.

CityTrust notified HSBC that it should continue to press for payment and to hold on to the document until further notice.

However, Klockner persisted in its refusal to pay. Thus, HSBC returned the documents to CityTrust. In a letter accompanying the returned documents, HSBC stated that it considered itself discharged of its duty under the transaction. It also asked for payment of handling charges. In response, CityTrust sent a cablegram to HSBC stating that it is "no longer possible for beneficiary to wait for you to get paid by applicant." It explained that since the documents required under the Letter of Credit have been properly sent to HSBC, Citytrust demanded payment from it. CityTrust also stated, for the first time in all of its correspondence with HSBC, that "your previous telexes, ICC Publication No. 322 are not applicable." HSBC responded in cablegram and it insisted that CityTrust sent documents which clearly stated that the collection was being made under URC 322.

Disagreeing with HSBC's position, CityTrust sent a cablegram and it insisted that HSBC should pay it in accordance with the terms of the Letter of Credit. Under the Letter of Credit, HSBC undertook to reimburse the presenting bank under "ICC 400 upon the presentment of all necessary documents." **CityTrust also stated that the reference to URC 322 in its Collection Order was merely in fine print.** CityTrust emphasized that the reference to URC 322 has been "obviously superseded by our specific instructions to 'deliver documents against payment/cable advice non-payment with reason/cable advice payment/remit proceeds via telex' which was typed in on said form." CityTrust also claimed that the controlling document is the Letter of Credit and not the mere fine print on the Collection Order. HSBC replied and it argued that CityTrust clearly instructed it to collect payment under URC 322, thus, CityTrust can no longer claim a contrary position three months after it made its request. HSBC repeated that the transaction is closed except for CityTrust's obligation to pay for the expenses which HSBC incurred.

Meanwhile, on March 3, 1994, NSC sent a letter to HSBC where it, for the first time, demanded payment under the Letter of Credit. NSC sent another letter to HSBC through the Office of the Corporate Counsel which served as its final demand. These demands were made after approximately four months from the expiration of the Letter of Credit.

NSC filed a complaint against it for collection of sum of money. In its Complaint, NSC alleged that it coursed the collection of the Letter of Credit through CityTrust. However, notwithstanding CityTrust's complete presentation of the documents in accordance with the requirements in the Letter of Credit, HSBC unreasonably refused to pay its obligation in the amount of US\$485,767.93.

HSBC denied any liability under the Letter of Credit. It argued in its Answer that CityTrust modified the obligation when it stated in its Collection Order that the transaction is subject to URC 322 and not under UCP 400. It also filed a Motion to Admit Attached Third-Party Complaint against CityTrust. It claimed that CityTrust instructed it to collect payment under URC 322 and never raised that it intended to collect under the Letter of Credit.

After a full-blown trial, the RTC Makati rendered a decision finding that HSBC is not liable to pay NSC the amount stated in the Letter of Credit. It ruled that the applicable law is URC 322 as it was the law which CityTrust intended to apply to the transaction. Under URC 322, HSBC has no liability to pay when Klockner refused payment.

NSC and CityTrust appealed the RTC Decision before the CA. The CA reversed the RTC Makati. **The CA found that it is UCP 400 and not URC 322 which governs the transaction.** According to the

CA, the terms of the Letter of Credit clearly stated that UCP 400 shall apply. Further, the CA explained that even if the Letter of Credit did not state that UCP 400 governs, it nevertheless finds application as this Court has consistently recognized it under Philippine jurisdiction. Thus, applying UCP 400 and principles concerning letters of credit, the CA explained that the obligation of the issuing bank is to pay the seller or beneficiary of the credit once the draft and the required documents are properly presented. **Under the independence principle, the issuing bank's obligation to pay under the letter of credit is separate from the compliance of the parties in the main contract.**

Hence, HSBC filed this Petition for Review on Certiorari before this Court, seeking a reversal of the CA's Assailed Decision and Resolution.

ISSUE

Whether or not the CA erred in ruling that UCP 400 should govern the transaction subject of this case?

RULING

Rules applicable to letters of credit

Letters of credit are defined and their incidences regulated by Articles 567 to 57285 of the Code of Commerce. These provisions must be read with Article 286 of the same code which states that acts of commerce are governed by their provisions, by the usages and customs generally observed in the particular place and, in the absence of both rules, by civil law. In addition, Article 5087 also states that commercial contracts shall be governed by the Code of Commerce and special laws and in their absence, by general civil law.

The International Chamber of Commerce (ICC) drafted a set of rules to govern transactions involving letters of credit. This set of rules is known as the Uniform Customs and Practice for Documentary Credits (UCP). Since its first issuance in 1933, the UCP has seen several revisions, the latest of which was in 2007, known as the UCP 600. However, for the period relevant to this case, the prevailing version is the 1993 revision called the UCP 400. Throughout the years, the UCP has grown to become the worldwide standard in transactions involving letters of credit. It has enjoyed near universal application with an estimated 95% of worldwide letters of credit issued subject to the UCP.

In Bank of the Philippine Islands v. De Reny Fabric Industries, Inc., this Court applied a provision from the UCP in resolving a case pertaining to a letter of credit transaction. This Court explained that the use of international custom in our jurisdiction is justified by Article 2 of the Code of Commerce which provides that acts of commerce are governed by, among others, usages and customs generally observed. Further, in Feati Bank & Trust Company v. Court of Appeals,92 this Court ruled that the UCP should be applied in cases where the letter of credit expressly states that it is the governing rule. This Court also held in Feati that the UCP applies even if it is not incorporated into the letter of the credit. The application of the UCP in Bank of Philippine Islands and in Feati was further affirmed in Metropolitan Waterworks and Sewerage System v. Daway where this Court held that "[1]etters of credit have long been and are still governed by the provisions of the Uniform

Customs and Practice for Documentary Credit[s] of the International Chamber of Commerce." These precedents highlight the binding nature of the UCP in our jurisdiction.

Thus, for the purpose of clarity, letters of credit are governed primarily by their own provisions, by laws specifically applicable to them, and by usage and custom. Consistent with our rulings in several cases, 100 usages and custom refers to UCP 400. When the particular issues are not covered by the provisions of the letter of credit, by laws specifically applicable to them and by UCP 400, our general civil law finds suppletory application.

Applying this set of laws and rules, this Court rules that HSBC is liable under the provisions of the Letter of Credit, in accordance with usage and custom as embodied in UCP 400, and under the provisions of general civil law.

From the moment that HSBC agreed to the terms of the Letter of Credit - which states that UCP 400 applies - its actions in connection with the transaction automatically became bound by the rules set in UCP 400. Even assuming that URC 322 is an international custom that has been recognized in commerce, this does not change the fact that HSBC, as the issuing bank of a letter of credit, undertook certain obligations dictated by the terms of the Letter of Credit itself and by UCP 400. In Feati, this Court applied UCP 400 even when there is no express stipulation in the letter of credit that it governs the transaction. 103 On the strength of our ruling in Feati, we have the legal duty to apply UCP 400 in this case independent of the parties' agreement to be bound by it.

UCP 400 states that an irrevocable credit payable on sight, such as the Letter of Credit in this case, constitutes a definite undertaking of the issuing bank to pay, provided that the stipulated documents are presented and that the terms and conditions of the credit are complied with. Further, UCP 400 provides that an issuing bank has the obligation to examine the documents with reasonable care. 105 Thus, when CityTrust forwarded the Letter of Credit with the attached documents to HSBC, it had the duty to make a determination of whether its obligation to pay arose by properly examining the documents.

In its petition, HSBC argues that it is not UCP 400 but URC 322 that should govern the transaction. 106 URC 322 is a set of norms compiled by the ICC. It was drafted by international experts and has been adopted by the ICC members. Owing to the status of the ICC and the international representation of its membership, these rules have been widely observed by businesses throughout the world. It prescribes the collection procedures, technology, and standards for handling collection transactions for banks. Under the facts of this case, a bank acting in accordance with the terms of URC 322 merely facilitates collection. Its duty is to forward the letter of credit and the required documents from the entity seeking payment to another entity which has the duty to pay. The bank incurs no obligation other than as a collecting agent. This is different in the case of issuing bank acting in accordance with UCP 400. In this case, the issuing bank has the duty to pay the amount stated in the letter of credit upon due presentment. HSBC claims that while UCP 400 applies to letters of credit, it is also common for beneficiaries of such letters to seek collection under URC 322. HSBC further claims that URC 322 is an accepted custom in commerce. 109 HSBC's argument is without merit. We note that HSBC failed to present evidence to prove that URC 322 constitutes custom and usage recognized in commerce. Neither was there sufficient evidence to prove that beneficiaries under a letter of credit commonly resort to collection under URC 322 as a matter of

industry practice. Thus, this Court cannot hold that URC 322 and resort to it by beneficiaries of letters of credit are customs that demand application in this case.

HSBC's position that URC 322 applies, thus allowing it, the issuing bank, to disregard the Letter of Credit, and merely demand collection from Klockner cannot be countenanced. Such an argument effectively asks this Court to give imprimatur to a practice that undermines the value and reliability of letters of credit in trade and commerce. The entire system of letters of credit rely on the assurance that upon presentment of the proper documents, the beneficiary has an enforceable right and the issuing bank a demandable obligation, to pay the amount agreed upon. Were a party to the transaction allowed to simply set this aside by the mere invocation of another set of norms related to commerce - one that is not established as a custom that is entitled to recognition by this Court - the sanctity of letters of credit will be jeopardized. To repeat, any law or custom governing letters of credit should have, at its core, an emphasis on the imperative that issuing banks respect their obligation to pay and that seller-beneficiaries may reasonably expect payment in accordance with the terms of a letter of credit. Thus, the CA correctly ruled, to wit:

At this juncture, it is significant to stress that an irrevocable letter of credit cannot, during its lifetime, be cancelled or modified without the express permission of the beneficiary. Not even partial payment of the obligation by the applicant-buyer would amend or modify the obligation of the issuing bank. The subsequent correspondences of [CityTrust] to HSBC, thus, could not in any way affect or amend the letter of credit, as it was not a party thereto. As a notifying bank, it has nothing to do with the contract between the issuing bank and the buyer regarding the issuance of the letter of credit. 112 (Citations omitted)

This Court therefore rules that CityTrust's presentment of the Letter of Credit with the attached documents in behalf of NSC, constitutes due presentment. Under the terms of the Letter of Credit, HSBC undertook to pay the amount of US\$485,767.93 upon presentment of the Letter of Credit and the required documents.114 In accordance with this agreement, NSC, through CityTrust, presented the Letter of Credit and necessary documents. In transactions where the letter of credit is payable on sight, as in this case, the issuer must pay upon due presentment. This obligation is imbued with the character of definiteness in that not even the defect or breach in the underlying transaction will affect the issuing bank's liability. This is the Independence Principle in the law on letters of credit. Article 17 of UCP 400 explains that under this principle, an issuing bank assumes no liability or responsibility "for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any documents, or for the general and/or particular conditions stipulated in the documents or superimposed thereon ... " Thus, as long as the proper documents are presented, the issuing bank has an obligation to pay even if the buyer should later on refuse payment. Hence, Klockner's refusal to pay carries no effect whatsoever on HSBC's obligation to pay under the Letter of Credit. To allow HSBC to refuse to honor the Letter of Credit simply because it could not collect first from Klockner is to countenance a breach of the Independence Principle.

HSBC's persistent refusal to comply with its obligation notwithstanding due presentment constitutes delay contemplated in Article 1169 of the Civil Code. This provision states that a party to an obligation incurs in delay from the time the other party makes a judicial or extrajudicial demand for the fulfillment of the obligation. We rule that the due presentment of the Letter of Credit and the attached documents is tantamount to a demand. HSBC incurred in delay when it failed to fulfill its obligation despite such a demand.

Having been remiss in its obligations under the applicable law, rules and jurisprudence, HSBC only has itself to blame for its consequent liability to NSC.

However, NSC has not raised any claim against CityTrust at any point in these proceedings. Thus, this Court cannot make any finding of liability against CityTrust in favor of NSC.

iv. In Standby letter of credit

• Insular Bank of Asia & America vs. Intermediate Appellate Court, 167 SCRA 450 (1988)

INSULAR BANK OF ASIA & AMERICA (NOW PHILIPPINE COMMERCIAL INTERNATIONAL BANK), PETITIONER, -VERSUS- HON. INTERMEDIATE APPELLATE COURT, THE PHILIPPINE AMERICAN LIFE INSURANCE CO., SPS. BEN MENDOZA & JUANITA M. MENDOZA, RESPONDENTS.

G.R. No. 74834, SECOND DIVISION, November 17, 1988, MELENCIO-HERRERA J.

Letters of credit and contracts for the issuance of such letters are subject to the same rules of construction as are ordinary commercial contracts. They are to receive a reasonable and not a technical construction and although usage and custom cannot control express terms in letters of credit, they are to be construed with reference to all the surrounding facts and circumstances, to the particular and often varying terms in which they may be expressed, the circumstances and intention of the parties to them, and the usages of the particular trade of business contemplated.

Unequivocally, the subject standby Letters of Credit secure the payment of any obligation of the Mendozas to Philam Life including all interests, surcharges and expenses thereon but not to exceed P600, 000.00. But while they are a security arrangement, they are not converted thereby into contracts of guaranty. That would make them ultra vires rather than a letter of credit, which is within the powers of a bank (Section 74[e], RA 337, General Banking Act). 1 The standby L/Cs are, "in effect an absolute undertaking to pay the money advanced or the amount for which credit is given on the faith of the instrument." (Scribner v. Rutherford, 22 N.W. 670, 65 Iowa 551; Duval v. Trask, 12 Mass. 154, cited in 38 CJS, Sec. 7, p. 1142). They are primary obligations and not accessory contracts. Being separate and independent agreements, the payments made by the Mendozas cannot be added in computing IBAA's liability under its own standby letters of credit. Payments made by the Mendozas directly to Philam Life are in compliance with their own prestation under the loan agreements. And although these payments could result in the reduction of the actual amount which could ultimately be collected from IBAA, the latter's separate undertaking under its L/Cs remains.

FACTS

Sometime in 1976 and 1977 respondent spouses Mendoza obtained two (2) loans from respondent Philippine American Life Insurance Co. (Philam Life) in the total amount of P600,000.00 to finance the construction of their residential house at Mandaue City. To secure payment, Philam Life required that amortizations be guaranteed by an irrevocable standby letter of credit of a commercial bank. Thus, the Mendozas contracted with petitioner Insular Bank of Asia and America (IBAA) for the issuance of two (2) irrevocable standby Letters of Credit in favor of Philam Life for

the total amount of P600,000.00. The first L/C for P500, 000.00 was to expire on 1 October 1981 and the second for P100,000.00 on 1 January 1982. These two (2) irrevocable standbys L/Cs were, in turn, secured by a real estate mortgage for the same amount on the property of Respondent Spouses in favor of IBAA.

On 11 May 1977, the Mendozas executed a promissory note in favor of IBAA promising to pay the sum of P100,000.00 plus 19% p.a. interest. Respondent Spouses executed another Promissory Note binding themselves to pay IBAA P100,000.00 plus 19% p.a. interest. Both Notes authorized IBAA "to sell at public or private sale such securities or things for the purpose of applying their proceeds to such payments" of many particular obligation or obligations" the Mendozas may have to IBAA.

The Mendozas failed to pay Philam Life the amortization that fell due on 1 June 1978 so that Philam Life informed IBAA that it was declaring both loans as "entirely due and demandable" and demanded payment of P492,996.30. However, because IBAA contested the propriety of calling ill the entire loan, Philam Life desisted and resumed availing of the L/Cs by drawing on them for five (5) more amortizations.

On 7 September 1979, because the Mendozas defaulted on their amortization due on 1 September 1979, Philam Life again informed IBAA that it was declaring the entire balance outstanding on both loans, including liquidated damages, "immediately due and payable." Philam Life then demanded the payment of P274,779.56 from IBAA but the latter took the position that, as a mere guarantor of the Mendozas who are the principal debtors, its remaining outstanding obligation under the two (2) standby L/Cs was only P30,100.60.

On 21 April 1980 the Real Estate Mortgage, which secured the two (2) standby L/Cs. was extrajudicially foreclosed by, and sold at public auction for P775,000.00, to petitioner IBAA as the lone and highest bidder. Philam Life filed suit against Respondent Spouses and IBAA before the RTC, for the recovery of the sum of P274,779.56, the amount allegedly still owing under the loan. The Court rendered a Decision finding that IBAA had paid Philam Life only P342,127.05 and not P372,227.65, as claimed by IBAA, because of a stale IBAA Manager's check in the amount of P30,100.60, which had to be deducted.

The Trial Court ordered Defendants-spouses Ben S. Mendoza and Juanita M. Mendoza to pay plaintiff Philippine American Life Insurance Company the sum of P322,000.00, Plaintiff Philippine American Life Insurance Company to refund the sum of P22,420.16 to the defendant Insular Bank of Asia and America and Dismissal of the counterclaim and crossclaim filed by the defendantsspouses against the plaintiff and the defendant IBAA, as well as the counterclaim filed by defendant IBAA against the plaintiff. RTC took the position that IBAA, "as surety" was discharged of its liability to the extent of the payment made by the Mendozas, as the principal debtors, to the creditor, Philam Life.

The Appellate Court reversed the Trial Court and ruled instead that IBAA's liability was not reduced by virtue of the payments made by the Mendozas.

ISSUE

Whether or not the partial payments made by the principal obligors (respondent MENDOZAS) would have the corresponding effect of reducing the liability of the petitioner as guarantor or surety under the terms of the standby LCs in question? (NO)

RULING

IBAA stresses that it has no more liability to Philam Life under the two (2) standby Letters of Credit and, instead, is entitled to a refund. Whereas Philam Life and the Mendoza spouses separately maintain that IBAA's obligation under said two (2) L/Cs is original and primary and is not reduced by the direct payments made by the Mendozas to Philam Life.

1. In construing the terms of a Letter of Credit, as in other contracts, it is the intention of the parties that must govern.

Letters of credit and contracts for the issuance of such letters are subject to the same rules of construction as are ordinary commercial contracts. They are to receive a reasonable and not a technical construction and although usage and custom cannot control express terms in letters of credit, they are to be construed with reference to all the surrounding facts and circumstances, to the particular and often varying terms in which they may be expressed, the circumstances and intention of the parties to them, and the usages of the particular trade of business contemplated. The terms of the subject Irrevocable Standby Letters of Credit read, in part, as follows:

This credit secures the payment of any obligation of the accountee to you under that Loan Agreement hereto attached as Annex 'A' and made a part hereof, including those pertaining to (a) surcharges on defaulted account; installments, (b) increased interest charges (in the event the law should authorize this increase), and (c) liabilities connected with taxes stipulated to be for Accountee's and provided however, that our maximum liabilities hereunder shall not exceed the amount of P500,000.00 (Pl00.000.00 for the other LC).

Each drawing under this credit shall be available at any time after one (1) day from due date of the obligations therein secured. Each drawing under this credit shall be accomplished by your signed statement in duplicate that the amount drawn represents payment due and unpaid by the accountee.

Unequivocally, the subject standby Letters of Credit secure the payment of any obligation of the Mendozas to Philam Life including all interests, surcharges and expenses thereon but not to exceed P600, 000.00. But while they are a security arrangement, they are not converted thereby into contracts of guaranty. That would make them ultra vires rather than a letter of credit, which is within the powers of a bank (Section 74[e], RA 337, General Banking Act). 1 The standby L/Cs are, "in effect an absolute undertaking to pay the money advanced or the amount for which credit is given on the faith of the instrument." (Scribner v. Rutherford, 22 N.W. 670, 65 Iowa 551; Duval v. Trask,, 12 Mass. 154, cited in 38 CJS, Sec. 7, p. 1142). They are primary obligations and not accessory contracts. Being separate and independent agreements, the payments made by the Mendozas cannot be added in computing IBAA's liability under its own standby letters of credit. Payments made by the Mendozas directly to Philam Life are in compliance with their own

prestation under the loan agreements. And although these payments could result in the reduction of the actual amount which could ultimately be collected from IBAA, the latter's separate undertaking under its L/Cs remains.

Both the Trial Court and the Appellate Court found, as a fact, that there still remains a balance on the loan, Pursuant to its absolute undertaking under the L/Cs, therefore, IBAA cannot escape the obligation to pay Philam Life for this unexpended balance. The Appellate Court found it to be P222, 000.00, arrived at by the Trial Court and adopted by the Appellate Court.

The amount of P222, 000.00, therefore, considered as "any obligation of the accountee" under the L/Cs will still have to be paid by IBAA under the explicit terms thereof, which IBAA had itself supplied. Letters of credit are strictly construed to the end that the rights of those directly parties to them may be preserved and their interest safeguarded. Like any other writing, it will be construed most strongly against the writer and so as to be reasonable and consistent with honest intentions. On the whole, the construction will be generally a strict one. As found by the Appellate Court, however, the amount payable should not exceed P296,294,05 (P600,000.00 less P303,705.95, the total amount found by the Appellate Court to have been paid by IBAA to Philam Life).

- e. Fraud Exception Principle
 - Transfield Philippines, Inc. vs. Luzon Hydro Corp. Ibid.
- f. Doctrine of Strict Compliance
 - Feati Bank & Trust Company vs. Court of Appeals, ibid.

II. TRUST RECEIPTS LAW

10. Definition/Concept of a Trust Receipt Transaction

- a. A security transaction intended to aid in financing importers and retail dealers who do not have sufficient funds or resources to finance the importation or purchase of merchandise, and who may not be able to acquire credit except through utilization, as collateral of the merchandise imported or purchased.
 - Lee vs. Court of Appeals, 375 SCRA 579 (2002)

CHARLES LEE, CHUA SIOK SUY, MARIANO SIO, ALFONSO YAP, RICHARD VELASCO AND ALFONSO CO, PETITIONERS, -VERSUS- COURT OF APPEALS AND PHILIPPINE BANK OF COMMUNICATIONS, RESPONDENTS.

G.R. No. 117913, SECOND DIVISION, February 1, 2002, DE LEON JR. J.

In this case, MICO argues that its obligation to PBCom is null and void and that the trust receipt agreement of no effect as shown by the fact that PBCom did not demand the material possession of the goods alleged to be covered by the trust receipt. The Supreme Court explained that a trust receipt is considered as a security transaction intended to aid in financing importers and retail dealers who do not have sufficient funds or resources to finance the importation or purchase of merchandise, and who may not be able to acquire credit except through utilization, as collateral of the merchandise imported or purchased. A trust receipt, therefor, is a document of security pursuant to which a bank acquires a "security interest" in the goods under trust receipt.

FACTS

Charles Lee, as President of MICO wrote private respondent Philippine Bank of Communications (PBCom) requesting for a grant of a discounting loan/credit line in the sum of Three Million Pesos (₱3,000,000.00) for the purpose of carrying out MICO's line of business as well as to maintain its volume of business.

On the same day, Charles Lee requested for another discounting loan/credit line of Three Million Pesos (₱3,000,000.00) from PBCom for the purpose of opening letters of credit and trust receipts. In connection with the requests for discounting loan/credit lines, PBCom was furnished by MICO a resolution duly authorizing and empowering Mr. Charles Lee and Mariano A. Sio to apply for, negotiate, and secure approval of commerce loans such as letters of credits and trust receipts in behalf of the corporation which was adopted unanimously by MICO's Board of Directors.

MICO availed of the first loan of One Million Pesos (₱1,000,000.00) from PBCom. Upon maturity of the loan, MICO caused the same to be renewed, the last renewal of which was made on May 21, 1982 under Promissory Note BNA No. 26218.

Another loan of One Million Pesos (₱1,000,000.00) was availed of by MICO from PBCom which was likewise later on renewed, the last renewal of which was. To complete MICO's availment of Three Million Pesos (₱3,000,000.00) discounting loan/credit line with PBCom, MICO availed of another loan from PBCom in the sum of One Million Pesos (₱1,000,000.00) on May 24, 1979. As in previous loans, this was rolled over or renewed, the last renewal of which was made on May 25, 1982 under Promissory Note BNA No. 26253.

As security for the loans, MICO through its Vice-President and General Manager, Mariano Sio, executed on May 16, 1979 a Deed of Real Estate Mortgage over its properties situated in Pasig, Metro Manila covered by Transfer Certificates of Title (TCT) Nos. 11248 and 11250.

Charles Lee, Chua SiokSuy, Mariano Sio, Alfonso Yap and Richard Velasco, in their personal capacities executed a Surety Agreement in favor of PBCom whereby the petitioners jointly and severally, guaranteed the prompt payment on due dates or at maturity of overdrafts, letters of credit, trust receipts, and other obligations of every kind and nature, for which MICO may be held accountable by PBCom. It was provided, however, that the liability of the sureties shall not at any one time exceed the principal amount of Three Million Pesos (₱3,000,000.00) plus interest, costs, losses, charges and expenses including attorney's fees incurred by PBCom in connection therewith. On July 14, 1980, petitioner Charles Lee, in his capacity as president of MICO, wrote PBCom and applied for an additional loan in the sum of Four Million Pesos (₱4,000,000.00). The loan was intended for the expansion and modernization of the company's machineries.

As per agreement, the proceeds of all the loan availments were credited to MICO's current checking account with PBCom. To induce the PBCom to increase the credit line of MICO, Charles Lee, Chua

SiokSuy, Mariano Sio, Alfonso Yap, Richard Velasco and Alfonso Co executed another surety agreement in favor of PBCom whereby they jointly and severally guaranteed the prompt payment on due dates or at maturity of overdrafts, promissory notes, discounts, drafts, letters of credit, bills of exchange, trust receipts and all other obligations of any kind and nature for which MICO may be held accountable by PBCom. It was provided, however, that their liability shall not at any one time exceed the sum of Seven Million Five Hundred Thousand Pesos (₱7,500,000.00) including interest, costs, charges, expenses and attorney's fees incurred by MICO in connection therewith.

On July 2, 1981, MICO filed with PBCom an application for a domestic letter of credit in the sum of Three Hundred Forty-Eight Thousand Pesos (₱348,000). The corresponding irrevocable letter of credit was approved and opened under LC No. L-16060. Thereafter, the domestic letter of credit was negotiated and accepted by MICO as evidenced by the corresponding bank draft issued for the purpose. After the supplier of the merchandise was paid, a trust receipt upon MICO's own initiative, was executed in favor of PBCom.

On September 14, 1981, MICO applied for another domestic letter of credit with PBCom in the sum of Two Hundred Ninety Thousand Pesos (₱290,000.00). The corresponding irrevocable letter of credit was issued on September 22, 1981 under LC No. L-16334. After the beneficiary of the said letter of credit was paid by PBCom for the price of the merchandise, the goods were delivered to MICO which executed a corresponding trust receipt in favor of PBCom.

MICO applied for authority to open a foreign letter of credit in favor of Ta Jih Enterprises Co., Ltd., and thus, the corresponding letter of credit was then issued by PBCom with a cable sent to the beneficiary, Ta Jih Enterprises Co., Ltd. advising that said beneficiary may draw funds from the account of PBCom in its correspondent bank's New York Office. PBCom also informed its corresponding bank in Taiwan, the Irving Trust Company, of the approved letter of credit. The correspondent bank acknowledged PBCom's advice through a confirmation letter and by debiting from PBCom's account with the said correspondent bank the sum of Eleven Thousand Nine Hundred Sixty US Dollars (\$11,960.00). As in past transactions, MICO executed in favor of PBCom a corresponding trust receipt.

MICO applied, for authority to open a foreign letter of credit in the sum of One Thousand Nine Hundred US Dollars (\$1,900.00), with PBCom. Upon approval, the corresponding letter of credit denominated as LC No. 62293 was issued whereupon PBCom advised its correspondent bank and MICO of the same. Negotiation and proper acceptance of the letter of credit were then made by MICO. Again, a corresponding trust receipt was executed by MICO in favor of PBCom.

In all the transactions involving foreign letters of credit, PBCom turned over to MICO the necessary documents such as the bills of lading and commercial invoices to enable the latter to withdraw the goods from the port of Manila.

MICO obtained from PBCom another loan in the sum of Three Hundred Seventy-Seven Thousand Pesos (₱377,000.00) covered by Promissory Note BA No. 7458.

Upon maturity of all credit availments obtained by MICO from PBCom, the latter made a demand for payment. For failure of petitioner MICO to pay the obligations incurred despite repeated demands, private respondent PBCom extrajudicially foreclosed MICO's real estate mortgage and sold the said

mortgaged properties in a public auction sale held on November 23, 1982. Private respondent PBCom which emerged as the highest bidder in the auction sale, applied the proceeds of the purchase price at public auction of Three Million Pesos (₱3,000,000.00) to the expenses of the foreclosure, interest and charges and part of the principal of the loans, leaving an unpaid balance of Five Million Four Hundred Forty-One Thousand Six Hundred Sixty-Three Pesos and Ninety Centavos (₱5,441,663.90) exclusive of penalty and interest charges. Aside from the unpaid balance of Five Million Four Hundred Forty-One Thousand Six Hundred Sixty-Three Pesos and Ninety Centavos (₱5,441,663.90), MICO likewise had another standing obligation in the sum of Four Hundred Sixty-One Thousand Six Hundred Sixty-One Thousand Six trust receipts liabilities to private respondent.

PBCom then demanded the settlement of the aforesaid obligations from herein petitioners-sureties who, however, refused to acknowledge their obligations to PBCom under the surety agreements.

PBCom filed a complaint with prayer for writ of preliminary attachment before the Regional Trial Court of Manila, which was raffled to Branch 55, alleging that MICO was no longer in operation and had no properties to answer for its obligations. PBCom further alleged that petitioner Charles Lee has disposed or concealed his properties with intent to defraud his creditors.

Petitioners (MICO and herein petitioners-sureties) denied all the allegations of the complaint filed by respondent PBCom, and alleged that: a) MICO was not granted the alleged loans and neither did it receive the proceeds of the aforesaid loans; b) Chua SiokSuy was never granted any valid Board Resolution to sign for and in behalf of MICO; c) PBCom acted in bad faith in granting the alleged loans and in releasing the proceeds thereof; d) petitioners were never advised of the alleged grant of loans and the subsequent releases therefor, if any; e) since no loan was ever released to or received by MICO, the corresponding real estate mortgage and the surety agreements signed concededly by the petitioners-sureties are null and void.

The trial court gave credence to the testimonies of herein petitioners and dismissed the complaint filed by PBCom. The trial court likewise declared the real estate mortgage and its foreclosure null and void. In ruling for herein petitioners,

The Court of Appeals reversed the ruling of the trial court, saying that the latter committed an erroneous application and appreciation of the rules governing the burden of proof. Citing Section 24 of the Negotiable Instruments Law which provides that "Every negotiable instrument is deemed prima facie to have been issued for valuable consideration and every person whose signature appears thereon to have become a party thereto for value", the Court of Appeals said that while the subject promissory notes and letters of credit issued by the PBCom made no mention of delivery of cash, it is presumed that said negotiable instruments were issued for valuable consideration. The Court of Appeals also cited the case of Gatmaitan vs. Court of Appeals which holds that "there is a presumption that an instrument sets out the true agreement of the parties thereto and that it was executed for valuable consideration".

ISSUE

Whether or not it is material for PBCom to acquire legal possession of the merchandise subject of the trust receipt? (NO)

RULING

A trust receipt is considered as a security transaction intended to aid in financing importers and retail dealers who do not have sufficient funds or resources to finance the importation or purchase of merchandise, and who may not be able to acquire credit except through utilization, as collateral of the merchandise imported or purchased. A trust receipt, therefor, is a document of security pursuant to which a bank acquires a "security interest" in the goods under trust receipt. Under a letter of credit-trust receipt arrangement, a bank extends a loan covered by a letter of credit, with the trust receipt as a security for the loan. The transaction involves a loan feature represented by a letter of credit, and a security feature which is in the covering trust receipt which secures indebtedness.

>>>>b. The loan and security features of a trust receipt

• Vintola vs. Insular Bank of Asia and America, 150 SCRA 140 (1987)

SPOUSES TIRSO I. VINTOLA AND LORETO DY VINTOLA, DEFENDANTS-APPELLANTS, -VERSUS-INSULAR BANK OF ASIA AND AMERICA, PLAINTIFF-APPELLEE. G.R. No. 73271, FIRST DIVISION, May 29, 1987, MELENCIO-HERRERA, J.

Contrary to the allegation of the VINTOLAS, IBAA did not become the real owner of the goods. It was merely the holder of a security title for the advances it had made to the Vintolas. The goods the Vintolas had purchased through IBAA financing remain their own property and they hold it at their own risk. The trust receipt arrangement did not convert the IBAA into an investor; the latter remained a lender and creditor.

Since the IBAA is not the factual owner of the goods, the Vintolas cannot justifiably claim that because they have surrendered the goods to IBAA and subsequently deposited them in the custody of the court, they are absolutely relieved of their obligation to pay their loan because of their inability to dispose of the goods. The fact that they were unable to sell the seashells in question does not affect IBAA's right to recover the advances it had made under the Letter of Credit.

FACTS

On August 20, 1975 the spouses Tirso and Loreta Vintola (Vintolas), doing business under the name "Dax Kin International," engaged in the manufacture of raw sea shells into finished products, applied for and were granted a domestic letter of credit by the Insular Bank of Asia and America (IBAA). The Letter of Credit authorized the bank to negotiate for their account drafts drawn by their supplier, one Stalin Tan, on Dax Kin International for the purchase of puka and olive seashells. On the same day, having received from Stalin Tan the puka and olive shells, the Vintolas executed a Trust Receipt agreement with IBAA. Under that Agreement, the Vintolas agreed to hold the goods in trust for IBAA as the "latter's property with liberty to sell the same for its account, and "in case of sale" to turn over the proceeds as soon as received to (IBAA).

Having defaulted on their obligation, IBAA demanded payment from the Vintolas. The Vintolas, who were unable to dispose of the shells, responded by offering to return the goods. IBAA refused to accept the merchandise, and due to the continued refusal of the Vintolas to make good their

undertaking, IBAA charged them with estafa. During the trial of the criminal case the VINTOLAS turned over the seashells to the custody of the trial court.

The trial court acquitted the Vintolas of the crime charged, after finding that the element of misappropriation or conversion was inexistent. Shortly thereafter, IBAA commenced the present civil action to recover the value of the goods before the Regional Trial Court. Holding that the complaint was barred by the judgment of acquittal in the criminal case, said Court dismissed the complaint. However, on IBAA's motion, the Court granted reconsideration and hold the Vintolas civilly liable.

The VINTOLAS rest their present appeal on the principal allegation that their acquittal in the estafa case bars IBAA's filing of the civil action because IBAA had not reserved in the criminal case its right to enforce separately their civil liability. Further, the VINTOLAS take the position that their obligation to IBAA has been extinguished inasmuch as, through no fault of their own, they were unable to dispose of the seashells, and that they have relinquished possession thereof to the IBAA, as owner of the goods, by depositing them with the Court.

This case was appealed to the Intermediate Appellate Court which, however, certified the same to this Court, the issue involved being purely legal.

ISSUE

Whether or not the Vintolas' obligation with IBAA is extinguished on the ground that they deposited the subject goods with the court? (NO)

RULING

Contrary to the allegation of the VINTOLAS, IBAA did not become the real owner of the goods. It was merely the holder of a security title for the advances it had made to the Vintolas. The goods the Vintolas had purchased through IBAA financing remain their own property and they hold it at their own risk. The trust receipt arrangement did not convert the IBAA into an investor; the latter remained a lender and creditor.

Since the IBAA is not the factual owner of the goods, the Vintolas cannot justifiably claim that because they have surrendered the goods to IBAA and subsequently deposited them in the custody of the court, they are absolutely relieved of their obligation to pay their loan because of their inability to dispose of the goods. The fact that they were unable to sell the seashells in question does not affect IBAA's right to recover the advances it had made under the Letter of Credit.

The acquittal of the Vintolas in the estafa case is no bar to the institution of a civil action for collection. It is inaccurate for the Vintolas to claim that the judgment in the estafa case had declared that the facts from which the civil action might arise, did not exist, for, it will be recalled that the decision of acquittal expressly declared that "the remedy of the Bank is civil and not criminal in nature." This amounts to a reservation of the civil action in IBAA's favor, for the Court would not have dwelt on a civil liability that it had intended to extinguish by the same decision.

The Vintolas are liable ex contractu for breach of the Letter of Credit — Trust Receipt, whether they did or they did not "misappropriate, misapply or convert" the merchandise as charged in the criminal case. Their civil liability does not arise ex delicto, the action for the recovery of which would have been deemed instituted with the criminal-action (unless waived or reserved) and where acquittal based on a judicial declaration that the criminal acts charged do not exist would have extinguished the civil action.

• Rosario Textile Mills Corp. vs. Home Bankers Savings and Trust Company, 462 SCRA 88 (2005)

ROSARIO TEXTILE MILLS CORPORATION AND EDILBERTO YUJUICO, PETITIONERS, VS. HOME BANKERS SAVINGS AND TRUST COMPANY, RESPONDENT. G.R. NO. 137232, THIRD DIVISION, June 29, 2005, SANDOVAL-GUTIERREZ, J.

RTMC secured a credit line from the Respondent bank. RTMC availed of the credit line by making numerous drawdowns, each drawdown being covered by a separate promissory note and trust receipt. RTMC failed to pay its loans. The bank filed a complaint for sum of money against RTMC. Petitioners argued that under the trust receipt contracts between the parties, they merely held the goods described therein in trust for respondent Home Bankers Savings and Trust Company (the bank) which owns the same. Since the ownership of the goods remains with the bank, then it should bear the loss. With the destruction of the goods by fire, petitioners should have been relieved of any obligation to pay.

The Supreme Court already clarified in a number of cases that a trust receipt is a security agreement, pursuant to which a bank acquires a 'security interest' in the goods. Security Interest means a property interest in goods, documents, or instruments to secure performance of some obligation of the entrustee or of some third persons to the entruster and includes title, whether or not expressed to be absolute, whenever such title is in substance taken or retained for security only." Petitioners' insistence that the ownership of the raw materials remained with the bank is untenable. To consider the bank as the true owner from the inception of the transaction would be to disregard the loan feature thereof..."Thus, petitioners cannot be relieved of their obligation to pay their loan in favor of the bank.

FACTS

Rosario Textile Mills Corporation (RTMC) applied from Home Bankers Savings & Trust Co. for an Omnibus Credit Line for ₱10 million. The bank approved RTMC's credit line but for only ₱8 million. The bank notified RTMC of the grant of the said loan.

Yujuico signed a Surety Agreement in favor of the bank, in which he bound himself jointly and severally with RTMC for the payment of all RTMC's indebtedness to the bank from 1989 to 1990. RTMC availed of the credit line by making numerous drawdowns, each drawdown being covered by a separate promissory note and trust receipt. RTMC, represented by Yujuico, executed in favor of the bank a total of eleven (11) promissory notes.

Despite the lapse of the respective due dates under the promissory notes and notwithstanding the bank's demand letters, RTMC failed to pay its loans.

The bank filed a complaint for sum of money against RTMC and Yujuico before the Regional Trial Court, Br. 16, Manila.

RTMC and Yujuico contend that they should be absolved from liability. They claimed that although the grant of the credit line and the execution of the suretyship agreement are admitted, the bank gave assurance that the suretyship agreement was merely a formality under which Yujuico will not be personally liable. They argue that the importation of raw materials under the credit line was with a grant of option to them to turn-over to the bank the imported raw materials should these fail to meet their manufacturing requirements.

Dissatisfied, RTMC and Yujuico, herein petitioners, appealed to the Court of Appeals, contending that under the trust receipt contracts between the parties, they merely held the goods described therein in trust for respondent Home Bankers Savings and Trust Company (the bank) which owns the same. Since the ownership of the goods remains with the bank, then it should bear the loss. With the destruction of the goods by fire, petitioners should have been relieved of any obligation to pay.

The Court of Appeals, however, affirmed the trial court's judgment, holding that the bank is merely the holder of the security for its advance payments to petitioners; and that the goods they purchased, through the credit line extended by the bank, belong to them and hold said goods at their own risk.

ISSUE

Whether the Court of Appeals erred in holding that petitioners are not relieved of their obligation to pay their loan after they tried to tender the goods to the bank which refused to accept the same, and which goods were subsequently lost in a fire? (NO)

RULING

It is clear that the principal transaction between petitioner RTMC and the bank is a contract of loan. RTMC used the proceeds of this loan to purchase raw materials from a supplier abroad. In order to secure the payment of the loan, RTMC delivered the raw materials to the bank as collateral. Trust receipts were executed by the parties to evidence this security arrangement. Simply stated, the trust receipts were mere securities.

In Samo vs. People, we described a trust receipt as "a security transaction intended to aid in financing importers and retail dealers who do not have sufficient funds or resources to finance the importation or purchase of merchandise, and who may not be able to acquire credit except through utilization, as collateral, of the merchandise imported or purchased."

In Vintola vs. Insular Bank of Asia and America, we elucidated further that "a trust receipt, therefore, is a security agreement, pursuant to which a bank acquires a 'security interest' in the goods. It secures an indebtedness and there can be no such thing as security interest that secures no obligation." Section 3 (h) of the Trust Receipts Law (P.D. No. 115) defines a "security interest" as follows:

"(h) Security Interest means a property interest in goods, documents, or instruments to secure performance of some obligation of the entrustee or of some third persons to the entruster and includes title, whether or not expressed to be absolute, whenever such title is in substance taken or retained for security only."

Petitioners' insistence that the ownership of the raw materials remained with the bank is untenable. To consider the bank as the true owner from the inception of the transaction would be to disregard the loan feature thereof..."Thus, petitioners cannot be relieved of their obligation to pay their loan in favor of the bank.

c. The loan should be granted to finance acquisition of the goods under trust receipt. If loan is granted when entrustee already has ownership of the goods, transaction only a simple loan

Colinares vs. Court of Appeals, 339 SCRA 609 (2000)

MELVIN COLINARES AND LORDINO VELOSO, PETITIONERS, -VERSUS- HONORABLE COURT OF APPEALS, AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS. G.R. No. 90828, FIRST DIVISION, September 5, 2000, DAVIDE, JR., C.J.

A thorough examination of the facts obtaining in the case at bar reveals that the transaction intended by the parties was a simple loan, not a trust receipt agreement.

Petitioners received the merchandise from CM Builders Centre on 30 October 1979. On that day, ownership over the merchandise was already transferred to Petitioners who were to use the materials for their construction project. It was only a day later, 31 October 1979 that they went to the bank to apply for a loan to pay for the merchandise.

This situation belies what normally obtains in a pure trust receipt transaction where goods are owned by the bank and only released to the importer in trust subsequent to the grant of the loan. The bank acquires a "security interest" in the goods as holder of a security title for the advances it had made to the entrustee. To secure that the bank shall be paid, it takes full title to the goods at the very beginning and continues to hold that title as his indispensable security until the goods are sold and the vendee is called upon to pay for them; hence, the importer has never owned the goods and is not able to deliver possession. In a certain manner, trust receipts partake of the nature of a conditional sale where the importer becomes absolute owner of the imported merchandise as soon as he has paid its price.

The antecedent acts in a trust receipt transaction consist of the application and approval of the letter of credit, the making of the marginal deposit and the effective importation of goods through the efforts of the importer.

FACTS

In 1979 Melvin Colinares and Lordino Veloso (petitioners) were contracted for a consideration of ₱40,000 by the Carmelite Sisters of Cagayan de Oro City to renovate the latter's convent.

On 30 October 1979, Petitioners obtained materials from CM Builders Centre for the construction project. The following day, Petitioners applied for a commercial letter of credit with the Philippine Banking Corporation in favor of CM Builders Centre. PBC approved the letter of credit for ₱22,389.80 to cover the full invoice value of the goods. Petitioners signed a pro-forma trust receipt as security. The loan was due on 29 January 1980. On 31 October 1979, PBC debited ₱6,720 from Petitioners' marginal deposit as partial payment of the loan.

On 7 May 1980, PBC wrote to Petitioners demanding that the amount be paid within seven days from notice. Instead of complying with PBC's demand, Veloso confessed that they lost ₱19,195.83 in the Carmelite Monastery Project and requested for a grace period of until 15 June 1980 to settle the account. PBC sent a new demand letter to Petitioners on 16 October 1980 and informed them that their outstanding balance as of 17 November 1979 was ₱20,824.40 exclusive of attorney's fees of 25%.

On 2 December 1980, Petitioners proposed that the terms of payment of the loan be by installment. Pending approval of the proposal, Petitioners paid ₱1,000 to PBC on 4 December 1980, and thereafter ₱500 on 11 February 1981, 16 March 1981, and 20 April 1981. Concurrently with the separate demand for attorney's fees by PBC's legal counsel, PBC continued to demand payment of the balance.

In 1983, Petitioners were charged with the violation of P.D. No. 115 (Trust Receipts Law) in relation to Article 315 of the Revised Penal Code

During trial, petitioner Veloso insisted that the transaction was a "clean loan" as per verbal guarantee of Cayo Garcia Tuiza, PBC's former manager. He and petitioner Colinares signed the documents without reading the fine print, only learning of the trust receipt implication much later. When he brought this to the attention of PBC, Mr. Tuiza assured him that the trust receipt was a mere formality.

The trial court promulgated its decision convicting Petitioners of estafa for violating P.D. No. 115 in relation to Article 315 of the Revised Penal Code.

The trial court considered the transaction between PBC and Petitioners as a trust receipt transaction under Section 4, P.D. No. 115. It considered Petitioners' use of the goods in their Carmelite monastery project as an act of "disposing" as contemplated under Section 13, P.D. No. 115, and treated the charge invoice for goods issued by CM Builders Centre as a "document" within the meaning of Section 3 thereof. It concluded that the failure of Petitioners to turn over the amount they owed to PBC constituted estafa.

Petitioners appealed from the judgment to the Court of Appeals. The Court of Appeals modified the judgment of the trial court by increasing the penalty of imprisonment. It held that the documentary evidence of the prosecution prevails over Veloso's testimony, discredited Petitioners' claim that the documents they signed were in blank, and disbelieved that they were coerced into signing them.

Petitioners filed a Motion for New Trial/Reconsideration alleging that the "Disclosure Statement on Loan/Credit Transaction" (hereafter Disclosure Statement) signed by them and Tuiza was suppressed by PBC during the trial. That document would have proved that the transaction was

indeed a loan as it bears a 14% interest as opposed to the trust receipt which does not at all bear any interest.

The Court of Appeals denied the Motion for New Trial/Reconsideration because the alleged newly discovered evidence was actually forgotten evidence already in existence during the trial, and would not alter the result of the case. Hence, Petitioners filed with SC the petition in this case on 16 November 1989.

On 28 February 1990 Petitioners filed a Motion to Dismiss the case on the ground that they had already fully paid PBC the amount of ₱70,000 for the balance of the loan, including interest and other charges, as evidenced by the different receipts issued by PBC, and that the PBC executed an Affidavit of desistance. The Solicitor General opined that payment of the loan was akin to a voluntary surrender or plea of guilty which merely serves to mitigate Petitioners' culpability, but does not in any way extinguish their criminal liability. SC gave due course to the petition.

ISSUE

Whether or not the contract between the parties is covered by trust receipt? (NO)

RULING

The Trust Receipts Law, defines a trust receipt transaction as any transaction by and between a person referred to as the entruster, and another person referred to as the entrustee, whereby the entruster who owns or holds absolute title or security interest over certain specified goods, documents or instruments, releases the same to the possession of the entrustee upon the latter's execution and delivery to the entruster of a signed document called a "trust receipt" wherein the entrustee binds himself to hold the designated goods, documents or instruments with the obligation to turn over to the entruster the proceeds thereof to the extent of the amount owing to the entruster or as appears in the trust receipt or the goods, documents or instruments themselves if they are unsold or not otherwise disposed of, in accordance with the terms and conditions specified in the trust receipt.

There are two possible situations in a trust receipt transaction. The first is covered by the provision which refers to money received under the obligation involving the duty to deliver it **(entregarla)** to the owner of the merchandise sold. The second is covered by the provision which refers to merchandise received under the obligation to "return" it **(devolvera)** to the owner. Failure of the entrustee to turn over the proceeds of the sale of the goods, covered by the trust receipt to the entruster or to return said goods if they were not disposed of in accordance with the terms of the trust receipt shall be punishable as estafa under Article 315 (1) of the Revised Penal Code, without need of proving intent to defraud.

A thorough examination of the facts obtaining in the case at bar reveals that the transaction intended by the parties was a simple loan, not a trust receipt agreement.

Petitioners received the merchandise from CM Builders Centre on 30 October 1979. On that day, ownership over the merchandise was already transferred to Petitioners who were to use the materials for their construction project. It was only a day later, 31 October 1979, that they went to the bank to apply for a loan to pay for the merchandise.

This situation belies what normally obtains in a pure trust receipt transaction where goods are owned by the bank and only released to the importer in trust subsequent to the grant of the loan. The bank acquires a "security interest" in the goods as holder of a security title for the advances it had made to the entrustee. To secure that the bank shall be paid, it takes full title to the goods at the very beginning and continues to hold that title as his indispensable security until the goods are sold and the vendee is called upon to pay for them; hence, the importer has never owned the goods and is not able to deliver possession. In a certain manner, trust receipts partake of the nature of a conditional sale where the importer becomes absolute owner of the imported merchandise as soon as he has paid its price.

The antecedent acts in a trust receipt transaction consist of the application and approval of the letter of credit, the making of the marginal deposit and the effective importation of goods through the efforts of the importer.

PBC attempted to cover up the true delivery date of the merchandise, yet the trial court took notice even though it failed to attach any significance to such fact in the judgment. Despite the Court of Appeals' contrary view that the goods were delivered to Petitioners previous to the execution of the letter of credit and trust receipt, we find that the records of the case speak volubly and this fact remains uncontroverted.

Petitioner Veloso's claim that they were made to believe that the transaction was a loan was also not denied by PBC. PBC could have presented its former bank manager, Cayo Garcia Tuiza, who contracted with Petitioners, to refute Veloso's testimony, yet it only presented credit investigator Grego Mutia. Nowhere from Mutia's testimony can it be gleaned that PBC represented to Petitioners that the transaction they were entering into was not a pure loan but had trust receipt implications.

The Trust Receipts Law does not seek to enforce payment of the loan, rather it punishes the dishonesty and abuse of confidence in the handling of money or goods to the prejudice of another regardless of whether the latter is the owner. Here, it is crystal clear that on the part of Petitioners there was neither dishonesty nor abuse of confidence in the handling of money to the prejudice of PBC. Petitioners continually endeavored to meet their obligations, as shown by several receipts issued by PBC acknowledging payment of the loan.

Also noteworthy is the fact that Petitioners are not importers acquiring the goods for re-sale, contrary to the express provision embodied in the trust receipt. They are contractors who obtained the fungible goods for their construction project. At no time did title over the construction materials pass to the bank, but directly to the Petitioners from CM Builders Centre.

The practice of banks of making borrowers sign trust receipts to facilitate collection of loans and place them under the threats of criminal prosecution should they be unable to pay it may be unjust and inequitable, if not reprehensible. Such agreements are contracts of adhesion which borrowers have no option but to sign lest their loan be disapproved. The resort to this scheme leaves poor and hapless borrowers at the mercy of banks, and is prone to misinterpretation, as had happened in this case. Eventually, PBC showed its true colors and admitted that it was only after collection of the money, as manifested by its Affidavit of Desistance.

 Consolidated Bank & Trust Corp. vs. Court of Appeals, 356 SCRA 671 (2001)

THE COSOLIDATED BANK AND TRUST CORPORATION (SOLIDBANK), PETITIONER -VERSUS THE COURT OF APPEALS, CONTINENTAL CEMENT CORPORATION, GREGORY T. LIM AND SPOUSE, RESPONDENTS. G.R. No. 114286, FIRST DIVISION, April 19, 2001, YNARES-SANTIAGO, J.

The recent case of Colinares v. Court of Appeals appears to be foursquare with the facts obtaining in the case at bar. There, we found that inasmuch as the debtor received the goods subject of the trust receipt before the trust receipt itself was entered into, the transaction in question was a simple loan and not a trust receipt agreement. Prior to the date of execution of the trust receipt, ownership over the goods was already transferred to the debtor. This situation is inconsistent with what normally obtains in a pure trust receipt transaction, wherein the goods belong in ownership to the bank and are only released to the importer in trust after the loan is granted.

In the case at bar, as in Colinares, the delivery to respondent Corporation of the goods subject of the trust receipt occurred long before the trust receipt itself was executed. More specifically, delivery of the bunker fuel oil to respondent Corporation's Bulacan plant commenced on July 7, 1982 and was completed by July 19, 1982.13Further, the oil was used up by respondent Corporation in its normal operations by August, 1982.14 On the other hand, the subject trust receipt was only executed nearly two months after full delivery of the oil was made to respondent Corporation, or on September 2, 1982.

FACTS

Continental Cement Corporation (hereinafter, respondent Corporation) and Gregory T. Lim (hereinafter, respondent Lim) obtained from petitioner Consolidated Bank and Trust Corporation Letter of Credit No. DOM-23277 in the amount of P1,068,150.00. On the same date, respondent Corporation paid a marginal deposit of P320,445.00 to petitioner. The letter of credit was used to purchase around five hundred thousand liters of bunker fuel oil from Petrophil Corporation, which the latter delivered directly to respondent Corporation in its Bulacan plant. In relation to the same transaction, a trust receipt for the amount of P1,001,520.93 was executed by respondent Corporation, with respondent Lim as signatory.

Claiming that respondents failed to turn over the goods covered by the trust receipt or the proceeds thereof, petitioner filed a complaint for sum of money with application for preliminary attachment before the Regional Trial Court of Manila. In answer to the complaint, respondents averred that the transaction between them was a simple loan and not a trust receipt transaction, and that the amount claimed by petitioner did not take into account payments already made by them. Respondent Lim also denied any personal liability in the subject transactions. In a Supplemental Answer, respondents prayed for reimbursement of alleged overpayment to petitioner of the amount of P490,228.90.

At the pre-trial conference, the parties agreed on the following issues:1) Whether or not the transaction involved is a loan transaction or a trust receipt transaction;2) Whether or not the interest rates charged against the defendants by the plaintiff are proper under the letter of credit,

trust receipt and under existing rules or regulations of the Central Bank;3) Whether or not the plaintiff properly applied the previous payment of P300,456.27 by the defendant corporation on July 13, 1982 as payment for the latters account; and4) Whether or not the defendants are personally liable under the transaction sued for in this case.

The dismissed the Complaint and ordered petitioner to pay respondents

The partially modified the Decision by deleting the award of attorney's fees in favor of respondents and, instead, ordering respondent Corporation to pay petitioner P37, 469.22 as and for attorney's fees and litigation expenses.

ISSUE

Whether or not the agreement between the parties is a trust receipt transaction? (NO)

RULING

Petitioner has also failed to convince us that its transaction with respondent Corporation is really a trust receipt transaction instead of merely a simple loan, as found by the lower court and the Court of Appeals.

The recent case of Colinares v. Court of Appeals appears to be foursquare with the facts obtaining in the case at bar. There, we found that inasmuch as the debtor received the goods subject of the trust receipt before the trust receipt itself was entered into, the transaction in question was a simple loan and not a trust receipt agreement. Prior to the date of execution of the trust receipt, ownership over the goods was already transferred to the debtor. This situation is inconsistent with what normally obtains in a pure trust receipt transaction, wherein the goods belong in ownership to the bank and are only released to the importer in trust after the loan is granted.

In the case at bar, as in Colinares, the delivery to respondent Corporation of the goods subject of the trust receipt occurred long before the trust receipt itself was executed. More specifically, delivery of the bunker fuel oil to respondent Corporation's Bulacan plant commenced on July 7, 1982 and was completed by July 19, 1982.13Further, the oil was used up by respondent Corporation in its normal operations by August, 1982.14 On the other hand, the subject trust receipt was only executed nearly two months after full delivery of the oil was made to respondent Corporation, or on September 2, 1982.

The danger in characterizing a simple loan as a trust receipt transaction was explained in Colinares, to wit:

The Trust Receipts Law does not seek to enforce payment of the loan, rather it punishes the dishonesty and abuse of confidence in the handling of money or goods to the prejudice of another regardless of whether the latter is the owner. Here, it is crystal clear that on the part of Petitioners there was neither dishonesty nor abuse of confidence in the handling of money to the prejudice of PBC. Petitioners continually endeavored to meet their obligations, as shown by several receipts issued by PBC acknowledging payment of the loan.

The Information charges Petitioners with intent to defraud and misappropriating the money for their personal use. The mala prohibita nature of the alleged offense notwithstanding, intent as a state of mind was not proved to be present in Petitioners' situation. Petitioners employed no artifice in dealing with PBC and never did they evade payment of their obligation nor attempt to abscond. Instead, Petitioners sought favorable terms precisely to meet their obligation.

Also noteworthy is the fact that Petitioners are not importers acquiring the goods for re-sale, contrary to the express provision embodied in the trust receipt. They are contractors who obtained the fungible goods for their construction project. At no time did title over the construction materials pass to the bank, but directly to the Petitioners from CM Builders Centre. This impresses upon the trust receipt in question vagueness and ambiguity, which should not be the basis for criminal prosecution in the event of violation of its provisions.

The practice of banks of making borrowers sign trust receipts to facilitate collection of loans and place them under the threats of criminal prosecution should they be unable to pay it may be unjust and inequitable if not reprehensible. Such agreements are contracts of adhesion which borrowers have no option but to sign lest their loan be disapproved. The resort to this scheme leaves poor and hapless borrowers at the mercy of banks, and is prone to misinterpretation, as had happened in this case. Eventually, PBC showed its true colors and admitted that it was only after collection of the money, as manifested by its Affidavit of Desistance.

Similarly, respondent Corporation cannot be said to have been dishonest in its dealings with petitioner. Neither has it been shown that it has evaded payment of its obligations. Indeed, it continually endeavored to meet the same, as shown by the various receipts issued by petitioner acknowledging payment on the loan. Certainly, the payment of the sum of P1, 832,158.38 on a loan with a principal amount of only P681, 075.93 negates any badge of dishonesty, abuse of confidence or mishandling of funds on the part of respondent Corporation, which are the gravamen of a trust receipt violation. Furthermore, Respondent Corporation is not an importer, which acquired the bunker fuel oil for re-sale; it needed the oil for its own operations. More importantly, at no time did title over the oil pass to petitioner, but directly to respondent Corporation to which the oil was directly delivered long before the trust receipt was executed. The fact that ownership of the oil belonged to Respondent Corporation, through its President, Gregory Lim, was acknowledged by petitioner's own account officer on the witness stand.

By all indications, then, it is apparent that there was really no trust receipt transaction that took place. Evidently, Respondent Corporation was required to sign the trust receipt simply to facilitate collection by petitioner of the loan it had extended to the former.

d. The goods must be intended for sale or resale, otherwise, it is a simple loan

• Anthony L. Ng vs. People of the Philippines, G.R. No. 173905, April 23, 2010;

ANTHONY L. NG, PETITIONER, -VERSUS- PEOPLE OF THE PHILIPPINES, RESPONDENT. G.R. No. 173905, THIRD DIVISION, April 23, 2010, VELASCO, JR.

A thorough examination of the facts obtaining in the instant case reveals that the transaction between petitioner and Asiatrust is not a trust receipt transaction but one of simple loan. It must be remembered that petitioner was transparent to Asiatrust from the very beginning that the subject goods were not being held for sale but were to be used for the fabrication of steel communication towers in accordance with his contracts with Islacom, Smart, and Infocom. In these contracts, he was commissioned to build, out of the materials received, steel communication towers, not to sell them. Following the precept of the law, such transactions affect situations wherein the entruster, who owns or holds absolute title or security interests over specified goods, documents or instruments, releases the subject goods to the possession of the entrustee. The release of such goods to the entrustee is conditioned upon his execution and delivery to the entruster of a trust receipt wherein the former binds himself to hold the specific goods, documents or instruments in trust for the entruster and to sell or otherwise dispose of the goods, documents or instruments with the obligation to turn over to the entruster the proceeds to the extent of the amount owing to the entruster or the goods, documents or instruments themselves if they are unsold. Similarly, we held in State Investment House v. CA, et al. that the entruster is entitled "only to the proceeds derived from the sale of goods released under a trust receipt to the entrustee."

Considering that the goods in this case were never intended for sale but for use in the fabrication of steel communication towers, the trial court erred in ruling that the agreement is a trust receipt transaction.

FACTS

In 1997, petitioner Anthony Ng, then engaged in the business of building and fabricating telecommunication towers under the trade name "Capitol Blacksmith and Builders," applied for a credit line of PhP 3,000,000 with Asiatrust Development Bank, Inc. (Asiatrust). In support of Asiatrust's credit investigation, petitioner voluntarily submitted the following documents: (1) the contracts he had with Islacom, Smart, and Infocom; (2) the list of projects wherein he was commissioned by the said telecommunication companies to build several steel towers; and (3) the collectible amounts he has with the said companies. Asiatrust approved petitioner's loan application.

After petitioner received the goods, consisting of chemicals and metal plates from his suppliers, he utilized them to fabricate the communication towers ordered from him by his clients which were installed in three project sites, namely: Isabel, Leyte; Panabo, Davao; and Tongonan.

As petitioner realized difficulty in collecting from his client Islacom, he failed to pay his loan to Asiatrust. Asiatrust then conducted a surprise ocular inspection of petitioner's business through Villarva S. Linga, Asiatrust's representative appraiser. Linga thereafter reported to Asiatrust that he found that approximately 97% of the subject goods of the Trust Receipts were "sold-out and that only 3 % of the goods remained." Asiatrust then endorsed petitioner's account to its Account Management Division for the possible restructuring of his loan. The parties thereafter held a series of conferences to work out the problem and to determine a way for petitioner to pay his debts. However, efforts towards a settlement failed to be reached.

On March 16, 1999, Remedial Account Officer Ma. Girlie C. Bernardez filed a Complaint-Affidavit before the Office of the City Prosecutor of Quezon City. Consequently, an Information for Estafa, as defined and penalized under Art. 315, par. 1(b) of the RPC in relation to Sec. 3, PD 115 or the Trust Receipts Law, was filed with the RTC. Upon arraignment, petitioner pleaded not guilty to the charges. Thereafter, a full-blown trial ensued.

During the pendency of the abovementioned case, conferences between petitioner and Asiatrust's Remedial Account Officer, Daniel Yap, were held. Afterward, a Compromise Agreement was drafted by Asiatrust. One of the requirements of the Compromise Agreement was for petitioner to issue six (6) postdated checks. Petitioner, in good faith, tried to comply by issuing two or three checks, which were deposited and made good. The remaining checks, however, were not deposited as the Compromise Agreement did not push through.

After trial on the merits, the RTC, on May 29, 2001, rendered a Decision, finding petitioner guilty of the crime of Estafa in relation to Section 3 of Presidential Decree 115, otherwise known as the Trust Receipts Law.

In rendering its Decision, the trial court held that petitioner could not simply argue that the contracts he had entered into with Asiatrust were void as they were contracts of adhesion. It reasoned that petitioner is presumed to have read and understood and is, therefore, bound by the provisions of the Letters of Credit and Trust Receipts. The trial court declared that petitioner, being the entrustee stated in the Trust Receipts issued by Asiatrust, is thus obliged to hold the goods in trust for the entruster and shall dispose of them strictly in accordance with the terms and conditions of the trust receipts; otherwise, he is obliged to return the goods in the event of non-sale or upon demand of the entruster, failing thus, he evidently violated the Trust Receipts Law. Petitioner then elevated the case to the CA. The CA rendered a Decision affirming that of the RTC

Petitioner then elevated the case to the CA. The CA rendered a Decision affirming that of the RTC and held that it was undisputed that petitioner entered into a trust receipt agreement with Asiatrust and he failed to pay the bank his obligation when it became due. According to the CA, the fact that petitioner acted without malice or fraud in entering into the transactions has no bearing, since the offense is punished as malum prohibitum regardless of the existence of intent or malice; the mere failure to deliver the proceeds of the sale or the goods if not sold constitutes the criminal offense.

After the receipt of the CA Decision, petitioner moved for its reconsideration, which was denied by the CA in its Resolution dated July 25, 2006. Thereafter, petitioner filed this Petition for Review on Certiorari.

ISSUE

1. Whether or not there is a Trust Receipt Transaction between the parties? (NO)

RULING

1.

A thorough examination of the facts obtaining in the instant case reveals that the transaction between petitioner and Asiatrust is not a trust receipt transaction but one of simple loan. **PD 115 DOES NOT APPLY.**

It must be remembered that petitioner was transparent to Asiatrust from the very beginning that the subject goods were not being held for sale but were to be used for the fabrication of steel communication towers in accordance with his contracts with Islacom, Smart, and Infocom. In these contracts, he was commissioned to build, out of the materials received, steel communication towers, not to sell them.

The true nature of a trust receipt transaction can be found in the "whereas" clause of PD 115 which states that a trust receipt is to be utilized "as a convenient business device to assist importers and merchants solve their financing problems." Obviously, the State, in enacting the law, sought to find a way to assist importers and merchants in their financing in order to encourage commerce in the Philippines.

Following the precept of the law, such transactions affect situations wherein the entruster, who owns or holds absolute title or security interests over specified goods, documents or instruments, releases the subject goods to the possession of the entrustee. The release of such goods to the entrustee is conditioned upon his execution and delivery to the entruster of a trust receipt wherein the former binds himself to hold the specific goods, documents or instruments in trust for the entruster and to sell or otherwise dispose of the goods, documents or instruments with the obligation to turn over to the entruster the proceeds to the extent of the amount owing to the entruster or the goods, documents or instruments themselves if they are unsold. Similarly, we held in State Investment House v. CA, et al. that the entruster is entitled "only to the proceeds derived from the sale of goods released under a trust receipt to the entrustee."

Considering that the goods in this case were never intended for sale but for use in the fabrication of steel communication towers, the trial court erred in ruling that the agreement is a trust receipt transaction.

In applying the provisions of PD 115, the trial court relied on the Memorandum of Asiatrust's appraiser, Linga, who stated that the goods have been sold by petitioner and that only 3% of the goods remained in the warehouse where it was previously stored. But for reasons known only to the trial court, the latter did not give weight to the testimony of Linga when he testified that he merely presumed that the goods were sold. The Memorandum of Linga, which was based only on his presumption and not any actual personal knowledge, should not have been used by the trial court to prove that the goods have in fact been sold. At the very least, it could only show that the goods were not in the warehouse.

Having established the inapplicability of PD 115, this Court finds that petitioner's liability is only limited to the satisfaction of his obligation from the loan. The real intent of the parties was simply to enter into a simple loan agreement.

• Land Bank of the Philippines vs. Perez, G.R. No. 166884, June 13, 2012;

LAND BANK OF THE PHILIPPINES, PETITIONER, -VERSUS- LAMBERTO C. PEREZ, NESTOR C. KUN, MA. ESTELITA P. ANGELES-PANLILIO, AND NAPOLEON O. GARCIA, RESPONDENTS. G.R. No. 166884, SECOND DIVISION, June 13, 2012, BRION, J.

In all trust receipt transactions, both obligations on the part of the trustee exist in the alternative the return of the proceeds of the sale or the return or recovery of the goods, whether raw or processed. When both parties enter into an agreement knowing that the return of the goods subject of the trust receipt is not possible even without any fault on the part of the trustee, it is not a trust receipt transaction penalized under Section 13 of P.D. 115; the only obligation actually agreed upon by the parties would be the return of the proceeds of the sale transaction. This transaction becomes a mere loan, where the borrower is obligated to pay the bank the amount spent for the purchase of the goods. We note in this regard that at the onset of these transactions, LBP knew that ACDC was in the construction business and that the materials that it sought to buy under the letters of credit were to be used for the following projects: the Metro Rail Transit Project and the Clark Centennial Exposition Project. LBP had in fact authorized the delivery of the materials on the construction sites for these projects, as seen in the letters of credit it attached to its complaint. Clearly, they were aware of the fact that there was no way they could recover the buildings or constructions for which the materials subject of the alleged trust receipts had been used.

The fact that LBP had knowingly authorized the delivery of construction materials to a construction site of two government projects, as well as unspecified construction sites, repudiates the idea that LBP intended to be the owner of those construction materials.

Thus, in concluding that the transaction was a loan and not a trust receipt, we noted in Colinares that the industry or line of work that the borrowers were engaged in was construction.

Based on these premises, we cannot consider the agreements between the parties in this case to be trust receipt transactions because (1) from the start, the parties were aware that ACDC could not possibly be obligated to reconvey to LBP the materials or the end product for which they were used; and (2) from the moment the materials were used for the government projects, they became public, not LBPs, property.

FACTS

Petitioner Land Bank of the Philippines (LBP) is a government financial institution and the official depository of the Philippines. Respondents are the officers and representatives of Asian Construction and Development Corporation (ACDC), a corporation incorporated under Philippine law and engaged in the construction business.

On June 7, 1999, LBP filed a complaint for estafa or violation of Article 315, paragraph 1(b) of the Revised Penal Code, in relation to P.D. 115, against the respondents. In the affidavit-complaint, it stated that LBP extended a credit accommodation to ACDC through the execution of an Omnibus Credit Line Agreement (Agreement) between LBP and ACDC. In various instances, ACDC used the Letters of Credit/Trust Receipts Facility of the Agreement to buy construction materials. The trust

receipts matured, but ACDC failed to return to LBP the proceeds of the construction projects or the construction materials subject of the trust receipts. When ACDC failed to comply with the demand letter, LBP filed the affidavit-complaint.

On September 30, 1999, the complaint was dismissed. The resolution pointed out that the evidence presented by LBP failed to state the date when the goods described in the letters of credit were actually released to the possession of the respondents. Section 4 of P.D. 115 requires that the goods covered by trust receipts be released to the possession of the entrustee after the latters execution and delivery to the entruster of a signed trust receipt.

On appeal, the Secretary of Justice reversed the Resolution of the Assistant City Prosecutor. The Secretary of Justice pointed out that there was no question that the goods covered by the trust receipts were received by ACDC. He likewise adopted LBPs argument that while the subjects of the trust receipts were not mentioned in the trust receipts, they were listed in the letters of credit referred to in the trust receipts.

Subsequently, the respondents filed a petition for review before the Court of Appeals. The Court of Appeals applying the Colinares doctrine ruled that this case did not involve a trust receipt transaction, but a mere loan.

LBP now files this petition for review on certiorari.

Before this Court is a petition for review on certiorari, under Rule 45 of the Rules of Court, assailing the decision dated January 20, 2005 of the Court of Appeals in CA-G.R. SP No. 76588. In the assailed decision, the Court of Appeals dismissed the criminal complaint for estafa against the respondents, Lamberto C. Perez, Nestor C. Kun, Ma. Estelita P. Angeles-Panlilio and Napoleon Garcia, who allegedly violated Article 315, paragraph 1(b) of the Revised Penal Code, in relation with Section 13 of Presidential Decree No. (P.D.) 115 the Trust Receipts Law.

ISSUE

Whether or not the disputed transactions are covered by trust receipts? (NO)

RULING

The disputed transactions are not trust receipts.

Section 4 of P.D. 115 defines a trust receipt transaction in this manner:

Section 4. What constitutes a trust receipt transaction. A trust receipt transaction, within the meaning of this Decree, is any transaction by and between a person referred to in this Decree as the entruster, and another person referred to in this Decree as entrustee, whereby the entruster, who owns or holds absolute title or security interests over certain specified goods, documents or instruments, releases the same to the possession of the entrustee upon the latter's execution and delivery to the entruster of a signed document called a "trust receipt" wherein the entrustee binds himself to hold the designated goods, documents or instruments in trust for the entruster and to sell or otherwise dispose of the goods, documents or instruments

with the obligation to turn over to the entruster the proceeds thereof to the extent of the amount owing to the entruster or as appears in the trust receipt or the goods, documents or instruments themselves if they are unsold or not otherwise disposed of, in accordance with the terms and conditions specified in the trust receipt, or for other purposes substantially equivalent to any of the following:

1. In the case of goods or documents, (a) to sell the goods or procure their sale; or (b) to manufacture or process the goods with the purpose of ultimate sale: Provided, That, in the case of goods delivered under trust receipt for the purpose of manufacturing or processing before its ultimate sale, the entruster shall retain its title over the goods whether in its original or processed form until the entrustee has complied fully with his obligation under the trust receipt; or (c) to load, unload, ship or transship or otherwise deal with them in a manner preliminary or necessary to their sale.

There are two obligations in a trust receipt transaction. The first is covered by the provision that refers to money under the obligation to deliver it to the owner of the merchandise sold. The second is covered by the provision referring to merchandise received under the obligation to return it to the owner. Thus, under the Trust Receipts Law, intent to defraud is presumed when (1) the entrustee fails to turn over the proceeds of the sale of goods covered by the trust receipt to the entruster; or when the entrustee fails to return the goods under trust, if they are not disposed of in accordance with the terms of the trust receipts.

In all trust receipt transactions, both obligations on the part of the trustee exist in the alternative the return of the proceeds of the sale or the return or recovery of the goods, whether raw or processed. When both parties enter into an agreement knowing that the return of the goods subject of the trust receipt is not possible even without any fault on the part of the trustee, it is not a trust receipt transaction penalized under Section 13 of P.D. 115; the only obligation actually agreed upon by the parties would be the return of the proceeds of the sale transaction. This transaction becomes a mere loan, where the borrower is obligated to pay the bank the amount spent for the purchase of the goods.

We note in this regard that at the onset of these transactions, LBP knew that ACDC was in the construction business and that the materials that it sought to buy under the letters of credit were to be used for the following projects: the Metro Rail Transit Project and the Clark Centennial Exposition Project. LBP had in fact authorized the delivery of the materials on the construction sites for these projects, as seen in the letters of credit it attached to its complaint. Clearly, they were aware of the fact that there was no way they could recover the buildings or constructions for which the materials subject of the alleged trust receipts had been used.

The fact that LBP had knowingly authorized the delivery of construction materials to a construction site of two government projects, as well as unspecified construction sites, repudiates the idea that LBP intended to be the owner of those construction materials.

Thus, in concluding that the transaction was a loan and not a trust receipt, we noted in Colinares that the industry or line of work that the borrowers were engaged in was construction.

Based on these premises, we cannot consider the agreements between the parties in this case to be trust receipt transactions because (1) from the start, the parties were aware that ACDC could not possibly be obligated to reconvey to LBP the materials or the end product for which they were used; and (2) from the moment the materials were used for the government projects, they became public, not LBPs, property.

Since these transactions are not trust receipts, an action for estafa should not be brought against the respondents, who are liable only for a loan.

• Hur Tin Yang vs. People of the Philippines, G.R. No. 195117, August 14, 2013

HUR TIN YANG, PETITIONER, -VERSUS- PEOPLE OF THE PHILIPPINES, RESPONDENT. G.R. No. 195117, THIRD DIVISION, August 14, 2013, VELASCO JR., J.

In this case, the dealing between petitioner and Metrobank was not a trust receipt transaction but one of simple loan. Petitioner's admission that he signed the trust receipts on behalf of Supermax, which failed to pay the loan or turn over the proceeds of the sale or the goods to Metrobank upon demand does not conclusively prove that the transaction was, indeed, a trust receipts transaction. In contrast to the nomenclature of the transaction, the parties really intended a contract of loan.

Simply stated, a trust receipt transaction is one where the entrustee has the obligation to deliver to the entruster the price of the sale, or if the merchandise is not sold, to return the merchandise to the entruster. There are, therefore, two obligations in a trust receipt transaction: the first refers to money received under the obligation involving the duty to turn it over (entregarla) to the owner of the merchandise sold, while the second refers to the merchandise received under the obligation to "return" it (devolvera) to the owner. A violation of any of these undertakings constitutes Estafa defined under Art. 315, par. 1(b) of the RPC, as provided in Sec. 13 of PD 115. Nonetheless, when both parties enter into an agreement knowing fully well that the return of the goods subject of the trust receipt is not possible even without any fault on the part of the trustee, it is not a trust receipt transaction penalized under Sec. 13 of PD 115 in relation to Art. 315, par. 1(b) of the RPC, as the only obligation actually agreed upon by the parties would be the return of the proceeds of the sale transaction. This transaction becomes a mere loan, where the borrower is obligated to pay the bank the amount spent for the purchase of the goods.

Considering that the goods in this case were never intended for sale but for use in the fabrication of steel communication towers, the trial court erred in ruling that the agreement is a trust receipt transaction.

FACTS

On various occasions in April, May, July, August, September, October and November, Metrobank extended several commercial letters of credits (LC) to Supermax, a corporation engaged in construction business. These LCs will be used to pay for the delivery of construction materials which will be used by Supermax in its business. Metrobank, required herein petitioner, as the vice president of the company to sign 24 Trust Receipts. These Trust receipts will serve as security for

the construction materials and to hold the materials or the proceeds of the sales in trust for Metrobank to the extent of the amount stated in the trust receipts.

The 24 Trust Receipts fell due however Supermax failed to pay or deliver the goods or proceeds to Metrobank. Metrobank sent demand letters but instead of complying, it requested for the restructuring of the loan which was denied by the Metrobank. After the denial, Metrobank sent another letter of demand which was unheeded. This prompted the bank to file a complaint against the petitioner. On his defense, petitioner said that these trust receipts are made as an additional security for the loans extended for the purchase of materials. He also claimed that Metrobank knew all along that the said materials were not intended for resale but for personal use of Supermax.

Trial Court found the petitioner guilty of Estafa under the Revised Penal Code. An appeal was made by the Petitioner but the Court of Appeals affirmed the decision of the trial court. Petitioner filed a Motion for Reconsideration, but it was denied in a Resolution dated December 20, 2010. Not satisfied, petitioner filed a petition for review under Rule 45 of the Rules of Court. The Office of the Solicitor General (OSG) filed its Comment dated November 28, 2011, stressing that the pieces of evidence adduced from the testimony and documents submitted before the trial court are sufficient to establish the guilt of petitioner. OSG dismissed the petition.

ISSUE

Whether or not the dealing between the parties in this case is covered by Trust Receipt Law which makes the Petitioner liable for Estafa under Art.315, par. 1(b) of the RPC in relation to PD 115? (NO)

RULING

In the instant case, the factual findings of the trial and appellate courts reveal that the dealing between petitioner and Metrobank was not a trust receipt transaction but one of simple loan. Petitioner's admission that he signed the trust receipts on behalf of Supermax, which failed to pay the loan or turn over the proceeds of the sale or the goods to Metrobank upon demand does not conclusively prove that the transaction was, indeed, a trust receipts transaction. In contrast to the nomenclature of the transaction, the parties really intended a contract of loan.

The petitioner was charged with Estafa committed in what is called, under PD 115, a "trust receipt transaction," which is defined as:

Section 4. What constitutes a trust receipts transaction. A trust receipt transaction, within the meaning of this Decree, is any transaction by and between a person referred to in this Decree as the entruster, and another person referred to in this Decree as entrustee, whereby the entruster, who owns or holds absolute title or security interests over certain specified goods, documents or instruments, releases the same to the possession of the entrustee upon the latter's execution and delivery to the entruster of a signed document called a "trust receipt" wherein the entrustee binds himself to hold the designated goods, documents or instruments in trust for the entruster and to sell or otherwise dispose of the goods, documents or instruments with the obligation to turn over to the entruster the proceeds thereof to the extent of the amount owing to the entruster or as appears in the trust receipt or the goods, documents or

instruments themselves if they are unsold or not otherwise disposed of, in accordance with the terms and conditions specified in the trust receipt, or for other purposes substantially equivalent to any of the following:

1. In the case of goods or documents: (a) to sell the goods or procure their sale; or (b) to manufacture or process the goods with the purpose of ultimate sale: Provided, That, in the case of goods delivered under trust receipt for the purpose of manufacturing or processing before its ultimate sale, the entruster shall retain its title over the goods whether in its original or processed form until the entrustee has complied full with his obligation under the trust receipt; or (c) to load, unload, ship or transship or otherwise deal with them in a manner preliminary or necessary to their sale; or

2. In the case of instruments: (a) to sell or procure their sale or exchange; or (b) to deliver them to a principal; or (c) to effect the consummation of some transactions involving delivery to a depository or register; or (d) to effect their presentation, collection or renewal.

Simply stated, a trust receipt transaction is one where the entrustee has the obligation to deliver to the entruster the price of the sale, or if the merchandise is not sold, to return the merchandise to the entruster. There are, therefore, two obligations in a trust receipt transaction: the first refers to money received under the obligation involving the duty to turn it over (entregarla) to the owner of the merchandise sold, while the second refers to the merchandise received under the obligation to "return" it (devolvera) to the owner. A violation of any of these undertakings constitutes Estafa defined under Art. 315, par. 1(b) of the RPC, as provided in Sec. 13 of PD 115, viz:

Section 13. Penalty Clause. The failure of an entrustee to turn over the proceeds of the sale of the goods, documents or instruments covered by a trust receipt to the extent of the amount owing to the entruster or as appears in the trust receipt or to return said goods, documents or instruments if they were not sold or disposed of in accordance with the terms of the trust receipt shall constitute the crime of estafa, punishable under the provisions of Article Three hundred fifteen, paragraph one (b) of Act Numbered Three thousand eight hundred and fifteen, as amended, otherwise known as the Revised Penal Code.

Nonetheless, when both parties enter into an agreement knowing fully well that the return of the goods subject of the trust receipt is not possible even without any fault on the part of the trustee, it is not a trust receipt transaction penalized under Sec. 13 of PD 115 in relation to Art. 315, par. 1(b) of the RPC, as the only obligation actually agreed upon by the parties would be the return of the proceeds of the sale transaction. This transaction becomes a mere loan, where the borrower is obligated to pay the bank the amount spent for the purchase of the goods.

Considering that the goods in this case were never intended for sale but for use in the fabrication of steel communication towers, the trial court erred in ruling that the agreement is a trust receipt transaction.

In concluding that the transaction was a loan and not a trust receipt, we noted in Colinares that the industry or line of work that the borrowers were engaged in was construction. We pointed out that the borrowers were not importers acquiring goods for resale. Indeed, goods sold in retail are often within the custody or control of the trustee until they are purchased. In the case of materials used in the manufacture of finished products, these finished products if not the raw materials or their

components similarly remain in the possession of the trustee until they are sold. But the goods and the materials that are used for a construction project are often placed under the control and custody of the clients employing the contractor, who can only be compelled to return the materials if they fail to pay the contractor and often only after the requisite legal proceedings. The contractor's difficulty and uncertainty in claiming these materials (or the buildings and structures which they become part of), as soon as the bank demands them, disqualify them from being covered by trust receipt agreements.

The Court's ruling in Colinares v. Court of Appeals is very apt, thus:

The practice of banks of making borrowers sign trust receipts to facilitate collection of loans and place them under the threats of criminal prosecution should they be unable to pay it may be unjust and inequitable, if not reprehensible. Such agreements are contracts of adhesion which borrowers have no option but to sign lest their loan be disapproved. The resort to this scheme leaves poor and hapless borrowers at the mercy of banks and is prone to misinterpretation x x x.

Unfortunately, what happened in Colinares is exactly the situation in the instant case. This reprehensible bank practice described in Colinares should be stopped and discouraged. For this Court to give life to the constitutional provision of non-imprisonment for nonpayment of debts, it is imperative that petitioner be acquitted of the crime of Estafa under Art. 315, par. 1 (b) of the RPC, in relation to PD 115.

e. No trust receipt, notwithstanding the label, if goods offered as security for a loan accommodation are goods sold to the debtor

• Sps. Dela Cruz vs. Dela Cruz, GR No. 158649, February 18, 2013

SPOUSES QUIRINO V. DELA CRUZ AND GLORIA DELA CRUZ, PETITIONERS, -VERSUS-PLANTERS PRODUCTS, INC., RESPONDENTS. G.R. No. 158649, FIRST DIVISION, February 18, 2013, BERSAMIN, J.

As earlier mentioned, Gloria signed the application for credit facilities on March 23, 1978, indicating that a trust receipt would serve as collateral for the credit line. On August 4, 1978, Gloria, as "dealer," signed together with Quirino the list of their assets having a total value of P260,000.00 (consisting of a residential house and lot, 10-hectare agricultural lands in Aliaga and Talavera, and two residential lots) that they tendered to PPI "to support our credit application in connection with our participation to your Special Credit Scheme." Gloria further signed the Trust Receipt/SCS documents defining her obligations under the agreement, and also the invoices pursuant to the agreement with PPI, indicating her having received PPI products on various dates.

It was shown in this case that there are established circumstances comprised by the contemporaneous and subsequent acts of Gloria and Quirino that manifested their intention to enter into the creditordebtor relationship with PPI which supported the decision of the CA in holding the petitioners liable to PPI. At this juncture, the Court clarifies that the contract, its label notwithstanding, was not a trust receipt transaction in legal contemplation or within the purview of the Trust Receipts Law (Presidential Decree No. 115) such that its breach would render Gloria criminally liable for estafa. Under Section 4 of the Trust Receipts Law, the sale of goods by a person in the business of selling goods for profit who, at the outset of the transaction, has, as against the buyer, general property rights in such goods, or who sells the goods to the buyer on credit, retaining title or other interest as security for the payment of the purchase price, does not constitute a trust receipt transaction and is outside the purview and coverage of the law.

FACTS

Spouses Dela Cruz operated the Barangay Agricultural supply in Aliaga, Nueva Ecija engaged in the distribution of fertilizers and agricultural chemical products. At that time, Quirino dela Cruz was the mayor of Aliaga. On March 23, 1978, Gloria, applied for regular credit line amounting to 200,000.00 with Planters Product Inc. (PPI) for a 60-day term with trust receipts as collaterals. Quirino and Gloria submitted a list of their assets in support of her credit application for participation in the Special Credit Scheme (SCS) of PPI. On August 28, 1978, Gloria signed in the presence of the PPI distribution officer/assistant sales representative two documents labeled "Trust Receipt/Special Credit Scheme," indicating the invoice number, quantity, value, and names of the agricultural inputs (i.e., fertilizer or agricultural chemicals) she received "upon the trust" of PPI. Gloria thereby subscribed to specific undertakings. She subscribed that she agrees to hold the goods in trust of PPI with the liberty to deliver and sell the same for PPI's account in favor of farmers accepted to participate in PPI's Special Credit Scheme within 60 days from receipt of inputs from PPI; to require Trust Agreement by the farmer-participants in her favor and in turn assign the same in favor of PPI with recourse; to allow the charging to her credit line with PPI, in case of non-delivery to the farmers-participants the inputs enumerated within 60 days, the undelivered inputs. She also expressly agreed to various obligations such as supervision to the collection of the cavans of rice and corn, keeping the fertilizers and pesticides and insuring the same, and making herself liable when there is negligence on her part. Gloria further expressly agreed that her obligation as stipulated in the contract would "continue in force and be applicable to all transactions, notwithstanding any change in the individuals composing any firm, parties to or concerned. She also included in the terms and conditions stipulations of interest rate of 12% per annum plus 2% service charges in all the obligations in the trust receipts reckoned from the date of delivery of the dealer to the farmers-participants the fertilizer and agchem products, service charges shall be effective on the 61st day.

Gloria executed 4 more documents and in each document, the following was written: "This invoice is subject to the terms and conditions stipulated in our contract. Under no circumstance is this invoice to be used as a receipt for payment. Interest at 14% per annum plus service and handling charges at the rate of 10% per annum shall be charged on all overdue accounts, and in the event of judicial proceedings to enforce collection, customer shall pay the Company an amount equivalent to 25% of the amount due for and as attorney's fees which in no case shall be less than ₱200 in addition to cost of suit."

The products were released to Gloria under the supervision of Cristina G. Llanera of PPI. The 60-day credit term has lapsed without Gloria paying her obligations under the Trust Receipts. Hence, PPI wrote collection letters to her which were unheeded. Because of such, the PPI district distribution manager wrote a letter of demand on her long due account of ₱191, 205.25. On February 24, 1979, PPI sent Gloria a credit note for ₱127,930.60 with these particulars: "To transfer to dealer's regular line inputs withdrawn VS. SCS line still undelivered to farmers after 60 days." Another credit note was sent indicating the same particulars. Final demand letter was sent to her stating that her accountability amounted to ₱156,755.00 "plus interest, service charges, and penalty charges," all of

which she should pay by June 18, 1980. PPI warned that should she fail to do so, PPI would file the "necessary civil and criminal cases" against her "based on the Trust Receipts."

On November 17, 1981, PPI brought against Quirino and Gloria in the erstwhile Court of First Instance in Pasig, Metro Manila a complaint for the recovery of a sum of money with prayer for a writ of preliminary attachment. PPI alleged that Gloria violated the fiduciary undertaking under trust receipts; that she is guilty of fraudulently misapplying or converting to her own use the items to be delivered; and that she did not return the goods indicated in the invoices and did not remit the proceeds of the sale. PPI prayed for judgment holding Gloria liable for the amount of ₱161,203.60 as of October 25, 1981 inclusive of interest and service charges and attorney's fees. In her answer petitioners alleged that Gloria was just a marketing outlet of PPI under its SCS program, not a dealer primarily obligated to PPI for the products of delivered to her; that she had not collected from the participating farmers due to the typhoon Kading that destroyed the crops of the participating farmers.

RTC rendered its judgement ordering the petitioners to pay the plaintiff the amount of ₱240,335.10 plus 16% interest/annum until fully paid plus ₱20,000.00 attorney's fees and cost of litigation. The RTC found that based on the terms and conditions of the SCS Program, a creditor-debtor relationship was created between Gloria and PPI; that her liability was predicated on Section 4 of the Trust Receipts Law (Presidential Decree No. 115)

The CA held the petitioners liable to PPI "for the value of the fertilizers and agricultural chemical products covered by the trust receipts" because a creditor-debtor relationship existed between the parties when, pursuant to the credit line of ₱200,000.00 and the SCS Program, the petitioners "withdrew several fertilizers and agricultural chemical products on credit;" that the petitioners then came under obligation to pay the equivalent value of the withdrawn goods, "or to return the undelivered and/or unused products within the specified period." It elucidated thus:

The trust receipts covering the said fertilizers and agricultural chemical products under the special credit scheme, and signed by defendant-appellant Gloria de la Cruz specifically provides for their direct and primary liability over the same, to wit:

"x x x. In the event, I/We cannot deliver/serve to the farmer-participants all the inputs as enumerated above within 60 days, then I/We agree that the undelivered inputs will be charged to my/our regular credit line, in which case, the corresponding adjustment of price and interest shall be made by PPI." and in case of failure on the part of Defendants-appellants to liquidate within the specified period the undelivered or unused fertilizers and agricultural chemical products, its corresponding value will be charged to the regular credit line of Defendants-appellants, which was eventually done by Plaintiff-appellee, when it converted and/or credited Defendants-appellants' accounts payable under the special credit scheme to their regular credit line as per "credit notes."

In their motion for reconsideration, the petitioners mainly contended that the farmers as participants in the SCS, not Gloria, were liable because the inputs had been delivered to them; that such was the tenor of the demand letters they had sent to the farmers but such Motion was denied by the CA.

ISSUE

Whether or not the transaction between the parties in this case is a trust receipt transaction? (NO)

RULING

As earlier mentioned, Gloria signed the application for credit facilities on March 23, 1978, indicating that a trust receipt would serve as collateral for the credit line. On August 4, 1978, Gloria, as "dealer," signed together with Quirino the list of their assets having a total value of ₱260,000.00 (consisting of a residential house and lot, 10-hectare agricultural lands in Aliaga and Talavera, and two residential lots) that they tendered to PPI "to support our credit application in connection with our participation to your Special Credit Scheme." Gloria further signed the Trust Receipt/SCS documents defining her obligations under the agreement, and also the invoices pursuant to the agreement with PPI, indicating her having received PPI products on various dates.

It was shown in this case that there are established circumstances comprised by the contemporaneous and subsequent acts of Gloria and Quirino that manifested their intention to enter into the creditor-debtor relationship with PPI which supported the decision of the CA in holding the petitioners liable to PPI. The first circumstance was the credit line of ₱200,000.00 that commenced the business relationship between the parties. A credit line is really a loan agreement between the parties. The second circumstance was the offer by Gloria of trust receipts as her collateral for securing the loans that PPI extended to her. The third circumstance was the offer of Gloria and Quirino to have their conjugal real properties beef up the collaterals for the credit line. Gloria signed the list of the properties involved as "dealer," thereby ineluctably manifesting that Gloria considered herself a dealer of the products delivered by PPI under the credit line. The fourth circumstance had to do with the undertakings under the trust receipts. The position of the petitioners was that the farmers-participants alone were obligated to pay for the goods delivered to them by Gloria. However, such position had no factual and legal legs to prop it up.

At this juncture, the Court clarifies that the contract, its label notwithstanding, was not a trust receipt transaction in legal contemplation or within the purview of the Trust Receipts Law (Presidential Decree No. 115) such that its breach would render Gloria criminally liable for estafa. Under Section 4 of the Trust Receipts Law, the sale of goods by a person in the business of selling goods for profit who, at the outset of the transaction, has, as against the buyer, general property rights in such goods, or who sells the goods to the buyer on credit, retaining title or other interest as security for the payment of the purchase price, does not constitute a trust receipt transaction and is outside the purview and coverage of the law.

In Land Bank v. Perez, the Court has elucidated on the coverage of Section 4, supra, to wit: There are two obligations in a trust receipt transaction. The first is covered by the provision that refers to money under the obligation to deliver it (entregarla) to the owner of the merchandise sold. The second is covered by the provision referring to merchandise received under the obligation to return it (devolvera) to the owner. Thus, under the Trust Receipts Law, intent to defraud is presumed when (1) the entrustee fails to turn over the proceeds of the sale of goods covered by the trust receipt to the entruster; or (2) when the entrustee fails to return the goods under trust, if they are not disposed of in accordance with the terms of the trust receipts.

In all trust receipt transactions, both obligations on the part of the trustee exist in the alternative – the return of the proceeds of the sale or the return or recovery of the goods, whether raw or processed. When both parties enter into an agreement knowing that the return of the goods subject of the trust receipt is not possible even without any fault on the part of the trustee, it is not a trust receipt transaction penalized under Section 13 of P.D. 115; the only obligation actually agreed upon by the parties would be the return of the proceeds of the sale transaction. This transaction becomes a mere loan, where the borrower is obligated to pay the bank the amount spent for the purchase of the goods.

However, Gloria remains liable for the amount of the loan. It is not amiss to point out that the RTC even erred in citing Section 4 of the Trust Receipts Law as its basis for ordering Gloria to pay the total amount of $\mathbb{P}240,355.10$. Section 13 of the Trust Receipts Law considers the "failure of an entrustee to turn over the proceeds of the sale of the goods, documents or instruments covered by a trust receipt to the extent of the amount owing to the entruster or as appears in the trust receipt or to return said goods, documents or instruments if they were not sold or disposed of in accordance with the terms of the trust receipt" as constituting the crime of estafa under Article 315 (b) of the Revised Penal Code. However, had PPI intended to charge Gloria with estafa, it could have then done so. Instead, it brought this collection suit, a clear indication that the trust receipts were only collaterals for the credit line as agreed upon by the parties.

It is worthwhile to note that the application for credit facilities was a form contract that Gloria filled out only with respect to her name, address, credit limit, term, and collateral. Her act of signing the application signified her agreement to be bound by the terms of the application, specifically her acquiescence to use trust receipts as collaterals, as well as by the terms and conditions of the Trust Receipt/SCS.

The last circumstance was that the petitioners now focus on the amount of liabilities adjudged against them by the lower courts. They thereby bolster the finding that they fully knew and accepted the legal import of the documents Gloria had signed of rendering them personally liable towards PPI for the value of the inputs granted to the farmer-participants through them. The finding is further confirmed by her admission of paying to PPI the amount of ₱50,000.00, which payment, albeit allegedly made grudgingly, solidified the existence of a creditor-debtor relationship between them. Indeed, Gloria would not have paid that amount except in acknowledgement of an indebtedness towards PPI.

- f. Failure of the entrustee to remit sale proceeds or return the goods in case of non-sale constitutes criminal liability
- g. Crime against public order

• People vs. Hon. Nitafan 207 SCRA 726 (1992)

PEOPLE OF THE PHILIPPINES, (PUBLIC PETITIONER) AND ALLIED BANKING CORPORATION (PRIVATE PETITIONER), -VERSUS- HON. JUDGE DAVID G. NITAFAN (PUBLIC RESPONDENT) AND BETTY SIA ANG (PRIVATE RESPONDENT). G.R. No. 81559-60, THIRD DIVISION, April 6, 1992, GUTIERREZ, JR., J.

Allied Banking Corporation filed information for estafa against Betty Sia Ang, proprietess of Eckart Enterprises. Ang filed a motion to quash the information, alleging that violation of the trust receipt constitutes only a civil liability.

The Supreme Court ruled that the factual circumstances in the present case show that the alleged violation was committed sometime in 1980 or during the effectivity of P.D. 115. The failure, therefore, to account for the P114, 884.22 balance is what makes the accused-respondent criminally liable for estafa. A Trust receipt arrangement does not involve a simple loan transaction between a creditor and debtor-importer. The title of the bank to the security is the one sought to be protected and not the loan which is a separate and distinct agreement.

FACTS

Allied Banking Corporation filed an information for estafa against Betty Sia Ang, proprietess of Eckart Enterprises. The comlaint alleged that Ang received from the bank Goardon plastics amounting to P398,000 specified in a trust receipt and covered by a Domestic Letter of Credit. Ang had the obligation to sell the goods and to account for the proceeds, if sold, or to return the goods, if not sold, on or before 16 October 1980, or upon demand. Despite repeated demands, Ang paid only P283,115. It was alleged that she misappropriated, misapplied and converted the balance of P114,884.22 to her own personal use and benefit.

Ang filed a motion to quash the information, alleging that violation of the trust receipt constitutes only a civil liability. Judge Nitafan granted the Motion to quash. The order was anchored on the premise that a trust receipt transaction is an evidence of a loan being secured so that there is, as between the parties to it, a creditor-debtor relationship. The court ruled that the penal clause of Presidential Decree No. 115 on the Trust Receipts Law is inoperative because it does not actually punish an offense mala prohibita. The law only refers to the relevant estafa provision in the Revised Penal Code.

The Court relied on the judicial pronouncements in People v. Cuevo, where SC upheld the dismissal of a charge for estafa for a violation of a trust receipt agreement; and in Sia v. People, where SC held that the violation merely gives rise to a civil obligation. At the time the order to quash was issued or on January 7, 1988, these two decisions were the only most recent ones. The Private respondent adopted practically the same stance of the lower court. She likewise asserts that P.D. 115 is unconstitutional as it violates the constitutional prohibition against imprisonment for non-payment of a debt. She argues that where no malice exists in a breach of a purely commercial undertaking, P.D. 115 imputes it. Hence, this Petition.

ISSUE

1. Whether or not the violation of the Trust Receipt Law by Ang should only give rise to civil obligation? (NO)

- 2. Whether or not a Trust Receipt Transaction only involves a loan transaction? (NO)
- 3. Whether or not the Trust Receipts Law is unconstitutional? (NO)

RULING

1.

The factual circumstances in the present case show that the alleged violation was committed sometime in 1980 or during the effectivity of P.D. 115. The failure, therefore, to account for the P114, 884.22 balance is what makes the accused-respondent criminally liable for estafa.

The Court reiterates its definitive ruling that, in the Cuevo and Sia cases relied upon by the accused, P.D. 115 was not applied because the questioned acts were committed before its effectivity. At the time those cases were decided, the failure to comply with the obligations under the trust receipt was susceptible to two interpretations. The Court in Sia adopted the view that a violation gives rise only to a civil liability as the more feasible view "before the promulgation of P.D. 115," notwithstanding prior decisions where we ruled that a breach also gives rise to a liability for estafa.

2.

A Trust receipt arrangement does not involve a simple loan transaction between a creditor and debtor-importer. Apart from a loan feature, the trust receipt arrangement has a security feature that is covered by the trust receipt itself. That second feature is what provides the much needed financial assistance to our traders in the importation or purchase of goods or merchandise through the use of those goods or merchandise as collateral for the advancements made by a bank. The title of the bank to the security is the one sought to be protected and not the loan which is a separate and distinct agreement.

3.

NO. The Trust Receipts Law punishes the dishonesty and abuse of confidence in the handling of money or goods to the prejudice of another regardless of whether the latter is the owner or not. The law does not seek to enforce payment of the loan. Thus, there can be no violation of a right against imprisonment for non-payment of a debt.

Trust receipts are indispensable contracts in international and domestic business transactions. The prevalent use of trust receipts, the danger of their misuse and/or misappropriation of the goods or proceeds realized from the sale of goods, documents or instruments held in trust for entrusterbanks, and the need for regulation of trust receipt transactions to safeguard the rights and enforce the obligations of the parties involved are the main thrusts of P.D. 115. As correctly observed by the Solicitor General, P.D. 115, like Batas Pambansa Blg. 22, punishes the act "not as an offense against property, but as an offense against public order". The misuse of trust receipts therefore should be deterred to prevent any possible havoc in trade circles and the banking community. It is in the context of upholding public interest that the law now specifically designates a breach of a trust receipt agreement to be an act that "shall" make one liable for estafa.

The offense is punished as a malum prohibitum regardless of the existence of intent or malice. A mere failure to deliver the proceeds of the sale or the goods if not sold, constitutes a criminal offense that causes prejudice not only to another, but more to the public interest.

We are continually re-evaluating the opposite view which insists that the violation of a trust receipt agreement should result only in a civil action for collection. The respondent contends that there is no malice involved. She cites the dissent of the late Chief Justice Claudio Teehankee in Ong v. Court of Appeals, (124 SCRA 578 [1983]) to wit:

The old capitalist orientation of putting importers in jail for supposed estafa or swindling for nonpayment of the price of the imported goods released to them under trust receipts (a purely commercial transaction) under the fiction of the trust receipt device, should no longer be permitted in this day and age.

As earlier stated, however, the law punishes the dishonesty and abuse of confidence in the handling of money or goods to the prejudice of the bank.

The Court reiterates that the enactment of P.D. 115 is a valid exercise of the police power of the State and is, thus, constitutional. The arguments of the respondent are appropriate for a repeal or modification of the law and should be directed to Congress. But until the law is repealed, we are constrained to apply it.

• Metropolitan Bank & Trust Company vs. Tonda, 338 SCRA 254 (2000)

METROPOLITAN BANK AND TRUST COMPANY, PETITIONER, -VERSUS- JOAQUIN TONDA AND MA. CRISTINA TONDA, RESPONDENTS.

G.R. No. 134436, THIRD DIVISION, August 16, 2000, GONZAGA-REYES, J.

The Trust Receipts Law declares the failure to turn over the goods or the proceeds realized from the sale thereof, as a criminal offense punishable under Article 315 (1) (b) of the Revised Penal Code. The law is violated whenever the entrustee or the person to whom the trust receipts were issued in favor of fails to: (1) return the goods covered by the trust receipts; or (2) return the proceeds of the sale of the said goods. The foregoing acts constitute estafa punishable under Article 315 (1) (b) of the Revised Penal Code. Given that various trust receipts were executed by the Tondas, they did not return the proceeds from the goods sold nor the goods themselves to Metrobank, there is no disputes that that the Tondas failed to comply with the obligations.

The amount of P2.8 million was not directly paid to Metrobank to settle the trust receipt accounts, but deposited in a joint account. In February 28, 1992, Metrobank was informed that the amount "may be applied anytime to the payment of the trust receipts account upon implementation of the parties of the terms of the restructuring." The parties failed to agree on the terms of the loan restructuring agreement as the offer by the Tondas to restructure the loan was followed by a series of counter-offers which yielded nothing. It is axiomatic that acceptance of an offer must be unqualified and absolute to perfect a contract.

FACTS

Spouses Joaquin G. Tonda and Ma. Cristina U. Tonda (Tondas) applied for and were granted commercial letters of credit by petitioner Metrobank for a period of eight (8) months in connection with the importation of raw textile materials to be used in the manufacturing of garments. The Tondas acting both in their capacity as officers of Honey Tree Apparel Corporation (HTAC) and in their personal capacities, executed eleven (11) trust receipts to secure the release of the raw materials to HTAC. The imported fabrics were withdrawn by HTAC under the 11 trust receipts executed by the Tondas.

Due to their failure to settle their obligations under the trust receipts upon maturity, Metrobank demanded upon the Tondas to settle their past due TR/LC accounts on or before August 15, 1992. Despite repeated demands therefor, the Tondas failed to comply with their obligations stated in the trust receipts agreements, i.e. the Tondas failed to account to Metrobank the goods and/or proceeds of sale of the merchandise, subject of the trust receipts. Consequently, Metrobank, filed a complaint-affidavit against the Tondas for violation of P.D. No. 115 (Trust Receipts Law) in relation to Article 315 (1) (b) of the Revised Penal Code.

Initially, the case was dismissed by the Provincial Director on the ground that the complainants failed to establish the elements of estafa. Metrobank then appealed to the Department of Justice (DOJ). On June 1, 1994, the DOJ reversed the findings and ordered the latter to file the appropriate information against the Tondas' as charged in the complaint. The TONDAS immediately sought a reconsideration of the DOJ Resolution but their motion was denied.

Subsequently, the Tondas' filed with the Court of Appeals a special civil action for certiorari and prohibition with application for a temporary restraining order or a writ of preliminary injunction. The Court of Appeals granted the Tondas' petition and ordered the criminal complaint against them dismissed. The Court of Appeals held that Metrobank had failed to show a prima facie case that the Tondas violated the Trust Receipts Law in relation to Art. 315 (1) (b) of the Revised Penal Code of convincing proof that "that the amount of P2.8 Million representing the outstanding obligation of the TONDAS under the trust receipts account had already been settled by them in compliance with the loan restructuring proposal.

This is a petition for review on certiorari under Rule 45 of the Rules of Court seeking to set aside the Decision of the Court of Appeals dated June 29, 1998 in CA-G.R. SP No. 38113 which: (1) reversed Resolution No. 417, s. 1994, dated June 1, 1994 of the Department of Justice directing to file the appropriate Information against herein respondents Joaquin P. Tonda and Ma. Cristina V. Tonda for violation of P.D. 115 in relation to Article 315 (1) (b) of the Revised Penal Code; and (2) effectively set aside the Resolutions dated April 7, 1995 and July 12 1995 of the Department of Justice denying the motions for reconsideration.

ISSUE

Whether or not the dismissal by the Court of Appeals of the charge for violation of the Trust Receipts Law in relation to Art. 315(1) (b) of the Revised Penal Code against the Tondas is warranted by the evidence at hand and by law? (NO)

RULING

The Trust Receipts Law declares the failure to turn over the goods or the proceeds realized from the sale thereof, as a criminal offense punishable under Article 315 (1) (b) of the Revised Penal Code. The law is violated whenever the entrustee or the person to whom the trust receipts were issued in favor of fails to: (1) return the goods covered by the trust receipts; or (2) return the proceeds of the sale of the said goods. The foregoing acts constitute estafa punishable under Article 315 (1) (b) of the Revised Penal Code. Given that various trust receipts were executed by the Tondas, they did not return the proceeds from the goods sold nor the goods themselves to Metrobank, there is no disputes that that the Tondas failed to comply with the obligations.

The amount of P2.8 million was not directly paid to Metrobank to settle the trust receipt accounts, but deposited in a joint account. In February 28, 1992, Metrobank was informed that the amount "may be applied anytime to the payment of the trust receipts account upon implementation of the parties of the terms of the restructuring." The parties failed to agree on the terms of the loan restructuring agreement as the offer by the Tondas to restructure the loan was followed by a series of counter-offers which yielded nothing. It is axiomatic that acceptance of an offer must be unqualified and absolute to perfect a contract.

The finding that there was no fraud and deceit is likewise misplaced. Considering that the offense is punished as a malum prohibitum regardless of the existence of intent or malice. A mere failure to deliver the proceeds of the sale or the goods if not sold constitutes a criminal offense that causes prejudice not only to another, but more to the public interest.

11. Ownership of the Goods, Documents and Instruments under a Trust Receipt

a. Entrustee is the owner of the goods

- Vintola vs IBAA, ibid
- Rosario Textile Mills vs Home Bankers Trust, ibid.

b. Entrustee can not mortgage the goods under trust receipt

DBP vs. Prudential Bank, 475 SCRA 623 (2005)

DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER - V E R S U S - PRUDENTIAL BANK, RESPONDENT.

G.R. No. 143772, THIRD DIVISION, November 22, 2005, CORONA J.

The various agreements between Prudential Bank and Litex commonly denominated as trust receipts were valid. The articles were owned by Prudential Bank and they were only held by Litex in trust. While it was allowed to sell the items, Litex had no authority to dispose of them or any part thereof or their proceeds through conditional sale, pledge or any other means.

Litex had neither absolute ownership, free disposal nor the authority to freely dispose of the articles. Litex could not have subjected them to a chattel mortgage. Their inclusion in the mortgage was void and had no legal effect. There being no valid mortgage, there could also be no valid foreclosure or valid auction sale. Thus, DBP could not be considered either as a mortgagee or as a purchaser in good faith. No one can transfer a right to another greater than what he himself has.

FACTS

In 1973, Lirag Textile Mills, Inc. (Litex) opened an irrevocable commercial letter of credit with respondent Prudential Bank. This was in connection with its importation of 5,000 spindles for spinning machinery with drawing frame, simplex fly frame, ring spinning frame and various accessories, spare parts and tool gauge. These were released to Litex under covering trust receipts it executed in favor of Prudential Bank. Litex installed and used the items in its textile mill.

On October 1980, DBP granted a foreign currency loan to Litex. To secure the loan, Litex executed real estate and chattel mortgages on its plant site including the buildings and other improvements, machineries and equipments there. Among the machineries and equipments mortgaged in favor of DBP were the articles covered by the trust receipts.

Prudential Bank learned about DBPs plan for the overall rehabilitation of Litex. Prudential Bank notified DBP of its claim over the various items covered by the trust receipts which had been installed and used by Litex in the textile mill. Prudential Bank informed DBP that it was the absolute and juridical owner of the said items and they were thus not part of the mortgaged assets that could be legally ceded to DBP. For the failure of Litex to pay its obligation, DBP extra-judicially foreclosed on the real estate and chattel mortgages, including the articles claimed by Prudential Bank.

Without the knowledge of Prudential Bank, DBP sold the Litex textile mill, as well as the machineries and equipment therein, to Lyon Textile Mills, Inc. Since its demands remained unheeded, Prudential Bank filed a complaint for a sum of money with damages against DBP.

The trial court decided in favor of Prudential Bank applying the provisions of PD 115, otherwise known as the Trust Receipts Law. Aggrieved, DBP filed an appeal with the Court of Appeals. However, the appellate court dismissed the appeal and affirmed the decision of the trial court in toto. It applied the provisions of PD 115 and held that ownership over the contested articles belonged to Prudential Bank as entrustor, not to Litex. Consequently, even if Litex mortgaged the items to DBP and the latter foreclosed on such mortgage, DBP was duty-bound to turn over the proceeds to Prudential Bank, being the party that advanced the payment for them. Moreover, the appellate court found that DBP was not a mortgagee in good faith. It also upheld the finding of the trial court that DBP was a trustee ex maleficio of Prudential Bank over the articles covered by the trust receipts.

Development Bank of the Philippines (DBP) assails in this petition for review on certiorari under Rule 45 of the Rules of Court the December 14, 1999 decision and the June 8, 2000 resolution of the Court of Appeals in CA-G.R. CV No. 45783. The challenged decision dismissed DBPs appeal and affirmed the February 12, 1991 decision of the Regional Trial Court of Makati, Branch 137 in Civil Case No. 88-931 in toto, while the impugned resolution denied DBPs motion for reconsideration for being pro forma.

ISSUE

Whether or not Litex can validly mortgage the goods covered by the trust receipt? (NO)

RULING

The various agreements between Prudential Bank and Litex commonly denominated as trust receipts were valid. As the Court of Appeals correctly ruled, their provisions did not contravene the law, morals, good customs, public order or public policy.

The articles were owned by Prudential Bank and they were only held by Litex in trust. While it was allowed to sell the items, Litex had no authority to dispose of them or any part thereof or their proceeds through conditional sale, pledge or any other means.

Litex had neither absolute ownership, free disposal nor the authority to freely dispose of the articles. Litex could not have subjected them to a chattel mortgage. Their inclusion in the mortgage was void and had no legal effect. There being no valid mortgage, there could also be no valid foreclosure or valid auction sale. Thus, DBP could not be considered either as a mortgagee or as a purchaser in good faith. No one can transfer a right to another greater than what he himself has. Nemo dat quod non habet. Hence, Litex could not transfer a right that it did not have over the disputed items. Corrolarily, DBP could not acquire a right greater than what its predecessor-in-interest had. The spring cannot rise higher than its source. DBP merely stepped into the shoes of Litex as trustee of the imported articles with an obligation to pay their value or to return them on Prudential Banks demand. By its failure to pay or return them despite Prudential Banks repeated demands and by selling them to Lyon without Prudential Banks knowledge and conformity, DBP became a trustee ex maleficio.

12. Rights of the Entruster

- a. Validity of the Security Interest as Against the Creditors of the Entrustee/Innocent Purchaser for Value
 - Prudential Bank vs. National Labor Relations Commission, 251 SCRA 412 (1995)

PRUDENTIAL BANK, PETITIONER, V. NATIONAL LABOR RELATIONS COMMISSION, CECILIA ORQUELLO, ET AL., ZENAIDA UCHI, ET AL., ALU-INTERASIA CONTAINER INDUSTRIES INC., AND RAUL REMODO, RESPONDENTS. G.R. No. 112592, FIRST DIVISION, December 19, 1995, BELLOSILLO, J.

INTERASIA was embroiled in three labor cases which were all resolved against it. Monetary awards consisting of 13th month pay differentials and other benefits were granted to complainants. The Sheriff levied on execution personal properties located in the factory of INTERASIA. Petitioner filed an Affidavit of Third-Party Claim asserting ownership over the seized properties on the strength of trust receipts executed by INTERASIA in its favor.

From the legal and jurisprudential standpoint it is clear that the security interest of the entruster is not merely an empty or idle title. To a certain extent, such interest, such interest becomes a "lien" on the goods because the entruster's advances will have to be settled first before the entrustee can consolidate his ownership over the goods. Significantly, the law uses the word "may" in granting to the entruster the right to cancel the trust and take possession of the goods. Consequently, petitioner has the discretion to avail of such right or seek any alternative action, such as a third-party claim or a separate civil action which it deems best to protect its right, at any time upon default or failure of the entrustee to comply with any of the terms and conditions of the trust agreement.

In fine, we hold that under the law and jurisprudence the NLRC committed grave abuse of discretion in disregarding the third-party claim of petitioner. Necessarily the auction sale held on 5 November 1992 should be set aside. For there would be neither justice nor equity in taking the funds from the party whose means had purchased the property under the contract.

FACTS

Interasia Container Industries, Inc. (INTERASIA) was embroiled in three labor cases which were all resolved against it. Monetary awards consisting of 13th month pay differentials and other benefits were granted to complainants. Subsequently the monetary award was recomputed to include separation pay in the total sum of P126,788.30 occasioned by the closure of operations of INTERASIA. Labor Arbiter declared the closure or shutdown of operations effected by INTERASIA as illegal and awarded to complainants the sum of P1,188,466.32 as wage differentials, separation pay and other benefits.

With the finality of the three decisions, writs of execution were issued. The Sheriff levied on execution personal properties located in the factory of INTERASIA.

Petitioner filed an Affidavit of Third-Party Claim asserting ownership over the seized properties on the strength of trust receipts executed by INTERASIA in its favor. As a result, the Sheriff suspended the public auction sale. But Labor Arbiter denied the claim of petitioner and directed the Sheriff to proceed with the levy of the properties. Petitioner then filed separate appeals to the NLRC.

Sheriff posted Notices of levy and Sale of the seized properties. However, no bidder appeared on the scheduled date hence the public auction sale was postponed. At the rescheduled date the Sheriff declared Angel Peliglorio the highest bidder with an offer of P128,000.00 on the properties levied.

Labor Arbiter ordered the release of the properties to Peliglorio prompting INTERASIA to file a Motion to Set Aside and/or Declare Public Auction Sale Null and Void Ab Initio for non-compliance with legal requisites. Labor Arbiter denied the motion and directed the Sheriff to break open the plant of INTERASIA in order that Peliglorio could enter and take possession of the auctioned properties. INTERASIA moved to reconsider the order.

The Labor Arbiter inhibited himself from the case because of INTERASIAS's accusation of partiality. The records were then forwarded to the NLRC. On the other hand, petitioner filed a Third-Party Claimant's Appeal/Memorandum. NLRC dismissed petitioner's appeal as well as INTERASIA's MR. INTERASIA and petitioner separately moved to reconsider the ruling but their motions were

denied. Hence, petitioner brought this present recourse raising questions on the validity not only of the NLRC resolutions but also of the public auction sale.

Petitioner's contended that Public auction was conducted without notice and in a place other than the premises of INTERASIA as required by the Manual of Instructions for Sheriffs. It also raises issue on the extent of its security title over the properties subject of the levy on execution, submitting that while it may not have absolute ownership over the properties, still it has right, interest and ownership consisting of a security title which attaches to the properties.

Petitioner differentiates a trust receipt, which is a security for the payment of the obligations of the importer, from a real estate mortgage executed as security for the payment of an obligation of a borrower. Petitioner argues that in the latter the ownership of the mortgagor may not necessarily have any bearing on its acquisition, whereas in the case of a trust receipt the acquisition of the goods by the borrower results from the advances made by the bank. It concludes that the security title of the bank in a trust receipt must necessarily be of the same or greater extent than the nature of the security arising from a real estate mortgage. Petitioner maintains that it is a preferred claimant to the proceeds from the foreclosure to the extent of its security title in the goods which are valued at P46,100,253.92 otherwise its security title will become useless.

In their comment, private respondents support the findings of the NLRC. They submit that petitioner's negligence to immediately assert its right to cancel the Trust Receipt Agreements, upon INTERASIA's failure to comply with its obligation, is fatal to its claim.

On the other hand, NLRC's contended that trust receipts are mere security transactions which do not vest upon petitioner any title of ownership, and that although the Trust Receipt Agreements described petitioner as owner of the goods, there was no showing that it canceled the trust receipts and took possession of the goods.

ISSUE

Whether or not petitioner could claim ownership of properties despite failure to cancel the Trust Agreements? (YES)

RULING

From the legal and jurisprudential standpoint it is clear that the security interest of the entruster is not merely an empty or idle title. To a certain extent, such interest, such interest becomes a "lien" on the goods because the entruster's advances will have to be settled first before the entrustee can consolidate his ownership over the goods. A contrary view would be disastrous. For to refuse to recognize the title of the banker under the trust receipt as security for the advance of the purchase price would be to strike down a bona fide and honest transaction of great commercial benefit and advantage founded upon a well-recognized custom by which banking credit is officially mobilized for manufacturers and importers of small means.

Significantly, the law uses the word "may" in granting to the entruster the right to cancel the trust and take possession of the goods. Consequently, petitioner has the discretion to avail of such right or seek any alternative action, such as a third-party claim or a separate civil action which it deems best to protect its right, at anytime upon default or failure of the entrustee to comply with any of the terms and conditions of the trust agreement.

Besides, as earlier stated, the law warrants the validity of petitioner's security interest in the goods pursuant to the written terms of the trust receipt as against all creditors of the trust receipt agreement. The only exception to the rule is when the properties are in the hands of an innocent purchaser for value and in good faith. The records however do not show that the winning bidder is such purchaser. Neither can private respondents plead preferential claims to the properties as petitioner has the primary right to them until its advances are fully paid.

In fine, we hold that under the law and jurisprudence the NLRC committed grave abuse of discretion in disregarding the third-party claim of petitioner. Necessarily the auction sale held on 5 November 1992 should be set aside. For there would be neither justice nor equity in taking the funds from the party whose means had purchased the property under the contract.

13. Obligation and Liability of the Entrustee a. No criminal liability in the following cases i. entrustee already owns the goods when loan under TR grantedColinares vs Court of Appeals, ibid. Consolidated vs Court of Appeals, ibid. **ii. goods not intended for sale or resale**Ng vs People, ibid. Land Bank vs Court of Appeals, ibid. Hur Ting Yang vs People, ibid. **iii. Non-delivery of the goods**Ramos vs. Court of Appeals, 153 SCRA 276 (1987)

TRINIDAD RAMOS, PETITIONER, -VERSUS- THE HONORABLE COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. L-39922-25, FIRST DIVISION, August 21, 1987, NARVASA, J.

The trust receipts do not fare any better as proofs of the delivery to Ramos of the goods. Except for the invoices, any documents relating to each trust receipt agreement, including the trust receipts themselves, appear to be standard Bank forms accomplished by the Bank personnel, and were all signed by Ramos in one sitting, no doubt with a view to facilitating the pending transactions between the parties. If, as she claims, Ramos was made to believe that bank usage or regulations require the signing of the papers in this way, i.e., on a single occasion, there was neither reason nor opportunity

for her to question the statement therein of receipt of the goods since it was evidently assumed that delivery to her of the goods would shortly come to pass.

At any rate, Ramos has categorically and consistently denied ever having received the goods either from the Bank or the suppliers. And this was because, according to her, the suppliers simply refused to part with the goods as no payment had been made therefor by the Bank. This rather sorry state of the evidence against the accused, who is to be presumed innocent until the contrary is proved beyond reasonable doubt, compels a reversal of her convictions in all four cases.

FACTS

The accused filed with Philippine National Cooperative Bank four applications for letters of credit. After the applications were processed and approved, domestic letters of credit were opened on the same dates of the applications and in the amounts applied for. Among the papers filed for the issuance of the domestic letters of credit were commercial invoices of the different suppliers of the merchandise sought to be purchase. The different suppliers then drew sight drafts against the applicant payable to the order of the PNCB, also bearing the same dates as the respective applications and for the same amounts. The PNCB then drew its own drafts against the accused as the buyer of the merchadise and which drafts were accepted by the accused also on the same dates of the respective applications. After such acceptance, the corresponding trust receipts were signed by the accused. **The four trust receipts signed by the accused uniformly contain the following stipulation:**

The undersigned hereby acknowledges to have received in trust from the ... (PNCB) the merchandise covered by the above-mentioned documents and agrees to hold said merchandise in storage as the property of said bank, with the liberty to sell the same for cash and for its account provided the proceeds thereof are turned over in their entirety to the said bank to be applied against any acceptance(s) and any other indebtedness of the undersigned to the said bank.

The records of the PNCB which had been presented in evidence show that the drafts drawn by the bank against the accused and accepted by the latter were supposed to be due in 90 days from the dates thereof. No payments were made excepting a partial payment of P3,900.00, inclusive of interests for the account under the letter of credit No. 006; and another partial payment of P2,000.00 on the same letter of credit. These partial payments were evidently in pursuance of written demands for payment addressed by the PNCB to the accused. A last formal demand was addressed to the accused in a letter of counsel for the PNCB.

Later on, a criminal case for four counts of Estafa was initiated by PNCB against the accused.

Both the RTC and the CA convicted the accused for the crimes charged.

Before the SC, Trinidad Ramos pleads for acquittal on the proposition that the factual predicate on which her conviction is laid is chiefly comprised of speculations, conjectures and presumptions without substantial and actual support in the evidence. She asserts that it behooved the prosecution, which had charged her with estafa under Article 315, par. 1 (b) of the Revised Penal Code, to prove the essential elements thereof, numbering four, to wit: (1) that the accused received

the thing subject of the offense; (2) that the thing received is personal property susceptible of appropriation; (3) that the thing was received for safe-keeping, or on commission, or for administration, or under any other obligation involving the duty to make delivery of or return the same; and (4) that there was misappropriation or conversion by the accused of the thing received to the prejudice of another. But, she contends, in her case (1) that there is no adequate proof of her receipt of the goods subject of the trust receipts in question or of her having paid anything on account thereof or in connection therewith; (2) that complainant Bank had suffered no damage whatever, since it had made no payment at all on account of the commercial invoices for which the trust receipts were issued; and (3) that under the laws at the time, transactions involving trust receipts could only give rise to purely civil liability.

In the appeal at bar, Trinidad Ramos seeks reversal of the judgment of the Court of Appeals, affirming with modification, her conviction of four felonies of estafa handed down by the Court of First Instance of Manila.

ISSUE

Whether or not the accused can be convicted for Estafa despite the failure of the prosecution to prove that she received the goods subject of the trust receipt? (NO)

RULING

Examined against the evidence of record, the assailed factual findings as to the receipt of the merchandise and the damage sustained by the Bank cannot stand. The proofs are indeed inadequate on these propositions of fact. It is difficult to accept the prosecution's theory that it has furnished sufficient proof of delivery by the introduction in evidence of the commercial invoices attached to the applications for the letters of credit and of the trust receipts. The invoices are actually nothing more than lists of the items sought to be purchased and their prices; and it can scarcely be believed that goods worth no mean sum actually transferred hands without the unpaid vendor requiring the vendee to acknowledge this fact in some way, even by a simple signature on these documents alone if not in fact by the execution of some appropriate document, such as a delivery receipt.

The trust receipts do not fare any better as proofs of the delivery to Ramos of the goods. Except for the invoices, any documents relating to each trust receipt agreement, including the trust receipts themselves, appear to be standard Bank forms accomplished by the Bank personnel, and were all signed by Ramos in one sitting, no doubt with a view to facilitating the pending transactions between the parties. If, as she claims, Ramos was made to believe that bank usage or regulations require the signing of the papers in this way, i.e., on a single occasion, there was neither reason nor opportunity for her to question the statement therein of receipt of the goods since it was evidently assumed that delivery to her of the goods would shortly come to pass.

At any rate, Ramos has categorically and consistently denied ever having received the goods either from the Bank or the suppliers. And this was because, according to her, the suppliers simply refused to part with the goods as no payment had been made therefor by the Bank. This rather sorry state of the evidence against the accused, who is to be presumed innocent until the contrary is proved beyond reasonable doubt, compels a reversal of her convictions in all four cases.

Having found the record to contain insufficient evidence of the essential elements of the crime charged, this Court finds it unnecessary to resolve the other issue raised by the accused.

iv. Novation

• Ong vs. Court of Appeals, 124 SCRA 578 (1983)

FERNANDO ONG, PETITIONER, -versus-. THE COURT OF APPEALS AND JUDGE P. PURISIMA, RESPONDENTS.

G.R. No. L-58476, FIRST DIVISION, September 2, 1983, RELOVA, J.

A criminal and a civil case were filed separately against the petitioner. A compromise agreement was entered into by the parties in the civil case. Subsequently, thepetitioner filed a motion to quash the information filed against him. However, the Supreme Court ruled that novation is not one of the means recognized by the Penal Code whereby criminal liability can be extinguished; hence, the role of novation may only be to either prevent the rise of criminal liability or to cast doubt on the true nature of the original basic transaction, whether or not it was such that its breach would not give rise to penal responsibility, as when money loaned is made to appear as a deposit, or other similar disguise is resorted to.

FACTS

An information for estafa was filed alleging that herein petitioner "obtained and received from the Tramat Mercantile, Inc., ... several units of machineries for a total value of P133,550.00, in trust, for the purpose of displaying and selling the machineries for cash, under the express obligation on the part of said accused (herein petitioner) of turning over to said Tramat Mercantile, Inc., the proceeds from the sale thereof, if sold, or of returning to the latter the said goods, if not sold, within ninety (90) days, or immediately upon demand. Petitioner allegedly failed to turn over the proceeds of the sale or to return the goods under the aforementioned covenant.

A few months after the case of estafa was filed against petitioner, Tramat Mercantile, Inc., filed a complaint against him in Civil Case No. 122842 for sum of money with the then Court of First Instance of Manila. The parties entered into a compromise agreement to settle the claim in said civil case, on the basis of which the trial court rendered judgment, dated March 27, 1980, approving the same.

On June 1, 1980, herein petitioner moved for the dismissal of the criminal charge of estafa (Criminal Case No. 43423) against him on the ground of novation because of the compromise agreement entered into between him and the complainant.

The trial court denied the motion to dismiss the estafa case for lack of merit. Thereafter, petitioner filed a petition for certiorari with the then Court of Appeals which dismissed the petition on the grounds, among others, that "novation does not extinguish the criminal liability if the crime of estafa had been completed.

It is the position of herein petitioner that the compromise agreement in the civil case novated the contract embodied in the trust receipts on which the information in Criminal Case No. 43423 was based, "inasmuch as there was a change of object or principal conditions, under Article 1291 of the Civil Code. There being a novation, it is respectfully submitted that even if the novation took place after the filing of the Information in the criminal case, the transaction had nonetheless been converted from a criminal violation to civil obligation, which would therefore necessitate the consequent dismissal of the criminal case."

ISSUE

Whether or not the compromise agreement in the civil case extinguished the criminal liability of the Petitioner? (NO)

RULING

The novation theory may perhaps apply to the filing of the criminal information in court by the state prosecutors because up to that time the original trust relation may be converted by the parties into an ordinary creditor-debtor situation, thereby placing the complainant in estoppel to insist on the original trust. But after the justice authorities have taken cognizance of the crime and instituted action in court, the offended party may no longer divest the prosecution of its power to exact the criminal liability, as distinguished from the civil. The crime being an offense against the state, only the latter can renounce it.

It may be observed in this regard that novation is not one of the means recognized by the Penal Code whereby criminal liability can be extinguished; hence, the role of novation may only be to either prevent the rise of criminal liability or to cast doubt on the true nature of the original basic transaction, whether or not it was such that its breach would not give rise to penal responsibility, as when money loaned is made to appear as a deposit, or other similar disguise is resorted to.

Thus, it is clear that the respondent Court of Appeals did not abuse its discretion amounting to lack of jurisdiction in denying petitioner's motion to dismiss the criminal case of estafa on the basis of a compromise agreement made after the filing of the information.



• Pilipinas Bank vs. Ong, 387 SCRA 37 (2002)

PILIPINAS BANK, PETITIONER, -VERSUS- ALFREDO T. ONG AND LEONCIA LIM, RESPONDENTS. G.R. No. 133176, THIRD DIVISION, August 8, 2002, SANDOVAL-GUTIERREZ, J.

In this case, no dishonesty or abuse of confidence can be attributed to respondents. Record shows that BMC failed to comply with its obligations upon maturity of the trust receipts due to serious liquidity problems, prompting it to file a Petition for Rehabilitation and Declaration in a State of Suspension of Payments. It bears emphasis that when petitioner bank made a demand upon BMC to comply with its obligations under the trust receipts, the latter was already under the control of the Management Committee created by the SEC. The Management Committee took custody of all BMCs assets and liabilities, including the red lauan lumber subject of the trust receipts, and authorized their use in the ordinary course of business operations. Clearly, it was the Management Committee which could settle BMCs obligations. Moreover, it has not escaped this Courts observation that respondent Ong paid P21,

000,000.00 in compliance with the equity infusion required by the MOA. The mala prohibita nature of the offense notwithstanding, respondent's intent to misuse or misappropriate the goods or their proceeds has not been established by the records.

The MOA novated the trust agreement between the parties. Indeed, what is automatically terminated in case BMC failed to comply with the conditions under the MOA is not the MOA itself but merely the obligation of the lender (the bank) to reschedule the existing credits. Moreover, it is erroneous to assume that the revesting of "all the rights of lenders against the borrower" means that petitioner can charge respondents for violation of the Trust Receipts Law under the original trust receipt agreement. As explained earlier, the execution of the MOA extinguished respondent's obligation under the trust receipts. Respondent's liability, if any, would only be civil in nature since the trust receipts were transformed into mere loan documents after the execution of the MOA.

FACTS

Baliwag Mahogany Corporation (BMC), through its president, respondent Alfredo T. Ong, applied for a domestic commercial letter of credit with petitioner Pilipinas Bank (hereinafter referred to as the bank) to finance the purchase of about 100,000 board feet of "Air Dried, Dark Red Lauan" sawn lumber.

The bank approved the application and issued Letter of Credit No. 91/725-HO in the amount of P3, 500,000.00. To secure payment of the amount, BMC, through respondent Ong, executed two (2) trust receipts providing inter alia that it shall turn over the proceeds of the goods to the bank, if sold, or return the goods, if unsold, upon maturity.

On due dates, BMC failed to comply with the trust receipt agreement. It filed with the Securities and Exchange Commission (SEC) a Petition for Rehabilitation and for a Declaration in a State of Suspension of Payments under Section 6 (c) of P.D. No. 902-A, as amended, docketed as SEC Case No. 4109. After BMC informed its creditors (including the bank) of the filing of the petition, a Creditors' Meeting was held to:(a) inform all creditor banks of the present status of BMC to avert any action which would affect the company's operations, and (b) reach an accord on a common course of action to restore the company to sound financial footing.

SEC issued an order creating a Management Committee wherein the bank is represented. The Committee shall, among others, undertake the management of BMC, take custody and control of all its existing assets and liabilities, study, review and evaluate its operation and/or the feasibility of its being restructured.

BMC and a consortium of 14 of its creditor banks entered into a Memorandum of Agreement (MOA) rescheduling the payment of BMCs existing debts.

SEC rendered a Decision approving the Rehabilitation Plan of BMC as contained in the MOA and declaring it in a state of suspension of payments. However, BMC and respondent Ong defaulted in the payment of their obligations under the rescheduled payment scheme provided in the MOA.

The bank filed with the Makati City Prosecutors Office a complaint charging respondents Ong and Leoncia Lim (as president and treasurer of BMC, respectively) with violation of the Trust Receipts

Law (PD No. 115). The bank alleged that both respondents failed to pay their obligations under the trust receipts despite demand.

Third Assistant Prosecutor Edgardo E. Bautista issued a Resolution recommending the dismissal of the complaint which was approved. The bank filed a motion for reconsideration but was denied.

Upon appeal by the bank, the DOJ rendered judgment denying the same for lack of merit. Its motion for reconsideration was likewise denied.

Thus, the bank filed with this Court a petition for certiorari and mandamus seeking to annul the resolution of the DOJ. The petition was referred to the Court of Appeals for proper determination and disposition. CA set aside the resolutions and directs the public respondents to file the appropriate criminal charges for violation of P.D. No. 115, otherwise known as The Trust Receipts Law, against private respondents.

However, upon respondent's motion for reconsideration, the **Court of Appeals reversed itself**, holding that the execution of the MOA constitutes novation which "places petitioner Bank in estoppel to insist on the original trust relation and constitutes a bar to the filing of any criminal information for violation of the trust receipts law."

The bank filed a motion for reconsideration but was denied. Hence this petition

Petitioner bank's contended that the MOA did not novate, much less extinguish, the existing obligations of BMC under the trust receipt agreement. It also argued that the bank, through the execution of the MOA, merely assisted BMC to settle its obligations by rescheduling the same. It also contends that when BMC defaulted in its payment, all its rights, including the right to charge respondents for violation of the Trust Receipts Law, were revived.

Respondents', on the other hand, contended that the MOA, which has the effect of a compromise agreement, novated BMCs existing obligations under the trust receipt agreement. It also argued that the novation converted the parties' relationship into one of an ordinary creditor and debtor. It further argues that the execution of the MOA precludes any criminal liability on their part which may arise in case they violate any provision thereof.

ISSUE

Whether or not the MOA executed by and between the parties had the effect of novating BMC's existing obligations under the trust receipt agreement? (YES)

RULING

Failure of the entrustee to turn over the proceeds of the sale of the goods covered by a trust receipt to the entruster or to return the goods, if they were not disposed of, shall constitute the crime of estafa under Article 315, par. 1(b) of the Revised Penal Code. If the violation or offense is committed by a corporation, the penalty shall be imposed upon the directors, officers, employees or other officials or persons therein responsible for the offense, without prejudice to the civil liabilities

arising from the criminal offense. It is on this premise that petitioner bank charged respondents with violation of the Trust Receipts Law.

Mere failure to deliver the proceeds of the sale or the goods, if not sold, constitutes violation of PD No. 115. However, what is being punished by the law is the dishonesty and abuse of confidence in the handling of money or goods to the prejudice of another regardless of whether the latter is the owner.

In this case, no dishonesty or abuse of confidence can be attributed to respondents. Record shows that BMC failed to comply with its obligations upon maturity of the trust receipts due to serious liquidity problems, prompting it to file a Petition for Rehabilitation and Declaration in a State of Suspension of Payments. It bears emphasis that when petitioner bank made a demand upon BMC to comply with its obligations under the trust receipts, the latter was already under the control of the Management Committee created by the SEC. The Management Committee took custody of all BMCs assets and liabilities, including the red lauan lumber subject of the trust receipts, and authorized their use in the ordinary course of business operations. Clearly, it was the Management Committee which could settle BMCs obligations. Moreover, it has not escaped this Courts observation that respondent Ong paid P21, 000,000.00 in compliance with the equity infusion required by the MOA. The mala prohibita nature of the offense notwithstanding, respondent's intent to misuse or misappropriate the goods or their proceeds has not been established by the records.

Did the MOA novate the trust agreement between the parties? Indeed, what is automatically terminated in case BMC failed to comply with the conditions under the MOA is not the MOA itself but merely the obligation of the lender (the bank) to reschedule the existing credits. Moreover, it is erroneous to assume that the revesting of "all the rights of lenders against the borrower" means that petitioner can charge respondents for violation of the Trust Receipts Law under the original trust receipt agreement. As explained earlier, the execution of the MOA extinguished respondent's obligation under the trust receipts. Respondent's liability, if any, would only be civil in nature since the trust receipts were transformed into mere loan documents after the execution of the MOA. This is reinforced by the fact that the mortgage contracts executed by the BMC survive despite its non-compliance with the conditions set forth in the MOA.

14. Payment/Delivery of Proceeds of Sale or Disposition of Goods, Documents or Instrume

15. Return of Goods, Documents or Instruments in Case of Non-Sale

• Vintola vs. Insular Bank of Asia and America, ibid

16. Liability for Loss of Goods, Documents or Instruments

• Rosario Textile Mills Corp. vs. Home Bankers Savings and Trust Company, ibid.

17. Penal Sanctions if Offender is a Corporation

a. Criminal Liability of directors, officers and agents

• Ong vs. Court of Appeals, 401 SCRA 649 (2003)

EDWARD C. ONG, PETITIONER, -versus- THE COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS. G.R. No. 119858, FIRST DIVISION, April 29, 2003, CARPIO, J.

In the instant case, the Bank was the entruster while ARMAGRI was the entrustee. Being the entrustee, ARMAGRI was the one responsible to account for the goods or its proceeds in case of sale. However, the criminal liability for violation of the Trust Receipts Law falls on the human agent responsible for the violation. Petitioner, who admits being the agent of ARMAGRI, is the person responsible for the offense for two reasons. First, petitioner is the signatory to the trust receipts, the loan applications and the letters of credit. Second, despite being the signatory to the trust receipts and the other documents, petitioner did not explain or show why he is not responsible for the failure to turn over the proceeds of the sale or account for the goods covered by the trust receipts.

FACTS

Edward Ong (petitioner), representing ARMAGRI International Corporation ("ARMAGRI"), applied for a letter of credit for P2, 532, 500.00 with SOLIDBANK Corporation ("Bank") to finance the purchase of differential assemblies from Metropole Industrial Sales. On 6 July 1990, petitioner, representing ARMAGRI, executed a trust receipt acknowledging receipt from the Bank of the goods valued at P2, 532, 500.00.

On 12 July 1990, petitioner and Benito Ong, representing ARMAGRI, applied for another letter of credit for P2, 050, 000.00 to finance the purchase of merchandise from Fertiphil Corporation. The Bank approved the application, opened the letter of credit and paid to Fertiphil Corporation the amount of P2, 050, 000.00. On 23 July 1990, petitioner, signing for ARMAGRI, executed another trust receipt in favor of the Bank acknowledging receipt of the merchandise.

Both trust receipts contained the same stipulations. Under the trust receipts, ARMAGRI undertook to account for the goods held in trust for the Bank, or if the goods are sold, to turn over the proceeds to the Bank. ARMAGRI also undertook the obligation to keep the proceeds in the form of money, bills or receivables as the separate property of the Bank or to return the goods upon demand by the Bank, if not sold. In addition, petitioner executed an additional undertaking stamped on the dorsal portion of both trust receipts.

Petitioner signed alone the additional undertaking in the Trust Receipt for P2, 253, 500.00, while both petitioner and Benito Ong signed the additional undertaking in the Trust Receipt for P2, 050, 000.00.

When the trust receipts became due and demandable, ARMAGRI failed to pay or deliver the goods to the Bank despite several demand letters. Consequently, as of 31 May 1991, the unpaid account under the first trust receipt amounted to P1, 527, 180.66 while the unpaid account under the second trust receipt amounted to P1, 449, 395.71.

Assistant City Prosecutor Dina P. Teves of the City of Manila charged petitioner and Benito Ong with two counts of estafa for violation of the Trust Receipts Law where he was found guilty by the RTC.

The CA affirmed the trial court's decision and denied the subsequent motion for reconsideration filed by the petitioner.

ISSUE

- 1. Whether or not the petitioner, being the agent and the one who signed for the entrustee corporation, can be held liable for violating the trust receipt agreement? (YES)
- 2. Whether or not the petitioner can be held criminally liable for estafa? (YES)

RULING

1.

Section 13 of the Trust Receipts Law which provides:

 $x \times x$. If the violation is committed by a corporation, partnership, association or other juridical entities, the penalty provided for in this Decree shall be imposed upon the directors, officers, employees or other officials or persons therein responsible for the offense, without prejudice to the civil liabilities arising from the offense

Trust Receipts Law is violated whenever the entrustee fails to: (1) turn over the proceeds of the sale of the goods, or (2) return the goods covered by the trust receipts if the goods are not sold. The mere failure to account or return gives rise to the crime which is malum prohibitum. There is no requirement to prove intent to defraud.

The Trust Receipts Law recognizes the impossibility of imposing the penalty of imprisonment on a corporation. Hence, if the entrustee is a corporation, the law makes the officers or employees or other persons responsible for the offense liable to suffer the penalty of imprisonment. The reason is obvious: corporations, partnerships, associations and other juridical entities cannot be put to jail. Hence, the criminal liability falls on the human agent responsible for the violation of the Trust Receipts Law.

In the instant case, the Bank was the entruster while ARMAGRI was the entrustee. Being the entrustee, ARMAGRI was the one responsible to account for the goods or its proceeds in case of sale. However, the criminal liability for violation of the Trust Receipts Law falls on the human agent responsible for the violation. Petitioner, who admits being the agent of ARMAGRI, is the person responsible for the offense for two reasons. First, petitioner is the signatory to the trust receipts, the loan applications and the letters of credit. Second, despite being the signatory to the trust receipts and the other documents, petitioner did not explain or show why he is not responsible for the failure to turn over the proceeds of the sale or account for the goods covered by the trust receipts.

2.

The two information explicitly allege that petitioner, representing ARMAGRI, defrauded the Bank by failing to remit the proceeds of the sale or to return the goods despite demands by the Bank, to the latter's prejudice. As an essential element of estafa with abuse of confidence, it is sufficient that the Informations specifically allege that the entrustee received the goods. The Informations expressly state that ARMAGRI, represented by petitioner, received the goods in trust for the Bank under the express obligation to remit the proceeds of the sale or to return the goods upon demand by the Bank. There is no need to allege in the Informations in what capacity petitioner participated to hold him responsible for the offense. Under the Trust Receipts Law, it is sufficient to allege and establish the failure of ARMAGRI, whom petitioner represented, to remit the proceeds or to return the goods to the Bank.

When petitioner signed the trust receipts, he claimed he was representing ARMAGRI. The corporation obviously acts only through its human agents and it is the conduct of such agents which the law must deter. The existence of the corporate entity does not shield from prosecution the agent who knowingly and intentionally commits a crime at the instance of a corporation.

Ching vs Secretary of Justice

ALFREDO CHING, PETITIONER, -VERSUS- THE SECRETARY OF JUSTICE, ASST. CITY PROSECUTOR ECILYN BURGOS-VILLAVERT, JUDGE EDGARDO SUDIAM OF THE REGIONAL TRIAL COURT, MANILA, BRANCH 52; RIZAL COMMERCIAL BANKING CORP. AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G. R. No. 164317, FIRST DIVISION, February 6, 2006, CALLEJO, SR., J.

There is no dispute that it was Ching, who, as senior vice-president of PBM, executed the thirteen (13) trust receipts. As such, the law points to him as the official responsible for the offense. Since a corporation cannot be proceeded against criminally because it cannot commit crime in which personal violence or malicious intent is required, criminal action is limited to the corporate agents guilty of an act amounting to a crime and never against the corporation itself. Petitioner having participated in the negotiations for the trust receipts and having received the goods for PBM, it was inevitable that the petitioner is the proper corporate officer to be proceeded against by virtue of the PBM's violation of P.D. No. 115.

The rationale is that such officers or employees are vested with the authority and responsibility to devise means necessary to ensure compliance with the law and, if they fail to do so, are held criminally accountable; thus, they have a responsible share in the violations of the law. In this case, Ching signed the trust receipts in question. He cannot, thus, hide behind the cloak of the separate corporate personality of PBMI.

FACTS

Petitioner (Ching) was the Senior Vice-President of Philippine Blooming Mills, Inc. (PBMI). Sometime in September to October 1980, PBMI, through petitioner, applied with the Rizal Commercial Banking Corporation (respondent bank) for the issuance of commercial letters of credit to finance its importation of assorted goods. Respondent bank approved the application, and irrevocable letters of credit were issued in favor of petitioner. The goods were purchased and delivered in trust to PBMI.

Under the receipts, petitioner agreed to hold the goods in trust for the said bank, with authority to sell but not by way of conditional sale, pledge or otherwise; and in case such goods were sold, to turn over the proceeds thereof as soon as received, to apply against the relative acceptances and payment of other indebtedness to respondent bank. In case the goods remained unsold within the specified period, the goods were to be returned to respondent bank without any need of demand. Thus, said "goods, manufactured products or proceeds thereof, whether in the form of money or bills, receivables, or accounts separate and capable of identification" were respondent bank's property. When the trust receipts matured, petitioner failed to return the goods to respondent bank, or to return their value amounting to P6,940,280.66 despite demands.

RCBC filed a criminal complaint for estafa against Ching in the Office of the City Prosecutor of Manila. Thirteen (13) Information for estafa under Article 315, paragraph 1(b) of the Revised Penal Code, in relation to Presidential Decree (P.D.) No. 115, otherwise known as the Trust Receipts Law were filed against the petitioner before the RTC of Manila.

Petitioner appealed the resolution of the City Prosecutor to the then Minister of Justice. The City Prosecutor was ordered to move for the withdrawal of the Information. This time, respondent bank filed a motion for reconsideration, which, however, was denied on February 24, 1988. The RTC, for its part, granted the Motion to Quash the Information filed by petitioner on the ground that the material allegations therein did not amount to estafa.

On February 27, 1995, respondent bank re-filed the criminal complaint for estafa against petitioner before the Office of the City Prosecutor of Manila. Preliminary investigation ensued. The City Prosecutor ruled that there was no probable cause to charge petitioner with violating P.D. No. 115, as petitioner's liability was only civil, not criminal, having signed the trust receipts as surety. Respondent bank appealed the resolution to the Department of Justice (DOJ) via petition for review. On July 13, 1999, the Secretary of Justice issued Resolution No. 250granting the petition and reversing the assailed resolution of the City Prosecutor.

The City Prosecutor then filed 13 Information against petitioner for violation of P.D. No. 115 before the RTC of Manila. Petitioner filed a motion for reconsideration, which the Secretary of Justice denied in a Resolution.

Petitioner filed a petition for certiorari, prohibition and mandamus with the CA, assailing the resolutions of the Secretary of Justice. On April 22, 2004, the CA rendered judgment dismissing the petition for lack of merit, and on procedural grounds. On the merits of the petition, the CA ruled that the assailed resolutions of the Secretary of Justice were correctly issued. Hence, this petition for review.

ISSUE

- 1. Whether or not Ching should be held criminally liable for the violation of the Trust Receipt Agreement? (YES)
- 2. Whether or not Ching should only be held civilly liable for violating the Trust Receipt Agreement? (NO)

RULING

1.

Petitioner posits that, except for his being the Senior Vice-President of the PBMI, there is no iota of evidence that he was a participes crimines in violating the trust receipts sued upon; and that his liability, if at all, is purely civil because he signed the said trust receipts merely as a surety and not as the entrustee. These assertions are, however, too dull that they cannot even just dent the findings of the respondent Secretary, it is apropos to quote section 13 of PD 115 which states in part:

'If the violation or offense is committed by a corporation, partnership, association or other judicial entities, the penalty provided for in this Decree shall be imposed upon the directors, officers, employees or other officials or persons therein responsible for the offense, without prejudice to the civil liabilities arising from the criminal offense.'

There is no dispute that it was Ching, who, as senior vice-president of PBM, executed the thirteen (13) trust receipts. As such, the law points to him as the official responsible for the offense. Since a corporation cannot be proceeded against criminally because it cannot commit crime in which personal violence or malicious intent is required, criminal action is limited to the corporate agents guilty of an act amounting to a crime and never against the corporation itself. Petitioner having participated in the negotiations for the trust receipts and having received the goods for PBM, it was inevitable that the petitioner is the proper corporate officer to be proceeded against by virtue of the PBM's violation of P.D. No. 115.

The rationale is that such officers or employees are vested with the authority and responsibility to devise means necessary to ensure compliance with the law and, if they fail to do so, are held criminally accountable; thus, they have a responsible share in the violations of the law. In this case, Ching signed the trust receipts in question. He cannot, thus, hide behind the cloak of the separate corporate personality of PBMI. In the words of Chief Justice Earl Warren, a corporate officer cannot protect himself behind a corporation where he is the actual, present and efficient actor.

2.

We note that the respondent bound himself under the terms of the trust receipts not only as a corporate official of PBM but also as its surety. It is evident that these are two (2) capacities which do not exclude the other. Logically, he can be proceeded against in two (2) ways: first, as surety as determined by the Supreme Court in its decision in RCBC vs. Court of Appeals; and, secondly, as the corporate official responsible for the offense under PD 115, the present case is an appropriate remedy under our penal law. PD 115 explicitly allows the prosecution of corporate officers 'without prejudice to the civil liabilities arising from the criminal offense' thus; the civil liability imposed on respondent in RCBC vs. Court of Appeals case is clearly separate and distinct from his criminal liability under PD 115.'"

b. Directors and officers of the corporation not civilly liable unless they assume personal liability

• Tupaz IV vs. Court of Appeals, 475 SCRA 398 (2005)

JOSE C. TUPAZ IV AND PETRONILA C. TUPAZ, PETITIONERS, -VERSUS- THE COURT OF APPEALS AND BANK OF THE P HIL IPPINE ' ISLANDS, RESPONDENTS. G.R. No. 145578, November 18, 2005, FIRST DIVISION, CARPIO, J.

In the trust receipt dated 9 October 1981, petitioners signed below this clause as officers of El Oro Corporation. Thus, under petitioner Petronila Tupaz's signature are the words Vice-PresTreasurer and under petitioner Jose Tupaz's signature are the words Vice-PresOperations. By so signing that trust receipt, petitioners did not bind themselves personally liable for El Oro Corporations obligation. For the trust receipt dated 30 September 1981, the dorsal portion of which petitioner Jose Tupaz signed alone, SC finds that he did so in his personal capacity. Petitioner Jose Tupaz did not indicate that he was signing as El Oro Corporations Vice-President for Operations. Hence, petitioner Jose Tupaz bound himself personally liable for El Oro Corporations debts. Not being a party to the trust receipt dated 30 September 1981, petitioner Petronila Tupaz is not liable under such trust receipt.

However, respondent banks suit against petitioner Jose Tupaz stands despite the Courts finding that he is liable as guarantor only. Under the trust receipt dated 30 September 1981, petitioner Jose Tupaz waived excussion when he agreed that his liability in [the] guaranty shall be DIRECT AND IMMEDIATE, without any need whatsoever on xxx [the] part [of respondent bank] to take any steps or exhaust any legal remedies. The clear import of this stipulation is that petitioner Jose Tupaz waived the benefit of excussion under his guarantee. As guarantor, petitioner Jose Tupaz is liable for El Oro Corporations principal debt and other accessory liabilities (as stipulated in the trust receipt and as provided by law) under the trust receipt dated 30 September 1981.

FACTS

Petitioners Jose C. Tupaz IV and Petronila C. Tupaz were Vice-President for Operations and Vice-President/Treasurer, respectively, of El Oro Engraver Corporation (El Oro Corporation). El Oro Corporation had a contract with the Philippine Army to supply the latter with survival bolos. To finance the purchase of the raw materials for the survival bolos, petitioners, on behalf of El Oro Corporation, applied with respondent Bank of the Philippine Islands (respondent bank) for two commercial letters of credit. The letters of credit were in favor of El Oro Corporations suppliers, Tanchaoco Incorporated and Maresco Corporation. Respondent bank granted petitioners application and issued Letter of Credit No. 2-00896-3 for P564, 871.05 to Tanchaoco Incorporated and Letter of Credit No. 2-00914-5 for P294,000 to Maresco Corporation.

Simultaneous with the issuance of the letters of credit, petitioners signed trust receipts in favor of respondent bank. On 30 September 1981, petitioner Jose Tupaz signed, in his personal capacity, a trust receipt corresponding to Letter of Credit No. 2-00896-3 (for P564, 871.05). Petitioner Jose Tupaz bound himself to sell the goods covered by the letter of credit and to remit the proceeds to respondent bank, if sold, or to return the goods, if not sold, on or before 29 December 1981.

On 9 October 1981, petitioners signed, in their capacities as officers of El Oro Corporation, a trust receipt corresponding to Letter of Credit No. 2-00914-5 (for P294,000). Petitioners bound themselves to sell the goods covered by that letter of credit and to remit the proceeds to respondent bank, if sold, or to return the goods, if not sold, on or before 8 December 1981. After Tanchaoco Incorporated and Maresco Corporation delivered the raw materials to El Oro Corporation, respondent bank paid the former P564, 871.05 and P294, 000.00, respectively.

Petitioners did not comply with their undertaking under the trust receipts claiming that it could not fully pay its debt because the Armed Forces of the Philippines had delayed paying for the survival bolos. Respondent bank charged petitioners with estafa under Section 13, Presidential Decree No. 115 (Section 13) or Trust Receipts Law (PD 115). Petitioners pleaded not guilty to the charges and trial ensued.

On 16 July 1992, RTC rendered judgment acquitting petitioners of estafa on reasonable doubt. However, the trial court found petitioners' solidarily liable with El Oro Corporation for the balance of El Oro Corporations principal debt under the trust receipts. Petitioners appealed to the Court of Appeals. Petitioners contended that: (1) their acquittal operates to extinguish [their] civil liability and (2) at any rate, they are not personally liable for El Oro Corporations debts. However, CA affirmed RTC's ruling.

ISSUE

Whether or not the acquittal of petitioners extinguishes their personal liability under the Trust Receipts agreement issued in favor of respondent bank? (Partly Yes)

RULING

In the trust receipt dated 9 October 1981, petitioners signed below this clause as officers of El Oro Corporation. Thus, under petitioner Petronila Tupaz's signature are the words Vice-PresTreasurer and under petitioner Jose Tupaz's signature are the words Vice-PresOperations. By so signing that trust receipt, petitioners did not bind themselves personally liable for El Oro Corporations obligation. In Ong v. Court of Appeals, a corporate representative signed a solidary guarantee clause in two trust receipts in his capacity as corporate representative. There, the Court held that the corporate representative did not undertake to guarantee personally the payment of the corporation's debts. Hence, for the trust receipt dated 9 October 1981, the Supreme Court sustain petitioners claim that they are not personally liable for El Oro Corporations.

For the trust receipt dated 30 September 1981, the dorsal portion of which petitioner Jose Tupaz signed alone, SC finds that he did so in his personal capacity. Petitioner Jose Tupaz did not indicate that he was signing as El Oro Corporations Vice-President for Operations. Hence, petitioner Jose Tupaz bound himself personally liable for El Oro Corporations debts. Not being a party to the trust receipt dated 30 September 1981, petitioner Petronila Tupaz is not liable under such trust receipt.

However, respondent banks suit against petitioner Jose Tupaz stands despite the Courts finding that he is liable as guarantor only. Under the trust receipt dated 30 September 1981, petitioner Jose Tupaz waived excussion when he agreed that his liability in [the] guaranty shall be DIRECT AND IMMEDIATE, without any need whatsoever on xxx [the] part [of respondent bank] to take any steps or exhaust any legal remedies. The clear import of this stipulation is that petitioner Jose Tupaz waived the benefit of excussion under his guarantee. As guarantor, petitioner Jose Tupaz is liable for El Oro Corporations principal debt and other accessory liabilities (as stipulated in the trust receipt and as provided by law) under the trust receipt dated 30 September 1981.

More so, although the trial court acquitted petitioner Jose Tupaz, his acquittal did not extinguish his civil liability. As the Court of Appeals correctly held, his liability arose not from the criminal act of which he was acquitted (ex delicto) but from the trust receipt contract (ex contractu) of 30 September 1981. Petitioner Jose Tupaz signed the trust receipt of 30 September 1981 in his personal capacity.

18. Remedies Available

a. Criminal and civil actions

- Vintola vs. Insular Bank of Asia and America, ibid
- Sarmiento vs. Court of Appeals, 394 SCRA 315 (2002)

LORENZO M. SARMIENTO, JR. and GREGORIO LIMPIN, JR., Petitioners, v. COURT OF APPEALS and ASSOCIATED BANKING CORP., Respondents. G.R. No. 122502, SECOND DIVISION, December 27, 2002, AUSTRIA-MARTINEZ, J.

Petitioner Gregorio Limpin, Jr. and Antonio Apostol, doing business under the name and style of Davao Libra Industrial Sales, obtained an Irrevocable Domestic Letter of Credit with the plaintiff Bank.Thereafter, a Trust Receipt dated September 6, 1978, was executed by defendant Limpin and Antonio Apostol.Petitioners failed to comply with their undertaking under the Trust Receipt. A complaint for Violation of the Trust Receipt Law was filed against the petitioners before the City Fiscals Office. Thereafter, the corresponding Information was filed against Gregorio Limpin, Jr. but the same dropped Sarmiento, Jr. as an accused. Petitioner Limpin, Jr. was convicted in Criminal Case No. 14,126. The Petitioners argue that respondent's act of filing a civil action against petitioners for collection of sum of money on account of the Trust Receipt had already been barred by Criminal Case No. 14,126, which dropped Sarmiento, Jr. as an accused and as to Limpin, Jr., the civil action was not expressly reserved in the same criminal action.

In the present case, private respondents complaint against petitioners was based on the failure of the latter to comply with their obligation as spelled out in the Trust Receipt executed by them. This breach of obligation is separate and distinct from any criminal liability for misuse and/or misappropriation of goods or proceeds realized from the sale of goods, documents or instruments released under trust receipts, punishable under Section 13 of the Trust Receipts Law (P.D. 115) in relation to Article 315(1), (b) of the Revised Penal Code. Being based on an obligation ex contractu and not ex delicto, the civil action may proceed independently of the criminal proceedings instituted against petitioners regardless of the result of the latter.

FACTS

On September 6, 1978, petitioner Gregorio Limpin, Jr. and Antonio Apostol, doing business under the name and style of Davao Libra Industrial Sales, filed an application for an Irrevocable Domestic Letter of Credit with the plaintiff Bank for the amount of P495, 000.00 in favor of LS Parts Hardware and Machine Shop (herein after referred to as LS Parts) for the purchase of assorted scrap irons. Said application was signed by defendant Limpin and Apostol. The aforesaid application was approved, and plaintiff Bank issued Domestic Letter of Credit No. DLC No. DVO-78006 in favor of LS Parts for P495, 000.00. Thereafter, a Trust Receipt dated September 6, 1978, was executed by defendant Limpin and Antonio Apostol. In said Trust Receipt, the following stipulation, signed by petitioner Lorenzo Sarmiento, Jr. appears: -

In consideration of the Associated Banking Corporation releasing to Gregorio Limpin and Antonio Apostol goods mentioned in the trust receipt, we hereby jointly and severally undertake and agree to pay, on demand, to the Associated Bank Corporation all sums and amount of money which said Associated Banking Corporation may call upon us to pay arising out of, pertaining to, and/or any manner connected with the trust receipt, WE FURTHER AGREE that our liability in this undertaking shall be direct and immediate and not contingent upon the pursuit by the Associated Banking Corporation of whatever remedies it may have against the aforesaid Gregorio Limpin and Antonio Apostol. SGD. T/LORENZO SARMIENTO, JR.

Surety/Guarantor

Petitioners failed to comply with their undertaking under the Trust Receipt. Hence as early as March, 1980, demands were made for them to comply with their undertaking. However, petitioners failed to pay their account. Legal action against the petitioners was deferred due to the proposed settlement of the account. However, no settlement was reached.

On June 11, 1986, a complaint for Violation of the Trust Receipt Law was filed against the petitioners before the City Fiscals Office. Thereafter, the corresponding Information was filed against Gregorio Limpin, Jr. but the same dropped Sarmiento, Jr. as an accused. Petitioner Limpin, Jr. was convicted in Criminal Case No. 14,126.

In their defense, petitioners claim that they cannot be held liable as the 825 tons of assorted scrap iron, subject of the trust receipt agreement, were lost when the vessel transporting them sunk, and that said scrap iron were delivered to Davao Libra Industrial Sales, a business concern over which they had no interest whatsoever.

After trial, the lower court rendered judgment in favor of Associated Banking Corporation. RTC ordered defendants Lorenzo Sarmiento, Jr. and Gregorio Limpin, Jr. to pay jointly and severally, the plaintiff bank the principal sum of P495, 000.00 plus interest thereon at the legal rate from December 6, 1978 until the full amount is paid; the sum of P49, 500.00 as the agreed attorney's fees and the costs of suit.

On appeal by petitioners Sarmiento, Jr. and Limpin, Jr., the Court of Appeals affirmed the judgment of the trial court, and, denied their consequent Motion for Reconsideration.

ISSUE

Whether the respondent's act of filing a civil action against petitioners for collection of sum of money on account of the Trust Receipt had already been barred by Criminal Case No. 14,126, which dropped Sarmiento, Jr. as an accused and as to Limpin, Jr., the civil action was not expressly reserved in the same criminal action? (NO)

RULING

In the present case, private respondents complaint against petitioners was based on the failure of the latter to comply with their obligation as spelled out in the Trust Receipt executed by them. This breach of obligation is separate and distinct from any criminal liability for misuse and/or misappropriation of goods or proceeds realized from the sale of goods, documents or instruments released under trust receipts, punishable under Section 13 of the Trust Receipts Law (P.D. 115) in relation to Article 315(1), (b) of the Revised Penal Code. Being based on an obligation ex contractu and not ex delicto, the civil action may proceed independently of the criminal proceedings instituted against petitioners regardless of the result of the latter.

This Court has previously held that the appearance of the offended party in the criminal case through a private prosecutor may not per se be considered either as an implied election to have his claim for damages determined in said proceedings or a waiver of his right to have it determined separately. He must actually or actively intervene in the criminal proceedings as to leave no doubt with respect to his intention to press a claim for damages in the same action.

In the present case, it can be said with reasonable certainty that by withdrawal of appearance of its counsel in the early stage of the criminal proceedings, the private respondent, indeed, had no intention of submitting its claim for civil liability against petitioners in the criminal action filed against the latter.

Furthermore, private respondents' right to file a separate complaint for a sum of money is governed by the provisions of Article 31 of the Civil Code, to wit:

Article 31. When the civil action is based on an obligation not arising from the act or omission complained of as a felony, such civil action may proceed independently of the criminal proceedings and regardless of the result of the latter.

b. Entruster's repossession of the goods under trust receipt not a bar to foreclosure of mortgage of other collateral

• Philippine National Bank vs. Pineda, 197 SCRA 1 (1991)

PHILIPPINE NATIONAL BANK V. HON. GREGORIO G. PINEDA IN HIS CAPACITY AS PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, BRANCH XXI AND TAYABAS CEMENT COMPANY, INC.

G.R. No. L-46658, THIRD DIVISION, May 13, 1991 Fernan, J.

PNB's possession of the subject machinery and equipment being precisely as a form of security for the advances given to TCC under the Letter of Credit, said possession by itself cannot be considered payment of the loan secured thereby. Payment would legally result only after PNB had foreclosed on said securities, sold the same and applied the proceeds thereof to TCC's loan obligation. Mere possession does not amount to foreclosure for foreclosure denotes the procedure adopted by the mortgagee to terminate the rights of the mortgagor on the property and includes the sale itself.

PNB has the right to foreclose the mortgages executed by the spouses Arroyo as sureties of TCC.

FACTS

In 1963, Ignacio Arroyo, married to Lourdes Tuason Arroyo (Spouses Arroyo), obtained a loan from petitioner bank to purchase 60% of the subscribed capital stock, and thereby acquire the controlling interest of private respondent Tayabas Cement Company, Inc. (TCC). As security for said loan, the spouses Arroyo executed a real estate mortgage over a parcel of land known as the La Vista property.

Thereafter, TCC filed with petitioner bank an application and agreement for the establishment of an eight (8) year deferred letter of credit (L/C) in favor of Toyo Menka Kaisha, Ltd., to cover the importation of a cement plant machinery and equipment. Upon approval of said application and opening of an L/C by PNB in favor of Toyo Menka Kaisha, Ltd. for the account of TCC, the Arroyo spouses executed the following documents to secure this loan accommodation: Surety Agreement dated August 5, 1964 and Covenant dated August 6, 1964.

The imported cement plant machinery and equipment arrived from Japan and were released to TCC under a trust receipt agreement. Subsequently, Toyo Menka Kaisha, Ltd. made the corresponding drawings against the L/C as scheduled. TCC, however, failed to remit and/or pay the corresponding amount covered by the drawings. Thus, pursuant to the trust receipt agreement, PNB notified TCC of its intention to repossess, as it later did, the imported machinery and equipment for failure of TCC to settle its obligations under the L/C.

In the meantime, the personal accounts of the spouses Arroyo, which included another loan of P160,000.00 secured by a real estate mortgage over parcels of agricultural land known as Hacienda Bacon had likewise become due. The spouses Arroyo having failed to satisfy their obligations with PNB, the latter decided to foreclose the real estate mortgages executed by the spouses Arroyo in its favor.

In this petition for certiorari, petitioner Philippine National Bank (PNB) seeks to annul and set aside the orders dated March 4, 1977 and May 31, 1977 rendered in Civil Case No. 244221 of the Court of First Instance of Rizal, Branch XXI, respectively granting private respondent Tayabas Cement Company, Inc.'s application for a writ of preliminary injunction to enjoin the foreclosure sale of certain properties in Quezon City and Negros Occidental and denying petitioner's motion for reconsideration thereof.

ISSUE

Whether or not TCC's liability has been extinguished by the repossession of PNB of the imported cement plant machinery and equipment?

RULING

No. It must be remembered that PNB took possession of the imported cement plant machinery and equipment pursuant to the trust receipt agreement executed by and between PNB and TCC giving the former the unqualified right to the possession and disposal of all property shipped under the Letter of Credit until such time as all the liabilities and obligations under said letter had been discharged.

PNB's possession of the subject machinery and equipment being precisely as a form of security for the advances given to TCC under the Letter of Credit, said possession by itself cannot be considered payment of the loan secured thereby. Payment would legally result only after PNB had foreclosed on said securities, sold the same and applied the proceeds thereof to TCC's loan obligation. Mere possession does not amount to foreclosure for foreclosure denotes the procedure adopted by the mortgagee to terminate the rights of the mortgagor on the property and includes the sale itself.

Neither can said repossession amount to dacion en pago. Dation in payment takes place when property is alienated to the creditor in satisfaction of a debt in money and the same is governed by sales. Dation in payment is the delivery and transmission of ownership of a thing by the debtor to the creditor as an accepted equivalent of the performance of the obligation. As aforesaid, the repossession of the machinery and equipment in question was merely to secure the payment of TCC's loan obligation and not for the purpose of transferring ownership thereof to PNB in satisfaction of said loan. Thus, no dacion en pago was ever accomplished.

Proceeding from this finding, PNB has the right to foreclose the mortgages executed by the spouses Arroyo as sureties of TCC. A surety is considered in law as being the same party as the debtor in relation to whatever is adjudged touching the obligation of the latter, and their liabilities are interwoven as to be inseparable.

c. cancellation of trust and repossession of goods



South City Homes, Inc. vs. BA Finance Corporation, 371 SCRA 603 (2001)

SOUTH CITY HOMES, INC., FORTUNE MOTORS (PHILS.), PALAWAN LUMBER MANUFACTURING CORPORATION, petitioners, vs. BA FINANCE CORPORATION, respondent. G. R. No. 135462, FIRST DIVISION, December 7, 2001, PARDO, J.

The court ruled that as an entruster, respondent BAFC must first demand the return of the unsold vehicles from Fortune Motors Corporation, pursuant to the terms of the trust receipts. Having failed to do so, BAFC had no cause of action whatsoever against Fortune Motors Corporation and the action for collection of sum of money was, therefore, premature.

In the event of default by the entrustee on his obligations under the trust receipt agreement, it is not absolutely necessary that the entruster cancel the trust and take possession of the goods to be able to enforce his rights thereunder.

FACTS

Fortune Motors Corporation (Phils.) has been availing of the credit facilities of BA Finance Corporation. On January 17, 1983, Joseph L. G. Chua, President of Fortune Motors Corporation, executed in favor of BA Finance a Continuing Suretyship Agreement, in which he jointly and severally unconditionally guaranteed the full, faithful and prompt payment and discharge of any and all indebtedness of Fortune Motors Corporation to BA Finance Corporation.

On February 3, 1983, Palawan Lumber Manufacturing Corporation executed in favor of BA Finance a Continuing Suretyship Agreement in which, said corporation jointly and severally unconditionally guaranteed the full, faithful and prompt payment and discharge of any and all indebtedness of Fortune Motors Corporation to BA Finance Corporation. On the same date, South City Homes, Inc. likewise executed a Continuing Suretyship Agreement in which said corporation jointly and severally unconditionally guaranteed the full, faithful and prompt payment and discharge of any and all indebtedness of Fortune Motors Corporation to BA Finance Corporation. Subsequently, Canlubang Automotive Resources Corporation (CARCO) drew six (6) Drafts in its own favor, payable thirty (30) days after sight, charged to the account of Fortune Motors Corporation. Fortune Motors Corporation thereafter executed trust receipts covering the motor vehicles delivered to it by CARCO under which it agreed to remit to the Entruster (CARCO) the proceeds of any sale and immediately surrender the remaining unsold vehicles. The trust receipts and drafts were assigned to plaintiff-appellant under deed of assignment executed by CARCO.

Fortune Motors Corp. failed to pay the amounts due under the drafts and trust receipts, failed to remit the proceeds of the sale of the motor vehicles and to return the remaining unsold. BA Finance Corporation sent demand letters to South City Homes and Lumber Manufacturing Corp.

Since the Fortune Motors Corp. and the other corporations failed to settle their outstanding account, a complaint for sum of money was filed against them. A writ of preliminary attachment was issued against the. The defendants filed a motion to discharge the attachment which was granted except as against defendant Fortune Motors Corporation and set the said incident for hearing. The defendants filed a Motion to Dismiss. Therein, they alleged that pursuant to the trust receipt transaction, it was premature under P. D. No. 115 to immediately file a complaint for a sum of money as the remedy of the entruster is an action for specific performance; that the suretyship agreements are null and void for having been entered into without an existing principal obligation. RTC rendered a judgment in favor of the BA Finance. Court of Appeals affirmed the decision of the RTC.

ISSUE

Whether or not the respondent BAFC has a valid cause of action for a sum of money following the drafts and trust receipts transactions.

RULING

No. The court ruled that as an entruster, respondent BAFC must first demand the return of the unsold vehicles from Fortune Motors Corporation, pursuant to the terms of the trust receipts. Having failed to do so, BAFC had no cause of action whatsoever against Fortune Motors Corporation and the action for collection of sum of money was, therefore, premature. A trust receipt is a security transaction intended to aid in financing importers and retail dealers who do not have sufficient funds or resources to finance the importation or purchase of merchandise, and who may not be able to acquire credit except through utilization, as collateral, of the merchandise imported or purchased. In the event of default by the entrustee on his obligations under the trust receipt agreement, it is not absolutely necessary that the entruster cancel the trust and take possession of the goods to be able to enforce his rights thereunder.

Court ruled:

x x x Significantly, the law uses the word may in granting to the entruster the right to cancel the trust and take possession of the goods. Consequently, petitioner has the discretion to avail of such right or seek any alternative action, such as a third party claim or a separate civil action which it deems best to protect its right, at any time upon default or failure of the entrustee to comply with any of the terms and conditions of the trust agreement.

d. entrustee liable for deficiency

Landl & Company vs. Metropolitan Bank, 435 SCRA 639 (2004)

• LANDL & COMPANY (PHIL.) INC., PERCIVAL G. LLABAN AND MANUEL P. LUCENTE, PETITIONERS, VS. METROPOLITAN BANK & TRUST COMPANY, RESPONDENT G.R. No. 159622, FIRST DIVISION, July 30, 2004Ynares-Santiago, J.

The second paragraph of Section 7 expressly provides that the entrustee shall be liable to the entruster for any deficiency after the proceeds of the sale have been applied to the payment of the expenses of the sale, the payment of the expenses of re-taking, keeping and storing the goods, documents or instruments, and the satisfaction of the entrustee's indebtedness to the entruster.

In the case at bar, the proceeds of the auction sale were insufficient to satisfy entirely petitioner corporation's indebtedness to the respondent bank. Respondent bank was thus well within its rights to institute the instant case to collect the deficiency

FACTS

Respondent alleged that petitioner corporation is engaged in the business of selling imported welding rods and alloys. On June 17, 1983, it opened Commercial Letter of Credit with respondent bank, in the amount of P218,733. The letter of credit was opened to purchase various welding rods and electrodes from Perma Alloys, Inc., New York, U.S.A., as evidenced by a Pro-Forma Invoice dated March 10, 1983. Petitioner corporation put up a marginal deposit of P50,414.00 from the proceeds of a separate clean loan.

As an additional security, and as a condition for the approval of petitioner corporation's application for the opening of the commercial letter of credit, Percival G. Llaban and Manuel P. Lucente executed a Continuing Suretyship Agreement. Petitioner Lucente also executed a Deed of Assignment. Upon compliance with these requisites, respondent bank opened an irrevocable letter of credit for the petitioner corporation.

To secure the indebtedness of petitioner corporation, respondent bank required the execution of a Trust Receipt in an amount equivalent to the letter of credit, on the condition that Landl would hold the goods in trust for respondent bank, with the right to sell the goods and the obligation to turn over to respondent bank the proceeds of the sale, if any. If the goods remained unsold, petitioner corporation had the further obligation to return them to respondent bank on or before November 23, 1983.

Upon arrival of the goods in the Philippines, Landl took possession and custody thereof.

On November 23, 1983, the maturity date of the trust receipt, petitioner corporation defaulted in the payment of its obligation to respondent bank and failed to turn over the goods to the latter. On July 24, 1984, respondent bank demanded that petitioners, as entrustees, turn over the goods subject of the trust receipt. On September 24, 1984, petitioners turned over the subject goods to the respondent bank.

On July 31, 1985, in the presence of representatives of Landl and respondent bank, the goods were sold at public auction. The goods were sold for P30,000.00 to respondent bank as the highest bidder. The proceeds of the auction sale were insufficient to completely satisfy petitioners' outstanding obligation to respondent bank, notwithstanding the application of the time deposit account of petitioner Lucente. Accordingly, respondent bank demanded that petitioners pay the remaining balance of their obligation. After petitioners failed to do so, respondent bank instituted the instant case to collect the said deficiency.

Respondent Metrobank filed a complaint for sum of money against Landl and Company (Phil.) Inc. and its directors, Percival G. Llaban and Manuel P. Lucente before the Regional Trial Court of Cebu City.

On March 31, 1997, after trial on the merits, the trial court rendered a decision ordering Landl, Llaban abd Lucente to pay jointly and severally to Metrobank the sum of P292,172.23 representing the defendant's obligation, plus interest, attorney's fees and penalty.

Petitioners appealed to the Court of Appeals. On February 13, 2003, the Court of Appeals rendered a decision affirming in toto the decision of the trial court. Hence, this petition for review.

ISSUES

- 1. Whether Metrobank's repossession of the goods amounted to extinguishment of Landl's obligation
- 2. Whether Metrobank had the right to claim the deficiency from petitioners notwithstanding the fact that the goods covered by the trust receipt were fully turned over to respondent.

RULING

1. NO. Repossession did not extinguish the liability of Landl.

There is no question that petitioners failed to pay their outstanding obligation to respondent bank. They contend, however, that based on Sec. 7 of PD 115, when the entrustee fails to settle his principal loan, the entruster may choose between two separate and alternative remedies: (1) the return of the goods covered by the trust receipt, in which case, the entruster now acquires the ownership of the goods which the entrustee failed to sell; or (2) cancel the trust and take possession of the goods, for the purpose of selling the same at a private sale or at public auction. Petitioners assert that, under this second remedy, the entruster does not acquire ownership of the

goods, in which case he is entitled to the deficiency. Petitioners argue that these two remedies are so distinct that the availment of one necessarily bars the availment of the other. Thus, when respondent bank availed of the remedy of demanding the return of the goods, the actual return of all the unsold goods completely extinguished petitioners' liability. Petitioners' argument is bereft of merit.

A trust receipt is inextricably linked with the primary agreement between the parties. Time and again, we have emphasized that a trust receipt agreement is merely a collateral agreement, the purpose of which is to serve as security for a loan.

The initial repossession by the bank of the goods subject of the trust receipt did not result in the full satisfaction of the petitioners' loan obligation. Petitioners are apparently laboring under the mistaken impression that the full turn-over of the goods suffices to divest them of their obligation to repay the principal amount of their loan obligation. The repossession of the machinery and equipment in question was merely to secure the payment of loan obligation and not for the purpose of transferring ownership thereof to Metrobank in satisfaction of said loan. Respondent bank's repossession of the properties and subsequent sale of the goods were completely in accordance with its statutory and contractual rights upon default of petitioner corporation.

2. YES, Metrobank can claim deficiency

The second paragraph of Section 7 expressly provides that the entrustee shall be liable to the entruster for any deficiency after the proceeds of the sale have been applied to the payment of the expenses of the sale, the payment of the expenses of re-taking, keeping and storing the goods, documents or instruments, and the satisfaction of the entrustee's indebtedness to the entruster. In the case at bar, the proceeds of the auction sale were insufficient to satisfy entirely petitioner corporation's indebtedness to the respondent bank. Respondent bank was thus well within its rights to institute the instant case to collect the deficiency.

III. WAREHOUSE RECEIPT'S LAW

• Estrada vs. Court of Agrarian Relations, 2 SCRA 986 (1961)

LIBERATA ANTONIO ESTRADA, CANUTO CENIZAN, NAZARIO DE LA CRUZ, GENARO ALVARO, ET AL. v. COURT OF AGRARIAN RELATIONS and FAUSTINO F. GALVAN G.R. Nos. L-17481 and L-17537 to L-17559, August 15, 1961, J. NATIVIDAD

The excuses respectively offered by the manager of the Moncada Bonded Warehouse and respondent Faustino F. Galvan are not without some merits. Such incidents, however, do not constitute a valid excuse to evade compliance with the order of this Court that the palay in question be delivered to the petitioners, and, considering that the petitioners, according to the manifestation filed by their counsel under date of August 3, 1961, are in dire need of said palay for their subsistence, our order must be carried out in the meantime that this cases have not been finally decided in order to ameliorate the precarious situation in which said petitioners find themselves.

FACTS

It was ordered by the Supreme Court that the owner or manager of the Moncada Bonded Warehouse release and give to Liberata Antonio Estrada et al. (Estrada et al.) the remaining deposits and that Faustino Galvan (Galvan) to surrender the original of the receipts of the palay deposits to the manager or owner of the Moncada Bonded Warehouse. Notwithstanding service of notice and in spite of repeated demands, they refused and still refuse to comply, the former, for the reason that Liberata Antonio Estrada et al. could not surrender to him the original of the warehouse receipts issued for the palay in question, and the latter, because he could not locate any more said receipts.

Petitioners Estrada Et Al. filed the petition before the Supreme Court to declare the manager of Moncada Bonded Warehouse and Respondent Galvan in contempt of court and punished accordingly.

ISSUE

Whether the excuses offered justify their refusal to comply with the orders.

RULING

NO. The excuses respectively offered by the manager of the Moncada Bonded Warehouse and respondent Faustino F. Galvan are not without some merits. The former unquestionably had the right to protect the interest of the bonded warehouse of which he was manager, as the warehouse receipts issued for the palay in question might have been for the value in favor of innocent third parties; and the latter (Galvan), might have in fact lost said warehouse receipts in the manner above stated, for his allegation to the effect in his answer to petitioners' motion for contempt until now has not been contradicted.

Such incidents, however, do not constitute a valid excuse to evade compliance with the order of this Court that the palay in question be delivered to the petitioners, and, considering that the petitioners, according to the manifestation filed by their counsel under date of August 3, 1961, are in dire need of said palay for their subsistence, our order must be carried out in the meantime that this cases have not been finally decided in order to ameliorate the precarious situation in which said petitioners find themselves.

• Consolidated Terminals vs. Artex Development Co., 63 SCRA 46 (1975)

CONSOLIDATED TERMINALS, INC. v. ARTEX DEVELOPMENT CO, INC. G.R. No. L-25748, SECOND DIVISON, March 10, 197, 5AQUINO, J

The amended complaint does not clearly show that, as warehouseman, it has a cause of action for damages against Artex. The real parties interested in the bales of cotton were Luzon Brokerage Corporation as depositor, Paramount Textile Mills, Inc. as consignee, Adolph Hanslik Cotton as shipper and the Commissioners of Customs and Internal Revenue with respect to the duties and taxes. These parties have not sued CTI for damages or for recovery of the bales of cotton or the corresponding taxes and duties.

FACTS

Consolidated Terminals, Inc. (CTI) was the operator of a customs bonded warehouse located at Port Area, Manila. It received on deposit one hundred ninety-three (193) bales of high density compressed raw cotton valued at P99,609.76. It was understood that CTI would keep the cotton in behalf of Luzon Brokerage Corporation until the consignee thereof, Paramount Textile Mills, Inc., had opened the corresponding letter of credit in favor of shipper, Adolph Hanslik Cotton of Corpus Christi, Texas.

Allegedly by virtue of a forged permit to deliver imported goods, purportedly issued by the Bureau of Customs, Artex was able to obtain delivery of the bales of cotton on November 5 and 6, 1964 after paying CTI 15,000 Pesos as storage and handling charges. At the time the merchandise was released to Artex, the letter of credit had not yet been opened and the customs duties and taxes due on the shipment had not been paid.

CTI contends that, as warehouseman, it was entitled to the possession (should be repossession) of the bales of cotton; that Artex acted wrongfully in depriving CTI of the possession of the merchandise because Artex presented a falsified delivery permit, and that Artex should pay damages to CTI.

Artex, on the other hand, contends that since the plaintiff (CTI) is only a warehouseman and according to the amended complaint, plaintiff was already paid the warehousing and handling charges of the 193 bales of high density compressed raw cotton mentioned in the complaint, the plaintiff can no longer recover for its services as warehouseman.

The fact that the delivery of the goods was obtained by the defendant without opening the corresponding letter of credit cannot be the basis of a cause of action of the plaintiff because such failure of the defendant to open the letter of credit gives rise to a cause of action in favor of the shipper of the goods and not in favor of the plaintiff.

CTI, in its original complaint, sought to recover possession of the cotton by means of a writ of replevin. The writ could not be executed. CTI then filed an amended complaint by transforming its original complaint into an action for the recovery from Artex of P99,609.76 as compensatory damages, P10,000 as nominal and exemplary damages and P20,000 as attorney's fees. RTC ruled in favor of Artex.

CTI appealed the decision of the RTC contending that, as warehouseman, it was entitled to the possession (should be repossession) of the bales of cotton; that Artex acted wrongfully in depriving CTI of the possession of the merchandise because Artex presented a falsified delivery permit, and that Artex should pay damages to CTI.

ISSUE

Whether or not Artex is liable to CTI, the warehouseman by reason of the former's use of a falsified delivery permit.

RULING

NO. Its amended complaint does not clearly show that, as warehouseman, it has a cause of action for damages against Artex. The real parties interested in the bales of cotton were Luzon Brokerage Corporation as depositor, Paramount Textile Mills, Inc. as consignee, Adolph Hanslik Cotton as shipper and the Commissioners of Customs and Internal Revenue with respect to the duties and taxes. These parties have not sued CTI for damages or for recovery of the bales of cotton or the corresponding taxes and duties. In other words, on the basis of the allegations of the amended complaint, the lower court could not render a valid judgment in accordance with the prayer thereof. It could not render such valid judgment because the amended complaint did not unequivocally allege what right of CTI was violated by Artex, or, to use the familiar language of adjective law, what delict or wrong was committed by Artex against CTI which would justify the latter in recovering the value of bales of cotton even if it was not the owner thereof.

• Philippine National Bank vs. Noah's Ark Sugar Refinery, 226 SCRA 36 (1993)

PHILIPPINE NATIONAL BANK v. NOAH'S ARK SUGAR REFINERY, ALBERTO T. LOOYUKO, JIMMY T. GO, WILSON T. GO

G.R. No. 107243, SECOND DIVISION, September 1, 1993, NARVASA, J

If the quedans were negotiable in form and duly indorsed to PNB (the creditor), the delivery of the quedans to PNB makes the PNB the owner of the property covered by said quedans and on deposit with Noah, the warehouseman. PNB's right to enforce the obligation of Noah as a warehouseman, to deliver the sugar stock to PNB as holder of the quedans, does not depend on the outcome of the third-party complaint because the validity of the negotiation transferring title to the goods to PNB as holder of the quedans is not affected by an act of RNS Merchandising and St. Therese Merchandising, in breach of trust, fraud or conversion against Noah'sArk.

FACTS

Noah's Ark Sugar Refinery issued on several dates warehouse receipts (quedans). Being negotiable, the receipts covering sugar deposited by RNS Merchandising was negotiated and indorsed to Luis Ramos. Those covering sugar deposited by St. Therese Merchandising, RNS Merchandising and Rosa Sy were indorsed and negotiated to Cresensiaand Zoleta. The two indorsees used the quedans as security for loans obtained by them from the PNB. Since both of them defaulted, PNB demanded Noah's Ark to deliver the sugar covered by the quedans. However, the latter refused to comply.

Noah and its co-defendants claimed that they are still the legal owners of the quedans and the sugar represented thereon because:

- 1. The P63M check issued by Rosa Ng Sy of RNS and Teresita Ng of St. Therese Merchandising for the quedans were dishonored by reason of "payment stopped" and " drawn against insufficient funds.
- 2. Since the vendees and first indorsers of quedans did not acquire ownership, the subsequent indorsers and PNB did not acquire a better right of ownership than the original vendees/first indorsers.

3. That quedans are not negotiable instruments within the purview of the Warehouse Receipts Law but simply an internal guarantee of defendants in the sale of their stocks of sugar.

While Rosa Ng Sy and Teresita Ng claims that the transaction between them and Noah was "bogus and simulated complex banking schemes and financial maneuvers and that it was to avoid payment of taxes considering that Noah is under sequestration by the PCGG.

PNB filed with the RTC a verified complaint for "Specific Performance with Damages and Applicationfor Writ of Attachment" against Noah's Ark, Alberto T. Looyuko, Jimmy T. Go, and Wilson T. Go, thelast three being identified as "the Sole Proprietor, Managing Partner and Executive Vice President ofNoah, respectively. RTC denied the application for preliminary attachment. After Noah's Ark filed its answer with counterclaim, PNB filed a motion for summary judgment, which was denied. PNB filed a petition for certiorari with the CA. CA nullified RTC order and ordered "summary judgment be rendered in favor of the PNB on the basis that "questions of law should be resolved after and not before, the questions of fact.Noah moved for reconsideration, but their motion was denied by the CA. RTC rendered judgment, but not in accordance with the decision of theCA since it dismissed PNB'scomplaint for lack of cause of action.

ISSUES

- 1. Whether or not PNB as indorsee/ pledgee of quedans was entitled to delivery of sugar stocks from the warehouseman, Noah's Ark.
- 2. Whether or not the non-payment of the purchase price for the quedans by the original vendees rendered invalid the negotiation by vendees/first indorsers to indorsers and the subsequent negotiation of Ramos and Zoleta to PNB.

RULING

- 1. Yes. PNB is entitled to the delivery of the sugar covered by the quedans. PNB whose debtor was the owner of the quedan shall be entitled to such aid from the court of appropriate jurisdiction attaching such document or in satisfying the claim by means as is allowed by law or in equity in regard to property which cannot be readily attached or levied upon by ordinary process. If the quedans were negotiable in form and duly indorsed to PNB (the creditor), the delivery of the quedans to PNB makes the PNB the owner of the property covered by said quedans and on deposit with Noah, the warehouseman. PNB's right to enforce the obligation of Noah as a warehouseman, to deliver the sugar stock to PNB as holder of the quedans, does not depend on the outcome of the third-party complaint because the validity of the negotiation transferring title to the goods to PNB as holder of the quedans is not affected by an act of RNS Merchandising and St. Therese Merchandising, in breach of trust, fraud or conversion against Noah's Ark.
- 2. No. The non-payment of the purchase price does not render the subsequent negotiation invalid. The validity of the negotiation in favor of PNB cannot be impaired even if the negotiation between Noah and its first vendees was in breach of faith on the part of the vendees or by the fact that Noah was deprived of the possession of the same by fraud,

mistake or conversion if PNB paid value in good faith without notice of such breach of duty, fraud, mistake or conversion. (Article 1518, New Civil Code)

• Philippine National Bank vs. Se. Jr., 256 SCRA 380 (1996)

PHILIPPINE NATIONAL BANK V. HON. PRES. JUDGE BENITO C. SE, JR., RTC, BR. 45, MANILA;

GR No. 119231, April 18, 1996, HERMOSISIMA, JR., J

Considering that PNB does not deny the existence, validity and genuineness of the Warehouse Receipts on which it anchors its claim for payment against PRs, it cannot disclaim liability for the payment of the storage fees stipulated therein.

While the PNB is entitled to the stocks of sugar as the endorsee of the quedans, delivery to it shall be effected only upon payment of the storage fees. Imperative is the right of the warehouseman to demand payment of his lien at this juncture, because, in accordance with Section 29 of the Warehouse Receipts Law, the warehouseman loses his lien upon goods by surrendering possession thereof. In other words, the lien may be lost where the warehouseman surrenders the possession of the goods without requiring payment of his lien, because a warehouseman's lien is possessory in nature.

FACTS

Noah's Ark Sugar Refinery issued on several dates warehouse receipts (quedans). Being negotiable, the receipts covering sugar deposited by RNS Merchandising was negotiated and indorsed to Luis Ramos. Those covering sugar deposited by St. Therese Merchandising, RNS Merchandising and Rosa Sy were indorsed and negotiated to CresensiaZoleta. The two indorsees used the quedans as security for loans obtained by them from the PNB. Since both of them defaulted, PNB demanded Noah's Ark to deliver the sugar covered by the quedans. However, the latter refused to comply. In G.R. No. 107243, Supreme Court ruled in favor of PNB declaring it as the owner of the contended sugar stocks covered by five warehouse receipts. Upon demand by the PNB of the sugar stocks in view of the favorable decision of the Supreme Court, the respondents refused to deliver the same without the payment of the warehouseman's lien and sought for the deferment of the proceedings through an Omnibus Motion and that they be heard on their claim on the warehouseman's lien or the storage fees. However, the PNB refused the payment of the storage fees and moved for the issuance of a Writ of Execution and an Opposition to the Omnibus Motion.

Supreme Court rendered judgment in favor of PNB in G.R. No. 107243 (PNB v. Noah's Ark). Noah's Ark et al. moved for reconsideration of this decision. The Supplemental/Second MR with leave of court filed by them was denied. They likewise filed a Motion Seeking Clarification of the Decision, which was also denied. They thereupon filed before the RTC an Omnibus Motion seeking among others the deferment of the proceedings until they are heard on their claim for warehouseman's lien. PNB filed a Motion for the Issuance of a Writ of Execution and an Opposition to the Omnibus Motion. The RTC granted the Omnibus Motion and found that there exists in favor of the Noah's Ark a valid warehouseman's lien under Section 27 of RA 2137. Consequently, the PNB filed the present petition to seek the nullification of the assailed order of Judge Se.

ISSUE

Whether or not the warehouseman may enforce his warehouseman's lien or storage fees before delivering the sugar stocks to PNB.

RULING

Yes. Even in the absence of such a provision, law and equity dictate the payment of the warehouseman's lienpursuant to Sections 27 and 31 of the Warehouse Receipts Law (R.A. 2137), to wit:

SECTION 27. What claims are included in the warehouseman's lien. -

Subject to the provisions of sectionthirty, a warehouseman shall have lien on goods deposited or on the proceeds thereof in his hands, for all lawfulcharges for storage and preservation of the goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing coopering and other charges and expenses in relation to such goods; also for all reasonable charges and expenses for notice, and advertisement of sale, and for sale of the goodswheredefault has been made in satisfying the warehouseman's lien.

SECTION 31. Warehouseman need not deliver until lien is satisfied. -

A warehouseman having a lien validagainst the person demanding the goods may refuse to deliver the goods to him until the lien is satisfied. After being declared as the warehouseman, PRs cannot legally be deprived of their right to enforce their claimfor warehouseman's lien, for reasonable storage fees and preservation expenses. Pursuant to Section 31, whichwe quote earlier, the goods under storage may not be delivered until said lien is satisfied.

Considering that PNB does not deny the existence, validity and genuineness of the Warehouse Receipts on which it anchors its claim for payment against PRs, it cannot disclaim liability for the payment of the storage fees stipulated therein. PNB is in estoppel in disclaiming liability for the payment of storage fees due the private respondents as warehouseman while claiming to be entitled to the sugar stocks covered by the subject Warehouse Receipts on the basis of which it anchors its claim for payment or delivery of the sugar stocks. The unconditional presentment of the receipts by PNB for payment against private respondents on the strength of the provisions of the Warehouse Receipts Law (R.A. 2137) carried with it the admission of the existence and validity of the terms, conditions and stipulations written on the face of the Warehouse Receipts, including the unqualified recognition of the payment of warehouseman's lien for storage fees and preservation expenses. PNB may not now retrieve the sugar stocks without paying the lien due private respondents as warehouseman.

In view of the foregoing, the rule may be simplified thus: While the PNB is entitled to the stocks of sugar as the endorsee of the quedans, delivery to it shall be effected only upon payment of the storage fees. Imperative is the right of the warehouseman to demand payment of his lien at this juncture, because, in accordance with Section 29 of the Warehouse Receipts Law, the warehouseman loses his lien upon goods by surrendering possession thereof. In other words, the lien may be lost where the warehouseman surrenders the possession of the goods without requiring payment of his lien, because a warehouseman's lien is possessory in nature.

• Philippine Naitonal Bank vs. Sayo, Jr., 292 SCRA 202 (1998)

PHILIPPINE NATIONAL BANK, VS. HON. MARCELINO L. SAYO, JR., IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF MANILA (BRANCH 45)

G.R. No. 129918, FIRST DIVISION, July 9, 1998, DAVIDE, JR., J

The warehouseman is entitled to the warehouseman's lien that attaches to the goods that may be invoked against anyone who claims a right of possession thereon. In this case, the lien was lost when the respondents refused to deliver the goods, which were not anchored to a valid excuse (i.e. non satisfaction of warehousemean's lien) but on an adverse claim of ownership. HOWEVER, the loss of Warehouseman's lien does not necessarily mean the extinguishment of the obligation to pay the Warehouseman's fees and charges, which continues to be a personal liability of the owners, PNB in this case.

FACTS

In accordance with the Warehouse Receipts Law, Noah's Ark Sugar Refinery issued on several dates Warehouse Receipts (quedans) covering sugar deposited by Rosa Sy, RNS Merchandising, and St. Therese Merchandising. The receipts are substantially in the form, and contain the terms, prescribed for negotiable warehouse receipts by Section 2 of the law.

Subsequently, Warehouse Receipts were negotiated and endorsed to Luis T. Ramos and to Cresencia K. Zoleta. Ramos and Zoleta then used the quedans as security for two loan agreements — one for P15.6 million and the other for P23.5 million — obtained by them from the PNB. They endorsed the aforementioned quedans to PNB.

After the decision in G.R. No. 119231 (PNB v. Se) became final and executory, various incidents took place before the trial court. Noah's Ark and its officers filed a Motion for Execution of Defendants' Lien as Warehouseman pursuant to SC's decision which was opposed by PNB. The RTC, this time presided Hon. Marcelino L. Sayo Jr., granted the Motion for Execution. PNB was immediately served with a Writ of Execution for the amount of P662,548,611.50. PNB thus filed an Urgent Motion seeking the deferment of the enforcement of the Writ of Execution. Nevertheless, the Sheriff levied on execution several properties of PNB. The said bank also filed a MR with Urgent Prayer for Quashal of Writ of Execution. After several exchanges of motions, Judge Sayo denied with finality for lack of merit the motions filed by PNB.

ISSUE

Whether or not the loss of warehouseman's lien extinguishes the obligation of PNB to pay storage fees and charges.

RULING

No. The warehouseman is entitled to the warehouseman's lien that attaches to the goods that may be invoked against anyone who claims a right of possession thereon. In this case, the lien was lost when the respondents refused to deliver the goods, which were not anchored to a valid excuse (i.e. non satisfaction of warehousemean's lien) but on an adverse claim of ownership. HOWEVER, the loss of Warehouseman's lien does not necessarily mean the extinguishment of the obligation to pay the Warehouseman's fees and charges, which continues to be a personal liability of the owners, PNB in this case. However, such fees and charges have ceased to accrue from the date of the rejection by Noah's Ark to heed the lawful demand for the release of the goods. While PNB is entitled to the stocks of sugar as the endorsee of the quedans, delivery to it shall be effected only upon payment of the storage fees.

IV. BANKING LAWS

- D. The New Central Bank Act (R.A. No. 7653)
 - 4. Responsibility and Primary Objective
 - Perez vs. Monetary Board, 20 SCRA 592 (1967)

DAMASO P. PEREZ and REPUBLIC BANK, ETC., ET AL., petitioners-appellants, vs. MONETARY BOARD, THE SUPERINTENDENT OF BANKS, CENTRAL BANK OF THE PHILIPPINES and SECRETARY OF JUSTICE, respondents-appellees. AURORA R. RECTO, MIGUEL CANIZARES, LEON ANCHETA, PABLO ROMAN, VICTORIA B. ROMAN and NORBERTO J. QUISUMBING,

intervenors-appellees.

G.R. No. L-23307, EN BANC, June 30, 1967, Bengzon, J

Perez cannot seek by mandamus to compel respondents to prosecute criminally those alleged violators of the banking laws. Although the Central Bank and its respondent officials may have the duty under the Central Bank Act and the General Banking Act to cause the prosecution of those alleged violators, yet there is nothing in said laws that imposes a clear, specific duty on the former to do the actual prosecution of the latter.

The Central Bank is a government corporation created principally to administer the monetary and banking system of the Republic, not a prosecution agency like the fiscal's office.

FACTS

Damaso Perez, for himself and in a derivative capacity on behalf of the Republic Bank, instituted mandamus proceedings in the Court of First Instance of Manila against the Monetary Board, the Superintendent of Banks, the Central Bank and the Secretary of Justice. His object was to compel these respondents to prosecute, among others, Pablo Roman and several other Republic Bank officials for violations of the General Banking Act and the Central Bank Act, and for falsification of public or commercial documents in connection with certain alleged anomalous loans amounting to P1,303,400.00 authorized by Roman and the other bank officials.

Respondents, Monetary Board, the Superintendent of Banks, the Central Bank and the Secretary of Justice their respective answers, the propriety of mandamus. The Secretary of Justice claimed that it was not their specific duty to prosecute the persons denounced by Perez. The Central Bank and its respondent officials, on the other hand, averred that they had already done their duty under the law

by referring to the special prosecutors of the Department of Justice for criminal investigation and prosecution those cases involving the alleged anomalous loans.

Petitioner-appellant Damaso P. Perez, for himself and in a derivative capacity on behalf of the Republic Bank, instituted mandamus proceedings in the Court of First Instance of Manila on June 23, 1962, against the Monetary Board, the Superintendent of Banks, the Central Bank and the Secretary of Justice.

On July 10, 1962, respondents moved for the dismissal of the petition for lack of cause of action. Petitioners opposed. The lower court denied the motion.

Subsequently, herein intervenors-appellees, as the incumbent directors of the Board of the Republic Bank, filed motion to intervene in the proceedings. Petitioners opposed the motion but the lower court approved the same.

The intervenors-appellees filed a motion to dismiss before the lower court claiming that the ouster of Pablo Roman and his family from the management of the Republic Bank effected by the voting trust agreement rendered the mandamus case moot and academic. Respondents-appellees also filed motion to dismiss in which they again raised the impropriety of mandamus. Acting upon the two motions and the oppositions thereto filed by petitioners, the lower court granted the motions and dismissed the case. Hence the petitioner appellant filed an appeal on the supreme court which also affirmed the dismissal of the case.

ISSUES

Whether or not these respondents may be compelled to prosecute criminally the alleged violators of banking laws.

RULING

No. As for the Secretary of Justice, while he may have the power to prosecute — through the office of the Solicitor General — criminal cases, yet it is settled rule that mandamus will not lie to compel a prosecuting officer to prosecute a criminal case in court.

Perez cannot seek by mandamus to compel respondents to prosecute criminally those alleged violators of the banking laws. Although the Central Bank and its respondent officials may have the duty under the Central Bank Act and the General Banking Act to cause the prosecution of those alleged violators, yet there is nothing in said laws that imposes a clear, specific duty on the former to do the actual prosecution of the latter. The Central Bank is a government corporation created principally to administer the monetary and banking system of the Republic, not a prosecution agency like the fiscal's office. Being an artificial person, The Central Bank is limited to its statutory powers and the nearest power to which prosecution of violators of banking laws may be attributed is its power to sue and be sued. But this corporate power of litigation evidently refers to civil cases only. Central Bank and its officers have already done what they can by referring the matter to the special prosecutors of the Department of Justice for prosecution and investigation. Moreover, it is a settled rule that mandamus will not lie to compel a prosecuting officer, like the Secretary of Justice, to prosecute a case in court.

Violations of banking laws constitute a public offense, the prosecution of which is a matter of public interest and hence, anyone even private individuals can denounce such violations before the prosecuting authorities. Since Perez himself could cause the filing of criminal complaints against those allegedly involved in the anomalous loans, if any, then he has a plain, adequate and speedy remedy in the ordinary course of law, which makes mandamus against respondents improper. Hence, the order of the lower court dismissing the petition was affirmed

• Romeo Busuego vs. Court of Appeals, G.R. No. 95326, March 11, 1999

ROMEO P. BUSUEGO, CATALINO F. BANEZ and RENATO F. LIM, petitioners, vs. THE HONORABLE COURT OF APPEALS and THE MONETARY BOARD OF THE CENTRAL BANK OF THE PHILIPPINES, respondents.

G.R. No. 95326, THIRD DIVISION, March 11, 1999Purisima, J.

The CB, through the MB, is the government agency charged with the responsibility of administering the monetary, banking and credit system of the country and is granted the power of supervision and examination over banks and non-bank financial institutions performing quasi-banking functions of which savings and loan associations, such as PESALA, form part of.

If any irregularity is discovered in the process, the MB may impose appropriate sanctions, such as suspending the offender from holding office or from being employed with the CB, or placing the names of the offenders in a watchlist.

FACTS

The 16th regular examination of the books and records of PAL Employees Savings and Loan Association (PESALA) was conducted by a team of CB Examiners.

Several irregularities were found to have been committed by the PESALA officers. Hence, CB sent a letter to petitioners for them to be present at a meeting specifically for the purpose of investigating said anomalies. Petitioners did not respond. Hence, the Monetary Board adopted a resolution including the names of the officers of PESALA in the watchlist to prevent them from holding responsible positions in any institution under CB supervision.

Petitioners filed a petition for injunction against the MB in order to prevent their names from being added in the said watchlist. RTC issued the TRO. The MB appealed to the CA which reversed RTC. Hence, this petition for certiorari with the SC.

Petitioners contend that the MB resolution was null and void for being violative of their right to due process by imposing administrative sanctions where the MB is not vested with authority to disqualify persons from occupying positions in institutions under the supervision of CB.

ISSUE

Whether or not the MB resolution was null and void

RULING

NO. The CB, through the MB, is the government agency charged with the responsibility of administering the monetary, banking and credit system of the country and is granted the power of supervision and examination over banks and non-bank financial institutions performing quasi-banking functions of which savings and loan associations, such as PESALA, form part of.

The special law governing savings and loan associations is R.A. 3779, the Savings and Loan Association Act. Said law authorizes the MB to conduct regular yearly examinations of the books and records of savings and loan associations, to suspend a savings and loan association for violation of law, to decide any controversy over the obligations and duties of directors and officers, and to take remedial measures. Hence, the CB, through the MB, is empowered to conduct investigations and examine the records of savings and loan associations. If any irregularity is discovered in the process, the MB may impose appropriate sanctions, such as suspending the offender from holding office or from being employed with the CB, or placing the names of the offenders in a watchlist.

Ana Maria Koruga vs. Teodoro Arcenas, Jr., G.R. No. 168332/ G.R. No. 169053, June 19, 2009

ANA MARIA A. KORUGA, Petitioner,

- versus -

TEODORO O. ARCENAS, JR., ALBERT C. AGUIRRE, CESAR S. PAGUIO, FRANCISCO A. RIVERA, and THE HONORABLE COURT OF APPEALS, THIRD DIVISION, Respondents.

x-----x

TEODORO O. ARCENAS, JR., ALBERT C. AGUIRRE, CESAR S. PAGUIO, and FRANCISCO A. RIVERA, Petitioners,

- versus -

HON. SIXTO MARELLA, JR., Presiding Judge, Branch 138, Regional Trial Courtof Makati City, and ANA MARIA A. KORUGA, Respondents.

G.R. No. 168332/ G.R. No. 169053, THIRD DIVISION, June 19, 2009, Nachura, J.

We hold that it is the BSP that has jurisdiction over the case. The acts complained of pertain to the conduct of Banco Filipino's banking business. The law vests in the BSP the supervision over operations and activities of banks.

Specifically, the BSP's supervisory and regulatory powers include: conduct of examination to determine compliance with laws and regulations if the circumstances so warrant as determined by the Monetary Board; Overseeing to ascertain that laws and Regulations are complied with; Regular investigation which shall not be oftener than once a year from the last date of examination to determine whether an institution is conducting its business on a safe or sound basis Inquiring into the solvency and liquidity of the institution.

FACTS

Koruga is a minority stockholder of Banco Filipino. On August 20, 2003, she filed a complaint before the Makati RTC. Koruga's complaint alleged:

1 Violation of Sections 31 to 34 of the Corporation Code ("Code") which prohibit self-dealing and conflicts of interest of directors and officers.

2.Right of a stockholder to inspect the records of a corporation (including financial statements) under Sections 74 and 75 of the Code

3. Receivership and Creation of a Management Committee

On September 12, 2003, Arcenas, et al. filed their Answer raising, among others, the trial court's lack of jurisdiction to take cognizance of the case. They also filed a Manifestation and Motion seeking the dismissal of the case.

In an Order dated October 18, 2004, the trial court denied the Manifestation and Motion

On February 9, 2005, the CA issued a 60-day TRO enjoining Judge Marella from conducting further proceedings in the case.

On February 22, 2005, the RTC issued a Notice of Pre-trial setting the case for pre-trial on June 2 and 9, 2005. Arcenas, et al. filed a Manifestation and Motion before the CA, reiterating their application for a writ of... preliminary injunction. Thus, on April 18, 2005, the CA issued the assailed Resolution, which reads in part:

(C)onsidering that the Temporary Restraining Order issued by this Court on February 9, 2005 expired on April 10, 2005, it is necessary that a writ of preliminary injunction be issued in order not to render ineffectual whatever final resolution this Court may render... in this case, after the petitioners shall have posted a bond.

Dissatisfied, Koruga filed this Petition for Certiorari under Rule 65 of the Rules of Court. Koruga alleged that the CA effectively gave due course to Arcenas, et al.'s petition when it issued a writ of preliminary injunction without factual or legal basis

Meanwhile, on March 13, 2006, this Court issued a Resolution granting the prayer for a TRO and enjoining the Presiding Judge of Makati RTC, Branch 138, from proceeding with the hearing of the case upon the filing by Arcenas, et al. of a P50,000.00 bond.

In their Petition, Arcenas, et al. asked the Court to set aside the Decision[14] dated July 20, 2005 of the CA in CA-G.R. SP No. 88422, which denied their petition, having found no grave abuse of discretion on the part of the Makati RTC. The CA said that... the RTC Orders were interlocutory in nature and, thus, may be assailed by certiorari or prohibition only when it is shown that the court acted without or in excess of jurisdiction or with grave abuse of discretion.

ISSUES

Which body has jurisdiction over the Koruga Complaint, the RTC or the BSP?

RULING

We hold that it is the BSP that has jurisdiction over the case. The acts complained of pertain to the conduct of Banco Filipino's banking business. The law vests in the BSP the supervision over operations and activities of banks.

Specifically, the BSP's supervisory and regulatory powers include: conduct of examination to determine compliance with laws and regulations if the circumstances so warrant as determined by the Monetary Board; Overseeing to ascertain that laws and Regulations are complied with; Regular investigation which shall not be oftener than once a year from the last date of examination to determine whether an institution is conducting its business on a safe or sound basis Inquiring into the solvency and liquidity of the institution. Correlatively, the General Banking Law of 2000 specifically deals with loans contracted by bank directors or officers, thus:

SECTION 36. Restriction on Bank Exposure to Directors, Officers, Stockholders and Their Related Interests.

The Monetary Board may regulate the amount of loans, credit accommodations and guarantees that may be extended, directly or indirectly, by a bank to its directors, officers, stockholders and their related interests, as well as investments of such bank in enterprises owned or... controlled by said directors, officers, stockholders and their related interests.

Furthermore, the authority to determine whether a bank is conducting business in an unsafe or unsound manner is also vested in the Monetary Board.

Finally, the New Central Bank Act grants the Monetary Board the power to impose administrative sanctions on the erring bank:

Section 37.

The Monetary Board may, at its discretion, impose upon... any bank or quasi-bank, their directors and/or officers or any commission of irregularities, and/or conducting business in an unsafe or unsound manner as may be determined by the Monetary Board

Koruga's invocation of the provisions of the Corporation Code is misplaced. In an earlier case with similar antecedents, we ruled that:

The Corporation Code, however, is a general law applying to all types of corporations, while the New Central Bank Act regulates specifically banks and other financial institutions, including the dissolution and liquidation thereof. As between a general and special... law, the latter shall prevail - generalia specialibus non derogant.

Consequently, it is not the Interim Rules of Procedure on Intra-Corporate Controversies,[32] or Rule 59 of the Rules of Civil Procedure on Receivership, that would apply to this case. Instead, Sections 29 and 30 of the New Central Bank Act should be followed viz.:

Section 30.

The Monetary Board may summarily and without need for prior... hearing forbid the institution from doing business in the Philippines and designate the Philippine Deposit Insurance Corporation as receiver of the banking institution.

Actions of the Monetary Board taken under this section or under Section 29 of this Act shall be final and executory, and may not be restrained or set aside by the court except on petition for certiorari on the ground that the action taken was in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction. The appointment of a receiver under this section shall be vested exclusively with the Monetary Board. On the strength of these provisions, it is the Monetary Board that exercises exclusive jurisdiction over proceedings for receivership of banks.

From the foregoing disquisition, there is no doubt that the RTC has no jurisdiction to hear and decide a suit that seeks to place Banco Filipino under receivership. The court's jurisdiction could only have been invoked after the Monetary Board had taken action on the matter and only on the ground that the action taken was in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction.

Bangko Sentral ng Pilipinas v. Banco Filipino Savings and Mortgage Bank, G.R. Nos. 178696 & 192607, [July 30, 2018]

BANGKO SENTRAL NG PILIPINAS V. BANCO FILIPINO SAVINGS AND MORTGAGE BANK G.R. Nos. 178696 & 192607, FIRST DIVISION, July 30, 2018, Leonardo-De Castro, J.

Nothing changed with the enactment of Republic Act No. 7653. BSP, the independent central monetary authority established by the law, is still given sufficient independence and latitude to carry out its mandate.

FACTS

Pursuant to Resolution No. 223 dated February 14, 1963 of the Monetary Board (MB) of the Central Bank of the Philippines (CB), Banco Filipino commenced its operations as savings and mortgage bank on July 9, 1964. However, pursuant to MB Resolution No. 75, MB ordered the closure of Banco Filipino on the ground that the latter was found to be *"insolvent and that its continuance in business would involve probable loss to its depositors and creditors x x x ".*

Banco Filipino sought to annul MB Resolution No. 75, which was subsequently granted. Central Bank and the Monetary Board are ordered to reorganize Banco Filipino and allow the latter to resume business in the Philippines under the comptrollership of both the Central Bank and the Monetary Board.

Consequently, Republic Act No. 7653 abolished the CB and a new central monetary authority was established known as Bangko Sentral ng Pilipinas (BSP). Under the said law, the CB will continue to exist under the name Central Bank-Board of Liquidators(CB-BOL) for the sole purpose of administering and liquidating the assets and liabilities of the CB that were not transferred to the BSP.

During a meeting, BSP-MB resolved to allow Banco Filipino to reopen and resume business under the comptrollership of BSP. Five years after, BSP and Banco Filipino entered into a Memorandum of Agreement where the latter was to repay to BSP the amount of P3,673,031,589.36 by way of *dacion en pago* of some of its real properties. The amount owed by BFSMB represented the so-called advances extended to it by the defunct CB. Further, pursuant to the aforementioned agreement, BSP has to lift its comptrollership over BFSMB on January 20, 2000, and deliver to the latter all collaterals in its custody, including government securities held by designated comptrollers.

Later on, Banco Filipino experienced massive withdrawals. Thus, it applied for emergency financial assistance from BSP to maintain liquidity. BSP however refused to assist, reasoning that there are strict requirements imposed by Republic Act No. 7653. Banco Filipino asserted BSP, *"having stepped into the shoes of the old CB"* was obligated to "reorganize" it.

ISSUE

Whether or not relief prayed for by Banco Filipino can be mandated by judicial compulsion through a mere revival of judgment considering that they lie within the discretion of the BSP-MB taking into account sound banking principles.

RULING

No. That the Court purposely left the finer details of the reorganization and the conditions thereof to the sound discretion of then CB-MB was an acknowledgment of the fact that the CB alone was vested by statute with the power and/or authority to determine or prescribe the conditions under which such resumption of business shall take place.

Verily, nothing changed with the enactment of Republic Act No. 7653. BSP, the independent central monetary authority established by the law, is still given sufficient independence and latitude to carry out its mandate. Sections to of Republic Act No. 7653 bear this out, viz.:

SECTION 1. Declaration of Policy. - The State shall maintain a central monetary authority that shall function and operate as an independent and accountable body corporate in the discharge of its mandated responsibilities concerning money, banking and credit. In line with this policy, and considering its unique functions and responsibilities, the central monetary authority established under this Act, while being government-owned corporation, shall enjoy fiscal and administrative autonomy.

Accordingly, given that the reliefs prayed for by Banco Filipino are outside the ambit of the judgment sought to be revived, coupled with its (Banco Filipino) admission in its petition, it is evident that the judgment obligation imposed by the Decision in G.R. No. 70054 had already been extinguished through its performance – Banco Filipino had been reopened and reorganized under

the comptrollership of the BSP-MB, which comptrollership lasted until January 20, 2000, upon the agreement of BSP-MB and Banco Filipino to implement the Memorandum of Agreement

5. Monetary Board - Powers and Functions

• BSP Monetary Board vs. Hon. Antonio-Valenzuela, G.R. No. 184778, October 2, 2009

BANGKO SENTRAL NG PILIPINAS MONETARY BOARD and CHUCHI FONACIER, Petitioners, vs.HON. NINA G. ANTONIO-VALENZUELA, in her capacity as Regional Trial Court Judge of Manila, Branch 28; RURAL BANK OF PARAÑAQUE, INC.; RURAL BANK OF SAN JOSE (BATANGAS), INC.; RURAL BANK OF CARMEN (CEBU), INC.; PILIPINO RURAL BANK, INC.; PHILIPPINE COUNTRYSIDE RURAL BANK, INC.; RURAL BANK OF CALATAGAN (BATANGAS), INC. (now DYNAMIC RURAL BANK); RURAL BANK OF DARBCI, INC.; RURAL BANK OF KANANGA (LEYTE), INC. (now FIRST INTERSTATE RURAL BANK); RURAL BANK OF BISAYAS MINGLANILLA (now BANK OF EAST ASIA); and SAN PABLO CITY DEVELOPMENT BANK, INC. G.R. No. 184778, THIRD DIVISION, October 2, 2009, Velasco Jr., J

The issuance by the RTC of writs of preliminary injunction is an unwarranted interference with the powers of the MB refer to the appointment of a conservator or a receiver for a bank, which is a power of the MB for which they need the ROEs done by the supervising or examining department. The writs of preliminary injunction issued by the trial court hinder the MB from fulfilling its function under the law. The "close now, hear later" scheme is grounded on practical and legal considerations to prevent unwarranted dissipation of the bank's assets and as a valid exercise of police power to protect the depositors, creditors, stockholders, and the general public.

Moreover, the respondent banks have failed to show that they are entitled to copies of the ROEs. They can point to no provision of law, no section in the procedures of the BSP that shows that the BSP is required to give them copies of the ROEs. Sec. 28 of RA 7653, provides that the ROE shall be submitted to the MB; the bank examined is not mentioned as a recipient of the ROE.

FACTS

Supervision and Examination Department (SED) of the Bangko Sentral ng Pilipinas (BSP) conducted examinations of the books of the following banks:

Rural Bank of Parañaque, Inc. (RBPI), Rural Bank of San Jose (Batangas), Inc., Rural Bank of Carmen (Cebu), Inc., Pilipino Rural Bank, Inc., Philippine Countryside Rural Bank, Inc., Rural Bank of Calatagan (Batangas), Inc. (now Dynamic Rural Bank), Rural Bank of Darbci, Inc., Rural Bank of Kananga (Leyte), Inc. (now First Interstate Rural Bank), Rural Bank de Bisayas Minglanilla (now Bank of East Asia), and San Pablo City Development Bank, Inc.

After the examinations, exit conferences were held with the officers of the banks wherein SED provided copies of Lists of Findings containing the deficiencies discovered during the examinations. Banks were then required to comment and to undertake the remedial measures which included the infusion of additional capital. Though the banks claimed that they made the additional capital infusions, petitioner Chuchi Fonacier, officer-in-charge of the SED, sent separate letters to the Board

of Directors of each bank, informing them that the SED found that the banks failed to carry out the required remedial measures. In response, the banks requested that they be given time to obtain BSP approval to amend their Articles of Incorporation, that they have an opportunity to seek investors. They requested as well that the basis for the capital infusion figures be disclosed, and noted that none of them had received the Report of Examination (ROE) which finalizes the audit findings. In response, Fonacier reiterated the banks' failure to comply with the directive for additional capital infusions.

RBPI filed a complaint for nullification of the BSP ROE with application for a TRO and writ of preliminary injunction before the RTC. Praying that Fonacier, her subordinates, agents, or any other person acting in her behalf be enjoined from submitting the ROE or any similar report to the Monetary Board (MB), or if the ROE had already been submitted, the MB be enjoined from acting on the basis of said ROE, on the allegation that the failure to furnish the bank with a copy of the ROE violated its right to due process.

The rest of the banks followed suit filing complaints with the RTC substantially similar to that of RBPI.

RTC denied the prayer for a TRO of Pilipino Rural Bank, Inc. The bank filed a motion for reconsideration the next day.Respondent Judge Nina Antonio-Valenzuela of Branch 28 granted RBPI's prayer for the issuance of a TRO.

The other banks separately filed motions for consolidation of their cases in Branch 28, which motions were granted. Petitioners assailed the validity of the consolidation of the nine cases before the RTC, alleging that the court had already prejudged the case by the earlier issuance of a TRO and moved for the inhibition of respondent judge. Petitioners filed a motion for reconsideration regarding the consolidation of the subject cases.

The RTC ruled that the banks were entitled to the writs of preliminary injunction prayed for. It held that it had been the practice of the SED to provide the ROEs to the banks before submission to the MB. It further held that as the banks are the subjects of examinations, they are entitled to copies of the ROEs. The denial by petitioners of the banks' requests for copies of the ROEs was held to be a denial of the banks' right to due process.

Petitioners claims grave abuse of discretion on the part of Judge Valenzuela. The CA ruled that the RTC committed no grave abuse of discretion when it ordered the issuance of a writ of preliminary injunction and when it ordered the consolidation of the 10 cases. It held that petitioners should have first filed a motion for reconsideration of the assailed orders, and failed to justify why they resorted to a special civil action of certiorari instead.

On November 24, 2008, a TRO was issued by this Court, restraining the CA, RTC, and respondents from implementing and enforcing the CA Decision. By reason of the TRO issued by this Court, the SED was able to submit their ROEs to the MB. The MB then prohibited the respondent banks from transacting business and placed them under receivership

ISSUES

a. Whether or not the TRO issued by the RTC violated section 25 of the New Central Bank Act that prevented the MB to discharge functions.

b. Whether or not the respondents are required to be given copies of the ROEs before submission of such to the Monetary Board.

RULING

(A.) YES, Requisites for preliminary injunctive relief are: (a) the invasion of right sought to be protected is material and substantial; (b) the right of the complainant is clear and unmistakable; and (c) there is an urgent and paramount necessity for the writ to prevent serious damage. The twin requirements of a valid injunction are the existence of a right and its actual or threatened violations. Thus, to be entitled to an injunctive writ, the right to be protected and the violation against that right must be shown. These requirements are absent in the present case.

The issuance by the RTC of writs of preliminary injunction is an unwarranted interference with the powers of the MB refer to the appointment of a conservator or a receiver for a bank, which is a power of the MB for which they need the ROEs done by the supervising or examining department. The writs of preliminary injunction issued by the trial court hinder the MB from fulfilling its function under the law. The actions of the MB under Secs. 29 and 30 of RA 7653 "may not be restrained or set aside by the court except on petition for certiorari on the ground that the action taken was in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction. The respondent banks have shown no necessity for the writ of preliminary injunction to prevent serious damage. The serious damage contemplated by the trial court was the possibility of the imposition of sanctions upon respondent banks, even the sanction of closure. Under the law, the sanction of closure could be imposed upon a bank by the BSP even without notice and hearing. This "close now, hear later" scheme is grounded on practical and legal considerations to prevent unwarranted dissipation of the bank's assets and as a valid exercise of police power to protect the depositors, creditors, stockholders, and the general public.

Judicial review enters the picture only after the MB has taken action; it cannot prevent such action by the MB. The threat of the imposition of sanctions, even that of closure, does not violate their right to due process, and cannot be the basis for a writ of preliminary injunction.

The "close now, hear later" doctrine has already been justified as a measure for the protection of the public interest.

(B) NO, The respondent banks have failed to show that they are entitled to copies of the ROEs. They can point to no provision of law, no section in the procedures of the BSP that shows that the BSP is required to give them copies of the ROEs. Sec. 28 of RA 7653, provides that the ROE shall be submitted to the MB; the bank examined is not mentioned as a recipient of the ROE.

The respondent banks cannot claim a violation of their right to due process if they are not provided with copies of the ROEs. The same ROEs are based on the lists of findings/exceptions containing the deficiencies found by the SED examiners when they examined the books of the respondent banks. As found by the RTC, these lists of findings/exceptions were furnished to the officers or

representatives of the respondent banks, and the respondent banks were required to comment and to undertake remedial measures stated in said lists. Despite these instructions, respondent banks failed to comply with the SED's directive.

Respondent banks are already aware of what is required of them by the BSP, and cannot claim violation of their right to due process simply because they are not furnished with copies of the ROEs.

• BANGKO SENTRAL NG PILIPINAS, Petitioner, v. FELICIANO P. LEGASPI, Respondent, G.R. No. 205966, March 02, 2016, PERALTA, J.

BANGKO SENTRAL NG PILIPINAS, Petitioner, v. FELICIANO P. LEGASPI, Respondent. G.R. No. 205966, THIRD DIVISION, March 02, 2016, PERALTA, J.

Under Republic Act No. 7653, or the New Central Bank Act, the BSP Governor is authorized to represent the Bangko Sentral, either personally or through counsel, including private counsel, as may be authorized by the Monetary Board, in any legal proceedings, action or specialized legal studies. Under the same law, the BSP Governor may also delegate his power to represent the BSP to other officers upon his own responsibility.

FACTS

Petitioner BSP filed a Complaint for annulment of title, revocation of certificate and damages (with application for TRO/writ of preliminary injunction) against Secretary Jose L. Atienza, Jr., Luningning G. De Leon, Engr. Ramon C. Angelo, Jr., Ex-Mayor Matilde A. Legaspi and respondent Feliciano P. Legaspi before the RTC of Malolos, Bulacan. Respondent, together with his fellow defendants, filed their Answer to the complaint. Thereafter, the RTC issued an Order mandating the issuance of preliminary injunction, enjoining the construction, development and/or operation of a dumpsite or landfill in Barangay San Mateo, Norzagaray, Bulacan, in an area allegedly covered by OCT No. P858/Free Patent No. 257917, the property subject of the complaint.

Herein respondent Legaspi filed a Motion to Dismiss alleging that the RTC did not acquire jurisdiction over the person of the petitioner BSP because the suit is unauthorized by petitioner BSP itself and that the counsel representing petitioner BSP is not authorized and thus cannot bind the same petitioner. In addition, respondent Legaspi asserted that the complaint was initiated without the authority of the Monetary Board and that the complaint was not prepared and signed by the Office of the Solicitor General (OSG), the statutory counsel of government agencies.

In opposing the Motion to Dismiss, petitioner BSP argued that the complaint was filed pursuant to Monetary Board Resolution No. 8865. Petitioner BSP further claimed that it is not precluded from being represented by a private counsel of its own choice.

In denying the Motion to Dismiss, the RTC ruled that it had acquired jurisdiction over the person of the petitioner when the latter filed with the court the Complaint. Furthermore, the RTC adjudged that in suits involving the BSP, the Monetary Board may authorize the Governor to represent it personally or through counsel, even a private counsel, and the authority to represent the BSP may be delegated to any other officer thereof. It took into account the Monetary Board Resolution No.

900 containing the Board's approval of the recommendation of the Asset Management Department (AMD) to engage the services of Ongkiko Kalaw Manhit and Acorda Law Offices (OKMA Law).

Respondent Legaspi filed a motion for reconsideration, adding as its argument that the RTC failed to acquire jurisdiction over the action because the complaint, a real action, failed to allege the assessed value of the subject property. As an opposition to respondent Legaspi's additional contention, petitioner BSP claimed that since the subject property contains an area of 4,838,736 square meters, it is unthinkable that said property would have an assessed value of less than P20,000.00 which is within the jurisdiction of the Municipal Trial Courts. Petitioner BSP further stated that a tax declaration showing the assessed value of P28,538,900.00 and latest zonal value of P145,162,080.00 was attached to the complaint.

RTC likewise denied respondent Legaspi's motion for reconsideration.

Respondent Legaspi elevated the case to the CA via a petition for certiorari under Rule 65 of the Rules of Court. CA granted respondent's motion and dismissed BSP's complaint.

ISSUES

1. Whether or not The Regional Trial Court of Malolos City has exclusive original jurisdiction over the subject matter of the action.

2. Whether or not BSP can lawfully engaged the services of a private counsel.

RULING

1. The RTC has exclusive original jurisdiction over the case.

Under Batas Pambansa Bilang 129, as amended by Republic Act No. 7691, the RTC has exclusive original jurisdiction over civil actions which involve title to possession of real property, or any interest therein, where the assessed value of the property involved exceeds Twenty Thousand Pesos (P20,000.00).

Petitioner BSP insists that the property involved has an assessed value of more than P20,000.00, as shown in a Tax Declaration attached to the complaint. Incidentally, the complaint, on its face, is devoid of any amount that would confer jurisdiction over the RTC. The non-inclusion on the face of the complaint of the amount of the property, however, is not fatal because attached in the complaint is a tax declaration (Annex "N" in the complaint) of the property in question showing that it has an assessed value of P215,320.00. It must be emphasized that annexes to a complaint are deemed part of, and should be considered together with the complaint.

Since a copy of the tax declaration, which is a public record, was attached to the complaint, the same document is already considered as on file with the court, thus, the court can now take judicial notice of such.

2. BSP can lawfully engage the services of a private counsel.

Anent the issue of the legal representation of petitioner BSP, the CA ruled that the BSP, being a government-owned and controlled corporation, should have been represented by the Office of the Solicitor General (OSG) or the Office of the Government Corporate Counsel (OGCC) and not a private law firm or private counsel, as in this case.

Under Republic Act No. 7653, or the New Central Bank Act, the BSP Governor is authorized to represent the Bangko Sentral, either personally or through counsel, including private counsel, as may be authorized by the Monetary Board, in any legal proceedings, action or specialized legal studies. Under the same law, the BSP Governor may also delegate his power to represent the BSP to other officers upon his own responsibility.

As aptly found by the RTC, petitioner BSP was able to justify its being represented by a private counsel, thus:

BSP's complaint dated April 10, 2008 was verified by Geraldine C. Alag, an officer of the BSP being the Director of its Asset Management Department. It has been explained that this was authorized by the Monetary Board, as per Resolution No. 865 dated June 17, 2004, which reads:

To approve delegation of authority to the Director, Asset Management Department (AMD), or in his absence, the Officer-in-Charge, AMD to sign all documents, contracts, agreements and affidavits relating to the consolidation of ownership, lease, cancellation of decision, redemption and sale of acquired assets, and all documents to be filed in court upon clearance by the Office of the General Counsel and Legal Services x x x.

Also submitted to this Court is the Secretary's Certificate issued by Silvina Q. Mamaril-Roxas, Officer-in-Charge, Office of the Secretary of BSP's Monetary Board attesting to Monetary Board Resolution No. 900, adopted and passed on July 18, 2008, which reads:

At the regular meeting of the MB on 18 July 2008, the MB adopted and passed MB Resolution No. 900, to wit: xxx The Board approved the recommendation of the Asset Management Department (AMD) to engage the services of Ongkiko Kalaw Manhit and Acorda Law Offices (OKMA Law) as follows: xxx To act as counsel for the Bangko Sentral ng Pilipinas (BSP) in a complaint to be filed against the Department of Environment and Natural Resources (DENR) Secretary, et al., xxx

• Federal Express Corp. v. Antonino, G.R. No. 199455, [June 27, 2018]

FEDERAL EXPRESS CORP. V. ANTONINO

G.R. No. 199455, THIRD DIVISION, June 27, 2018, Leonen, J.

It is settled in jurisprudence that checks, being only negotiable instruments, are only substitutes for money and are not legal tender; more so when the check has a named payee and is not payable to bearer. An order instrument, which has to be endorsed by the payee before it may be negotiated, cannot be a negotiable instrument equivalent to cash.

FACTS

In November 2003, monthly common charges on the unit situated in New York, USA and owned by respondent Eliza Antonino became due. These charges were for the period of July 2003 to November 2003, and were for a total amount of US\$9,742.81. On December 2003, respondents Luwalhati and Eliza were in the Philippines. As the monthly common charges on the Unit had become due, they decided to send several Citibank checks to Sison, who was based in New York. Citibank checks allegedly amounting to US\$17,726.18 for the payment of monthly charges and US\$11,619.35 for the payment of real estate taxes were sent by Luwalhati through FedEx with Account No. x2546-4948-1 and Tracking No. 8442 4588 4268. The package was addressed to Sison who was tasked to deliver the checks payable to MaxwellKates, Inc. and to the New York County Department of Finance. Sison allegedly did not receive the package, resulting in the non-payment of Luwalhati and Eliza's obligations and the foreclosure of the Unit.

After several follow-ups, Sison was informed that the package was delivered to her neighbor but there was no signed receipt. On March 14, 2004, respondents, through their counsel, sent a demand letter to FedEx for payment of damages due to the non-delivery of the package, but FedEx refused to heed their demand. Hence, on April 5, 2004, they led their Complaint for damages.

FedEx contended that it should be absolved of liability as the respondents shipped prohibited items and misdeclared these items as "documents." It pointed to conditions under its Air Waybill prohibiting the "transportation of money (including but not limited to coins or negotiable instruments equivalent to cash such as endorsed stocks and bonds)."

ISSUE

Whether or not the Citibank checks are considered money, within the prohibition of FedEx's Air Waybill.

RULING

The prohibition has a singular object: money. What follows the phrase "transportation of money " is a phrase enclosed in parentheses, and commencing with the words "including but not limited to." The additional phrase, enclosed as it is in parentheses, is not the object of the prohibition, but merely a postscript to the word "money." Moreover, its introductory words "including but not limited to" signify that the items that follow are illustrative examples; they are not qualifiers that are integral to or inseverable from "money." Despite the utterance of the enclosed phrase, the singular prohibition remains: money.

Money is "what is generally acceptable in exchange for goods." It can take many forms, most commonly as coins and banknotes. Despite its myriad forms, its key element is its general acceptability. Laws usually define what can be considered as a generally acceptable medium of exchange.

It is settled in jurisprudence that checks, being only negotiable instruments, are only substitutes for money and are not legal tender; more so when the check has a named payee and is not payable to bearer. In *Philippine Airlines, Inc. v. Court of Appeals*, the Court ruled that the payment of a check to

the sheriff did not satisfy the judgment debt as checks are not considered legal tender. This has been maintained in other cases decided by the Supreme Court.

The Air Waybill's prohibition mentions "negotiable instruments" only in the course of making an example. Thus, they are not prohibited items themselves. Moreover, the illustrative example does not even pertain to negotiable instruments *per se* but to "negotiable instruments equivalent to cash." The checks involved here are payable to specific payees, Maxwell-Kates, Inc. and the New York County Department of Finance. Thus, they are order instruments. They are not payable to their bearer. Order instruments differ from bearer instruments in their manner of negotiation: Under Section 30 of the Negotiable Instruments Law, an order instrument requires an indorsement from the payee or holder before it may be validly negotiated. A bearer instrument, on the other hand, does not require an indorsement to be validly negotiated. There is no question that checks, whether payable to order or to bearer, so long as they comply with the requirements under Section 1 of the Negotiable Instruments Law, are negotiable instruments. The more relevant consideration is whether checks with a specified payee are negotiable instruments equivalent to cash, as contemplated in the example added to the Air Waybill's prohibition. The Court thinks they are not. An order instrument, which has to be endorsed by the payee before it may be negotiated, cannot be a negotiable instrument equivalent to cash. It is worth emphasizing that the instruments given as further examples under the Air Waybill must be endorsed to be considered equivalent to cash

- 6. How the BSP handles Banks in Distress
 - e. Conservatorship

Central Bank of the Philippines vs. Court of Appeals, G.R. No. L-45710 October 3, 1985

CENTRAL BANK OF THE PHILIPPINES and ACTING DIRECTOR ANTONIO T. CASTRO, JR. OF THE DEPARTMENT OF COMMERCIAL AND SAVINGS BANK, in his capacity as statutory receiver of Island Savings Bank, petitioners, vs. THE HONORABLE COURT OF APPEALS and SULPICIO M. TOLENTINO, respondents.

G.R. No. L-45710, SECOND DIVISION, October 3, 1985, Makasiar, J

Since ISB was in default under the agreement, Tolentino may choose between specific performance or rescission, but since ISB is now prohibited from doing further business, the only remedy left is rescission only for the P63,000 balance of the loan.

FACTS

April 28, 1965 - Island Savings Bank (ISB) approved the loan application for P80,000 of Sulpicio Tolentino, who, as a security for the loan, also executed a real estate mortgage over his 100-ha land. The approved loan application called for P80,000 loan, repayable in semi-annual installments for a period of 3 years, with 12% interest.

May 22, 1965 – a mere P17,000 partial release of the loan was made by ISB, and Tolentino and his wife Edita signed a promissory note for P17,000 at 12% annual interest, payable within 3 years from the date of execution of the contract at semi-annual installments of P3,459.

An advance interest for the P80,000 loan covering a 6-mo period amounting to P4,800was deducted from the partial release of P17,000, but this was refunded to Tolentino on July 23, 1965, after being informed by ISB that there was no fund yet available for the release of the P63,000 balance.

Aug. 13, 1965 – the Monetary Board of the Central Bank issued Resolution No. 1049, which prohibited ISB from making new loans and investments, after finding that it was suffering liquidity problems.

June 14, 1968 – the Monetary Board issued Resolution No. 967, which prohibited ISB from doing business in the Philippines, after finding that it failed to put up the required capital to restore its solvency.

Aug. 1, 1968 – ISB, in view of non-payment of the P17,000 covered by the promissory note, filed an application for the extra-judicial foreclosure of the real estate mortgage covering the 100-ha land; and the sheriff scheduled auction.

Tolentino filed a petition with the CFI for injunction, specific performance or rescission and damages with preliminary injunction, alleging that since ISB failed to deliver the P63,000 remaining balance of the loan, he is entitled to specific performance by ordering ISB to deliver it with interest of 12% per annum from April 28, 1965, and if said balance cannot be delivered, to rescind the real estate mortgage.

CFI issued a TRO enjoining ISB from continuing with the foreclosure of the mortgage, however, after finding Tolentino's petition unmeritorious, ordered the latter to pay ISB P17,000 plus legal interest and legal charges and lifting the TRO so the sheriff may proceed with the foreclosure.

CA, on appeal by Tolentino, modified CFI's decision by affirming dismissal of Tolentino's petition for specific performance, but ruled that ISB can neither foreclose the mortgage nor collect the P17,000 loan.

ISSUES

1) WON the action of Tolenitno for specific performance can prosper. NO.

2) WON Tolentino is liable to pay the P17,000 debt covered by the promissory note. YES.

3) WON Tolentino's real estate mortgage can be foreclosed to satisfy the P17,000 if his liability to pay therefor subsists. NO.

RULING

1) Since ISB was in default under the agreement, Tolentino may choose between specific performance or rescission, but since ISB is now prohibited from doing further business, the only remedy left is Rescission only for the P63,000 balance of the loan.

2) The bank was deemed to have complied with its reciprocal obligation to furnish a P17,000 loan. The promissory note gave rise to Tolentino's reciprocal obligation to pay such loan when it falls due and his failure to pay the overdue amortizations under the promissory note made him a party in default, hence not entitled to rescission (Art. 1191, CC). ISB has the right to rescind the promissory note, being the aggrieved party.

Since both parties were in default in the performance of their reciprocal obligations, both are liable for damages. In case both parties have committed a breach of their reciprocal obligations, the liability of the first infractor shall be equirably tempered by the courts (Art. 1192, CC). The liability of ISB for damages in not furnishing the entire loan is offset by the liability of Tolentino for damages (penalties and surcharges) for not paying his overdue P17,000 debt. Since Tolentino derived some benefit for his use of the P17,000, he should account for the interest thereon (interest was not included in the offsetting).

3) The fact that when Tolentino executed his real estate mortgage, no consideration was then in existence, as there was no debt yet because ISB had not made any release on the loan, does not make the real estate mortgage void for lack of consideration.

It is not necessary that any consideration should pass at the time of the execution of the contract of real mortgage. When the consideration is subsequent to the mortgage, the latter can take effect only when the debt secured by it is created as a binding contract to pay. And when there is partial failure of consideration, the mortgage becomes unenforceable to the extent of such failure. Where the indebtedness actually owing to the holder of the mortgage is less than the sum named in the mortgage, the mortgage cannot be enforced for more than the actual sum due.

Since ISB failed to furnish the P63,000 balance, the real estate mortgage of Tolentino became unenforceable to such extent. P63,000 is 78.75% of P80,000, hence the mortgage covering 100 ha is unenforceable to the extent of 78.75 ha. The mortgage covering the remainder of 21.25 ha subsists as a security for the P17,000 debt.

• Central Bank of the Philippines vs. Court of Appeals, G.R. No. 88353, May 8, 1992

CENTRAL BANK OF THE PHILIPPINES and HON. JOSE B. FERNANDEZ, petitioners, vs. HON. COURT OF APPEALS, RTC JUDGE TEOFILO GUADIZ, JR., PRODUCERS BANK OF THE PHILIPPINES and PRODUCERS PROPERTIES, INC., respondents. ATTY. LEONIDA G. TANSINSIN-ENCARNACION, as the Acting Conservator of Producers Bank of the Philippines, and PRODUCERS BANK OF THE PHILIPPINES, petitioners, vs. PRODUCERS BANK OF THE PHILIPPINES, allegedly represented by HENRY L. CO, HON. COURT OF APPEALS, HON. TEOFILO GUADIZ, JR., and the "LAW FIRM OF QUISUMBING, TORRES AND EVANGELISTA" (RAMON J. QUISUMBING, VICENTE TORRES, RAFAEL E. EVANGELISTA, JR. and CHRISTOFER L. LIM), respondents.

G.R. No. 88353, EN BANC, May 8, 1992, Davide Jr., J

Board of Directors of a bank is not prohibited to file suit to lift the conservatorship over it, to question the validity of the conservator's fraudulent acts and abuses and the arbitrary action of the MB provided following requisites should be complied with: 1. The appropriate pleading must be filed by the stockholders of record representing the majority of the capital stock of the bank in the proper court;

2. Said pleading must be filed within ten (10) days from receipt of notice by said majority stockholders of the order placing the bank under conservatorship; and

3. There must be convincing proof, after hearing, that the action is plainly arbitrary and made in bad faith.

In the instant case, however, PBP's complaint was filed after the expiration of the 10-day period deferred to above. Accordingly, the order placing PBP under conservatorship had long become final and its validity could no longer be litigated upon before the trial court. Furthermore, it is important to note that the action instituted was not for the purpose of having the conservatorship lifted but it is an action for damage which must nevertheless be dismissed for failure of the PBP to pay the correct docket fees.

FACTS

Central Bank (CB) discovered that certain questionable loans extended by Producer's Bank of the Philippines (PBP), totalling approximately P300 million (the paid-in capital of PBP amounting only to P 140.544 million, were fictitious as they were extended, without collateral, to certain interests related to PBP owners themselves.

Subsequently and during the same year, several blind items about a family-owned bank in Binondo which granted fictitious loans to its stockholders appeared in major newspapers which triggered a bank-run in PBP and resulted in continuous over-drawings on the bank's demand deposit account with the Central Bank; reaching to P 143.955 million. Hence, on the basis of the report submitted by the Supervision and Examination Sector, the Monetary Board (MB), placed PBP under conservatorship.

PBP submitted a rehabilitation plan to the CB which proposed the transfer to PBP of 3 buildings owned by Producers Properties, Inc. (PPI), its principal stockholder and the subsequent mortgage of said properties to the CB as collateral for the bank's overdraft obligation but which was not approved due to disagreements between the parties.

Since no other rehabilitation program was submitted by PBP for almost 3 years its overdrafts with the CB continued to accumulate and swelled to a staggering P1.023 billion. Consequently, the CB Monetary Board decided to approve in principle what it considered a viable rehabilitation program for PBP. There being no response from both PBP and PPI on the proposed rehabilitation plan, the MB issued a resolution instructing Central Bank management to advise the bank that the conservatorship may be lifted if PBP complies with certain conditions.

Without responding to the communications of the CB, PBP filed a complaint with the Regional Trial Court of Makati against the CB, the MB and CB Governor alleging that the resolutions issued were arbitrary and made in bad faith. Respondent Judge issued a temporary restraining order and subsequently a writ of preliminary injunction. CB filed a motion to dismiss but was denied and ruled that the MB resolutions were arbitrarily issued. CB filed a petition for certiorari before the

Court of Appeals seeking to annul the orders of the trial court but CA affirmed the said orders. Hence this petition.

The first case, G.R. No. 88353, is a petition for review on certiorari of the decision of 6 October 19882 and the resolution of 17 May 19893 of the respondent Court of Appeals in C.A.-G.R. No. SP-13624. The impugned decision upheld the 21 September 1987 Order of respondent Judge Teofilo Guadiz, Jr. in Civil Case No. 17692 granting the motion for issuance of a writ of preliminary injunction -- enjoining petitioners Central Bank of the Philippines (CB), Mr. Jose B. Fernandez, Jr. and the Monetary Board, or any of their agencies from implementing Monetary Board (MB) Resolutions No. 649 and No. 751, or from taking the threatened appropriate alternative action -- and the 27 October 1987 Order in the same case denying petitioners' motion to dismiss and vacate said injunction. The challenged resolution, on the other hand, denied petitioners' motion for reconsideration of the 6 October 1988 decision.

The second case, G.R. No. 92943, is a petition for review directed principally against the 17 January 1990 decision of the respondent Court of Appeals in C.A.-G.R. SP No. 16972. The said decision dismissed the petition therein filed and sustained the various Orders of the respondent Judge in Civil Case No. 17692, but directed the plaintiffs therein to amend the amended complaint by stating in its prayer the specific amount of damages which Producers Bank of the Philippines (PBP) claims to have sustained as a result of losses of operation and the conservator's bank frauds and abuses; the Clerk of Court was also ordered to determine the amount of filing fees which should be paid by the plaintiffs within the applicable prescriptive or reglementary period.

ISSUES

Whether an approval from the CB is necessary for the bank to bring action before the court? Whether the court is correct in issuing the preliminary injunction?

RULING

No, but the Court in this case ruled that the case filed by PB should be dismissed. A conservator, once appointed, takes over the management of the bank and assumes exclusive powers to oversee every aspect of the bank's operations and affairs. However, it must be stressed that a bank retains its juridical personality even if placed under conservatorship; it is neither replaced nor substituted by the conservator. Hence, the approval of the CB is not necessary where the action was instituted by the bank through the majority of the bank's stockholders. To contend otherwise would be to defeat the rights of such stockholders under the fifth paragraph of Section 29 of the Central Bank Act.

Therefore, the rule is the Board of Directors of a bank is not prohibited to file suit to lift the conservatorship over it, to question the validity of the conservator's fraudulent acts and abuses and the arbitrary action of the MB provided following requisites should be complied with:

1. The appropriate pleading must be filed by the stockholders of record representing the majority of the capital stock of the bank in the proper court;

2. Said pleading must be filed within ten (10) days from receipt of notice by said majority stockholders of the order placing the bank under conservatorship; and

3. There must be convincing proof, after hearing, that the action is plainly arbitrary and made in bad faith.

In the instant case, however, PBP's complaint was filed after the expiration of the 10-day period deferred to above. Accordingly, the order placing PBP under conservatorship had long become final and its validity could no longer be litigated upon before the trial court. Furthermore, it is important to note that the action instituted was not for the purpose of having the conservatorship lifted but it is an action for damage which must nevertheless be dismissed for failure of the PBP to pay the correct docket fees.

The court is not correct in issuing the preliminary injunction. It is well-settled that the closure of a bank may be considered as an exercise of police power. The action of the MB on this matter is final and executory. Such exercise may nonetheless be subject to judicial inquiry and can be set aside if found to be in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction. The records of this case revealed that there was neither arbitrariness nor bad faith in the issuance of MB Resolutions ordering for conservatorship.

It must be stressed in this connection that the banking business is properly subject to reasonable regulation under the police power of the state because of its nature and relation to the fiscal affairs of the people and the revenues of the state. It is then Government's responsibility to see to it that the financial interests of those who deal with banks and banking institutions, as depositors or otherwise, are protected. Hence, the CB is authorized to take the necessary steps against any banking institution if its continued operation would cause prejudice to its depositors, creditors and the general public as well. This power has been expressly recognized by this Court.

• First Philippine International Bank vs. Court of Appeals, G.R. No. 115849, January 24, 1996

FIRST PHILIPPINE INTERNATIONAL BANK (Formerly Producers Bank of the Philippines) and MERCURIO RIVERA, petitioners, vs.COURT OF APPEALS, CARLOS EJERCITO, in substitution of DEMETRIO DEMETRIA, and JOSE JANOLO

G.R. No. 115849, THIRD DIVISION, January 24, 1996, Panganiban, J

While admittedly, the Central Bank law gives vast and far-reaching powers to the conservator of a bank, it must be pointed out that such powers must be related to the "(preservation of) the assets of the bank, (the reorganization of) the management thereof and (the restoration of) its viability." Such powers, enormous and extensive as they are, cannot extend to the post-facto repudiation of perfected transactions, otherwise they would infringe against the non-impairment clause of the Constitution. In the case, it is not disputed that the bank was under a conservator placed by the Central Bank of the Philippines during the time that the negotiation and perfection of the contract of sale took place. Moreover, there was absolutely no evidence that the Conservator, at the time the contract was perfected, actually repudiated or overruled said contract of sale. The bank never objected to the sale, what it unilaterally repudiated was—not the contract —but the authority of Rivera to make a binding offer —and which unarguably came months after the perfection of the contract.

FACTS

Producer Bank of the Philippines acquired six parcels of land located at Laguna. The property used to be owned by BYME Investment and Development Corporation which had them mortgaged with the bank as collateral for a loan. The original plaintiffs, Demetrio Demetria and Jose O. Janolo, wanted to purchase the property and thus initiated negotiations for that purpose. Plaintiffs, met with defendant Mercurio Rivera, Manager of the Property Management Department of the defendant bank. After the meeting, plaintiff Janolo made a formal purchase offer to the bank in the amount of 3.5M but counter offered by Rivera(Bank) with 5.5M. Janolo revised there offer to 4.25M. but received no response but Luis co and rivera had a meeting and in the end the offer of Mr. Rivera was accepted.

The conservator of the bank was replaced by an Acting Conservator in the person of defendant Leonida T. Encarnacion whereby they stated that Rivera's proposal was under study yet as of this time by the newly created committee for submission to the newly designated Acting Conservator of the bank. Thereafter transpired was a series of demands by the plaintiffs for compliance by the bank with what plaintiff considered as a perfected contract of sale, which demands were in one form or another refused by the bank.

Plaintiffs filed a suit for specific performance with damages against the bank, Acting Conservator Encarnacion. The basis of the suit was that the transaction had with the bank resulted in a perfected contract of sale, The defendants took the position that there was no such perfected sale because the defendant Rivera is not authorized to sell the property, and that there was no meeting of the minds as to the price.

ISSUE

Whether or not the bank conservator has the unilateral power to repudiate the authority of the bank officers and/or to revoke the said contract

RULING

Section 28-A - Whenever, on the basis of a report submitted by the appropriate supervising or examining department, the Monetary Board finds that a bank or a non-bank financial intermediary performing quasi-banking functions is in a state of continuing inability or unwillingness to maintain a state of liquidity deemed adequate to protect the interest of depositors and creditors, the Monetary Board may appoint a conservator to take charge of the assets, liabilities, and the management of that institution, collect all monies and debts due said institution and exercise all powers necessary to preserve the assets of the institution, reorganize the management thereof, and restore its viability. He shall have the power to overrule or revoke the actions of the previous management and board of directors of the bank or non-bank financial intermediary performing quasi-banking functions, any provision of law to the contrary notwithstanding, and such other powers as the Monetary Board shall deem necessary.

While admittedly, the Central Bank law gives vast and far-reaching powers to the conservator of a bank, it must be pointed out that such powers must be related to the "(preservation of) the assets of the bank, (the reorganization of) the management thereof and (the restoration of) its viability."

Such powers, enormous and extensive as they are, cannot extend to the post-facto repudiation of perfected transactions, otherwise they would infringe against the non-impairment clause of the Constitution.

Section 28-A merely gives the conservator power to revoke contracts that are, under existing law, deemed to be defective. Hence, the conservator merely takes the place of a bank's board of directors, so what the board cannot do; the conservator cannot do either. His power is however, not unilateral as he cannot simply repudiate valid obligations of the Bank. His authority would be only to bring court actions to assail such contracts.

In the case, it is not disputed that the bank was under a conservator placed by the Central Bank of the Philippines during the time that the negotiation and perfection of the contract of sale took place. Moreover, there was absolutely no evidence that the Conservator, at the time the contract was perfected, actually repudiated or overruled said contract of sale. The bank never objected to the sale, what it unilaterally repudiated was—not the contract —but the authority of Rivera to make a binding offer —and which unarguably came months after the perfection of the contract. The conservator's authority would be only to bring court actions to assail such contracts —as he

has already done so in the instant case.

f. Closure

Emerito Ramos vs. Central Bank of the Philippines, G.R. No. L-29352, October 4, 1971

EMERITO M. RAMOS, SUSANA B. RAMOS, EMERITO B. RAMOS, JR., JOSEFA RAMOS DE LA RAMA, HORACIO DE LA RAMA, ANTONIO B. RAMOS, FILOMENA RAMOS LEDESMA, RODOLFO RAMOS, VICTORIA RAMOS TANJUATCO, and TEOFILO TANJUATCO, petitioners, vs. CENTRAL BANK OF THE PHILIPPINES, respondent.

G.R. No. L-29352, EN BANC, October 4, 1971, Concepcion Jr., J

Even in the absence of contract, the record plainly shows that the CB made express representations to petitioners herein that it would support the OBM, and avoid its liquidation if the petitioners would execute (a) the Voting Trust Agreement turning over the management of OBM to the CB or its nominees, and (b) mortgage or assign their properties to the Central Bank to cover the overdraft balance of OBM to which petitioners have complied with.

FACTS

Respondent bank enforced Monetary Board Resolution No. 1263 excluding the Overseas Bank of Manila (OBM) from clearing with the Central Bank and from lending operations for various violations of the banking laws and implementing regulations. Herein petitioners, majority and controlling stockholders of OBM, alleges that the latter became financially distressed because of this suspension and the deprivation by respondent of all the usual credit facilities and accommodations accorded to the other banks. Thereafter, petitioner Ramos and the OBM management finally met with respondent respondent on the necessity and urgency of rehabilitating the OBM through the extension of necessary financial assistance. Respondent informed petitioner that if his bank is thrown out of clearing, the Central Bank will proceed in accordance with the existing policy under

which he and other stockholders representing a majority will have to sign a trusteeship agreement with the Philippine National Bank pursuant to which the Overseas Bank will be managed by the Philippine National Bank. The petitioners then executed the Voting Trust Agreement and conveyed by way of mortgage to the CB all their private properties and holdings to secure the obligations of the OBM to the CB. The Superintendent of Banks reported that the condition of the OBM was one of insolvency, calling for the liquidation of OBM.

The Central Bank governor wrote to the petitioner Ramos, reiterating the need for the OBM stockholders to execute a voting trust agreement "to stave of liquidation", and requiring the execution of the Voting Trust Agreement by the OBM stockholders and of the mortgage of their properties to secure OBM obligations to the Central Bank and the endorsement of the shares of stock held by them in their corporations and enterprises. Eventually, however, the Superintendent of Banks recommended to the Monetary Board that OBM be liquidated, Petitioners aver that no adequate financial assistance was granted to the OBM after the execution of the Voting Trust Agreement, that adequate and necessary financial assistance to stave off liquidation, is legally demandable, and that in violation of its obligations, the CB, "after eight months of delay", adopted the questioned resolutions, without notice to or hearing the petitioners.

The petitioners file petition Certiorari, Prohibition and Mandamus with prayer for the issuance of a writ of preliminary injunction to restrain respondent Central Bank of the Philippines (hereinafter designated as the CB) from enforcing and implementing the Monetary Board Resolution No. 1263, adopted on 30 July 1968, excluding the Overseas Bank of Manila (hereinafter termed the OBM) from clearing with the Central Bank, that was ordered implemented on 31 July 1968 (Annex "11"), and Resolution No. 1290, adopted on 1 August 1968, granting authority to the OBM Board of Directors to suspend operations thereof, which was implemented on 2 August 1968.

ISSUES

Whether or not the CB had agreed to rehabilitate, normalize and stabilize OBM.

RULING

This Court held that, in addition to requiring a mortgage or assignment of petitioners' personal properties to CB, the memorandum required the stockholders of OBM to subscribe to an appropriate trust agreement, with the only difference that instead of the Philippine National Bank, the trust would be executed in favor of the CB as trustee to enable it to reorganize and transfer management to a nominee of the Monetary Board. Moreover, the CB Governor stated that as a measure to stave off liquidation, a voting trust agreement should be executed by petitioner Ramos and his family and the corporations controlled by petitioner in favor of the Superintendent of Banks, in an instrument similar to the one executed by stockholders of the Republic Bank in favor of the Philippine National Bank. The reference to the case of the Republic Bank clarifies the purpose and scope of the demand for a voting trust agreement "as a measure to stave off liquidation"; for it is well-known, and it is not denied, that when the Republic Bank previously became distressed, the CB had advanced funds, to rehabilitate it and allow it to resume operating. While the trust agreement on its face creates obligations only for the Superintendent of Banks as trustee, his commitments were undeniably those of the Central Bank itself, since it was the latter that had from the very beginning insisted upon such voting trust being executed.

Considerating the execution of the voting trust agreement by the petitioner stockholders of OBM, and of the mortgage or assignment of their personal properties to the respondent, the latter had agreed to announce its readiness to support the new management "in order to allay the fears of depositors and creditors", and to stave off liquidation" by providing adequate funds for "the rehabilitation, normalization and stabilization" of the OBM, in a manner similar to what the CB had previously done with the Republic Bank. While no express terms in the documents refer to the provision of funds by CB for the purpose, the same is necessarily implied, for in no other way could it rehabilitate, normalize and stabilize a distressed bank. Even in the absence of contract, the record plainly shows that the CB made express representations to petitioners herein that it would support the OBM, and avoid its liquidation if the petitioners would execute (a) the Voting Trust Agreement turning over the management of OBM to the CB or its nominees, and (b) mortgage or assign their properties to the Central Bank to cover the overdraft balance of OBM to which petitioners have complied with.

Moreover, respondent's allegation that the Voting Trust agreement was binding only upon the trustee, the Superintendent of Banks is untenable since the trust could have no private interest in the matters. Not only that, but CB subsequently caused its own team of nominees to take over the direction and management of the OBM, through the voting of the shares conveyed to the trustee. Even more the CB gave notice that it would not extend or renew the voting trust, and attempted to turn back the shares covered by it to the petitioners, thereby recognizing the obligations under the agreement as its own, and repudiating its original disclaimer thereof.

This Court is constrained to agree that CB attempted to evade rehabilitating OBM despite its promises. By the ordered liquidation, depositors and other creditors would have to share in the assets of the OBM, while the CB's own credits for advances were secured by the new mortgages it had obtained from the petitioners, thereby gaining for it what amounts to an illegal preference. To cap it all, the CB disregarded its representations and promises to rehabilitate and normalize the financial condition of OBM, as it had previously done with the Republic Bank, without even offering to discharge the mortgages, given by petitioners in consideration for its promises, or notifying petitioners that it desired to rescind its contract, or bringing action in court for the purpose. And all the while CB knew that the situation of the OBM was deteriorating daily, with penalties at 3% per month continually accumulating, while its creditors, depositors and stockholders awaited the promised aid that never came, and which apparently CB never intended to give.

• Central Bank vs. Court of Appeals, G.R. No. L-50031-32, July 27, 1981

CENTRAL BANK OF THE PHILIPPINES, Petitioner, vs. HONORABLE COURT OF APPEALS, ISIDRO E. FERNANDEZ, and JESUS R. JAYME, Respondents.

G.R. No. L-50031-32, SECOND DIVISION, July 27, 1981, Concepcion Jr. J

While the closure and liquidation of a bank may be considered an exercise of police power, the validity of such exercise of police power is subject to judicial inquiry and could be set aside if it is either capricious, discriminatory, whimsical, arbitrary, unjust, or a denial of due process and equal protection clauses of the Constitution.

The arbitrariness and bad faith of Central Bank is evident from the fact that it pressured Fernandez and Jayme into relinquishing the management and control of Provident Savings Bank to Iglesia Ni

Kristo which did not have any intention of restoring the bank into its former sound financial condition but whose interest was merely to recover its deposits from the bank and thereafter allowing INK to mismanage the bank until the bank's financial deterioration and subsequent closure. Central Bank acted whimsically and withdrew its commitment to support the bank to the detriment of the latter.

FACTS

Isidro Fernandez and Jesus Jayme are the majority and controlling stockholders of Provident Bank. When Provident Savings Bank experienced bankrun, which was triggered off by adverse publicity in the newspapers, radio and television of investigations conducted by Congress that some banks were unable to pay deposit withdrawals. The Bank was forced to borrow funds from other banks and the Central Bank but despite the borrowing, the funds remained insufficient to satisfy the withdrawals.

Hence, the Isidro Fernandez and Jesus Jayme appealed to Central Bank for further assistance. However, the Central Bank replied to them stating that they have to relinquish and turnover the management and control of the bank to Iglesia ni Kristo (INK) affiliated entity Eagle Broadcasting in order for it to assist the distressed provident. Under the agreement, EB agreed to purchase 52,000 capital stock with provident. The Eagle Broadcasting Corporation, however, did not comply with its commitment to purchase 53,000 common shares of stock and to convert its deposits into equity. Instead, the new management of PROVIDENT caused the conversion of the deposits of Iglesia Ni Kristo into "bills payable" earning 12% interest, which were subsequently withdrawn. 4 PROVIDENT, under the new management, also failed to comply with the Monetary Board directives relative to the rehabilitation of the bank so that it restored the interest rate of 12% on outstanding loans.

These acts were made despite the presence of Central Bank examiners. Subsequently, Central Bank Monetary Board issued a resolution declaring the closure of Provident Savings Bank and ordering its liquidation. Hence, Fernandez and Jayme filed with the Court of First Instance a petition for certiorari, prohibition, and mandamus against Central Bank to annul the resolution and restrain CB from proceeding with the liquidation which the court granted.

Consequently, on September 28, 1972, Fernandez and Jayme filed a petition for certiorari, prohibition and mandamus and/or specific performance, with preliminary injunction, against the Central Bank and Eagle Broadcasting Corporation, with the Court of First Instance of Manila, to annul and set aside the said Monetary Board Resolution No. 1766, dated September 15, 1972 and to restrain the Central Bank from liquidating PROVIDENT, and, instead, to order the Central Bank to comply with its commitments to the petitioners and reorganize and rehabilitate PROVIDENT in the manner it did to the Overseas Bank of Manila, as well as for damages and costs.

Eagle Broadcasting Corporation, upon the other hand, blames both the Central Bank and Fernandez and Jayme for the failure of PROVIDENT.

On December 11, 1972, the Central Bank filed a Petition for Assistance and Supervision in Liquidation of the Provident Savings Bank with the Court of First Instance of Manila, docketed therein as Sp. Proc. No. 89219, entitled: "In re: Liquidation of the Provident Savings Bank; Central Bank of the Philippines, petitioner."

Upon motion, the two cases were heard jointly, 14 and on February 20, 1974, judgment was rendered wherein the writs prayed for in the amended petition, except the writ of mandamus, are hereby granted, and Resolution No. 1766 dated September 15, 1972 of the Monetary Board of respondent Central Bank — as well as any and all resolutions issued in pursuance thereof, are hereby annulled and set aside; and said respondent Central Bank is ordered to desist from liquidating PROVIDENT and is ordered to specifically perform its obligation to reorganize and rehabilitate the Provident Savings Bank, following the precedent set in the case of the reorganization or rehabilitation of the Republic Bank and the course of action expected to be taken in the implementation of the final decision of the Supreme Court in the case of RAMOS vs. CENTRAL BANK, 41 SCRA 565, with respect to the Overseas Bank of Manila, within two cranad(2) years from finality of this decision.

The Central Bank and the Eagle Broadcasting Corporation appealed and after appropriate proceedings, the herein respondent Court of Appeals rendered the disputed decision which affirmed the decision appealed from but modified to exclude the award of damages and attorney's fees

ISSUE

Whether or not the closure of the bank may be subject to judicial inquiry and whether or not the resolution was issued arbitrarily and in bad faith.

RULING

Yes. Having decided in 1968 that PROVIDENT was salvageable and could be permitted to continue in business with its support, provided there is change in management and introduction of reforms, the CB should have been vigilant in its overseeing of the faithful compliance by the parties of the terms of the Memorandum Agreement, as well as in supervising and controlling the operations of the bank under the management of EAGLE. The persuasive, nay, compulsory, powers of the CB to accomplish these cannot be doubted. The CB exercises such control of private banks under its broad powers that it can decree life or death of any bank by simply withholding from it the facilitates that it normally accords banks.

While the closure and liquidation of a bank may be considered an exercise of police power, the validity of such exercise of police power is subject to judicial inquiry and could be set aside if it is either capricious, discriminatory, whimsical, arbitrary, unjust, or a denial of due process and equal protection clauses of the Constitution. The arbitrariness and bad faith of Central Bank is evident from the fact that it pressured Fernandez and Jayme into relinquishing the management and control of Provident Savings Bank to Iglesia Ni Kristo which did not have any intention of restoring the bank into its former sound financial condition but whose interest was merely to recover its deposits from the bank and thereafter allowing INK to mismanage the bank until the bank's financial deterioration and subsequent closure. Central Bank acted whimsically and withdrew its commitment to support the bank to the detriment of the latter. If jurisdiction was already acquired ito delve into the validity of Resolutions 1263 and 1290 (and this the Central Bank admits), there is no cogent reason why, after such jurisdiction 1333, particularly because the latter, in relation to the antecedent facts, appears to be no more than a deliberate effort to evade the jurisdiction of

this Court, and have the case thrown back to the Court of First Instance. The Central Bank, by promising to rehabilitate the bank, is estopped from closing it down. The conduct of the Central Bank reveals a calculated attempt to evade rehabilitating OBM despite its promises. Hence, respondent Central Bank of the Philippines is directed to comply with it obligations under the voting trust agreement, and to desist from taking action in violation thereof.

The Central Bank made express representations to petitioners herein that it would support the OBM, and avoid its liquidation if the petitioners would execute (a) the voting trust agreement turning over the management of OBM to the Central Bank or its nominees, and (b) mortgage or assign their properties to the Central Bank to cover the overdraft balance of OBM. The petitioners having complied with these conditions and parted with value to the profit of the CB (which thus acquired additional security for its own advances), the Central Bank may not now renege on its representations and liquidate the OBM, to the detriment of its stockholders, depositors and other creditors, under the rule of promissory estoppel.

• Central Bank of the Philippines vs. Court of Appeals, 139 SCRA 46 (1985)

CENTRAL BANK OF THE PHILIPPINES and ACTING DIRECTOR ANTONIO T. CASTRO, JR. OF THE DEPARTMENT OF COMMERCIAL AND SAVINGS BANK, in his capacity as statutory receiver of Island Savings Bank, petitioners, vs. THE HONORABLE COURT OF APPEALS and SULPICIO M. TOLENTINO, respondents.

G.R. No. L-45710, SECOND DIVISION, October 3, 1985Makasiar, J

Since ISB was in default under the agreement, Tolentino may choose between specific performance or rescission, but since ISB is now prohibited from doing further business, the only remedy left is rescission only for the P63,000 balance of the loan.

FACTS

April 28, 1965 - Island Savings Bank (ISB) approved the loan application for P80,000 of Sulpicio Tolentino, who, as a security for the loan, also executed a real estate mortgage over his 100-ha land. The approved loan application called for P80,000 loan, repayable in semi-annual installments for a period of 3 years, with 12% interest.

May 22, 1965 – a mere P17,000 partial release of the loan was made by ISB, and Tolentino and his wife Edita signed a promissory note for P17,000 at 12% annual interest, payable within 3 years from the date of execution of the contract at semi-annual installments of P3,459.

An advance interest for the P80,000 loan covering a 6-mo period amounting to P4,800was deducted from the partial release of P17,000, but this was refunded to Tolentino on July 23, 1965, after being informed by ISB that there was no fund yet available for the release of the P63,000 balance.

Aug. 13, 1965 – the Monetary Board of the Central Bank issued Resolution No. 1049, which prohibited ISB from making new loans and investments, after finding that it was suffering liquidity problems.

June 14, 1968 – the Monetary Board issued Resolution No. 967, which prohibited ISB from doing business in the Philippines, after finding that it failed to put up the required capital to restore its solvency.

Aug. 1, 1968 – ISB, in view of non-payment of the P17,000 covered by the promissory note, filed an application for the extra-judicial foreclosure of the real estate mortgage covering the 100-ha land; and the sheriff scheduled auction.

Tolentino filed a petition with the CFI for injunction, specific performance or rescission and damages with preliminary injunction, alleging that since ISB failed to deliver the P63,000 remaining balance of the loan, he is entitled to specific performance by ordering ISB to deliver it with interest of 12% per annum from April 28, 1965, and if said balance cannot be delivered, to rescind the real estate mortgage.

CFI issued a TRO enjoining ISB from continuing with the foreclosure of the mortgage, however, after finding Tolentino's petition unmeritorious, ordered the latter to pay ISB P17,000 plus legal interest and legal charges and lifting the TRO so the sheriff may proceed with the foreclosure.

CA, on appeal by Tolentino, modified CFI's decision by affirming dismissal of Tolentino's petition for specific performance, but ruled that ISB can neither foreclose the mortgage nor collect the P17,000 loan.

ISSUES

- 1) WON the action of Tolenitno for specific performance can prosper. NO.
- 2) WON Tolentino is liable to pay the P17,000 debt covered by the promissory note. YES.
- 3) WON Tolentino's real estate mortgage can be foreclosed to satisfy the P17,000 if his liability to pay therefor subsists. NO.

RULING

1) Since ISB was in default under the agreement, Tolentino may choose between specific performance or rescission, but since ISB is now prohibited from doing further business, the only remedy left is Rescission only for the P63,000 balance of the loan.

2) The bank was deemed to have complied with its reciprocal obligation to furnish a P17,000 loan. The promissory note gave rise to Tolentino's reciprocal obligation to pay such loan when it falls due and his failure to pay the overdue amortizations under the promissory note made him a party in default, hence not entitled to rescission (Art. 1191, CC). ISB has the right to rescind the promissory note, being the aggrieved party.

Since both parties were in default in the performance of their reciprocal obligations, both are liable for damages. In case both parties have committed a breach of their reciprocal obligations, the liability of the first infractor shall be equirably tempered by the courts (Art. 1192, CC). The liability of ISB for damages in not furnishing the entire loan is offset by the liability of Tolentino for damages

(penalties and surcharges) for not paying his overdue P17,000 debt. Since Tolentino derived some benefit for his use of the P17,000, he should account for the interest thereon (interest was not included in the offsetting).

3) The fact that when Tolentino executed his real estate mortgage, no consideration was then in existence, as there was no debt yet because ISB had not made any release on the loan, does not make the real estate mortgage void for lack of consideration.

It is not necessary that any consideration should pass at the time of the execution of the contract of real mortgage. When the consideration is subsequent to the mortgage, the latter can take effect only when the debt secured by it is created as a binding contract to pay. And when there is partial failure of consideration, the mortgage becomes unenforceable to the extent of such failure. Where the indebtedness actually owing to the holder of the mortgage is less than the sum named in the mortgage, the mortgage cannot be enforced for more than the actual sum due.

Since ISB failed to furnish the P63,000 balance, the real estate mortgage of Tolentino became unenforceable to such extent. P63,000 is 78.75% of P80,000, hence the mortgage covering 100 ha is unenforceable to the extent of 78.75 ha. The mortgage covering the remainder of 21.25 ha subsists as a security for the P17,000 debt.

• Lipana vs. Development Bank of Rizal, 154 SCRA 257 (1987)

SPOUSES ROMEO LIPANA and MILAGROS LIPANA, petitioners, vs. DEVELOPMENT BANK OF RIZAL, respondent.

G.R. No. 73884, SECOND DIVISION, September 24, 1987, PARAS, J

The rule that once a decision becomes final and executory, it is the ministerial duty of the court to order its execution, admits of certain exceptions as in cases of special and exceptional nature where it becomes imperative in the higher interest of justice to direct the suspension of its execution; whenever it is necessary to accomplish the aims of justice; or when certain facts and circumstances transpired after the judgment became final which could render the execution of the judgment unjust.

In the instant case, the stay of the execution of judgment is warranted by the fact that respondent bank was placed under receivership. To execute the judgment would unduly deplete the assets of respondent bank to the obvious prejudice of other depositors and creditors.

FACTS

During the period from 1982 to January, 1984, herein petitioners opened and maintained both time and savings deposits with Development Bank of Rizal all in the aggregate amount of P939,737.32. When some of the Time Deposit Certificates matured, petitioners were not able to cash them but instead were issued a manager's check which was dishonored upon presentment. Demands for the payment of both time and savings deposits were made but the bank did not respond. The petitioners filed with the Regional Trial Court of Pasig a Complaint with Prayer for Issuance of a Writ of Preliminary Attachment for collection of a sum of money with damages. The respondent Judge ordered the issuance of a writ of attachment. Thereafter, judgment was rendered in favor of the petitioners. Meanwhile the Monetary Board issued a resolution finding that the condition of respondent bank was one of insolvency and that its continuance in business would result in probable loss to its depositors and creditors. Consequently, the bank was placed under receivership. Thereafter, the petitioners filed a Motion for Execution Pending Appeal. The respondent judge ordered the issuance of a writ of execution. However, the bank filed for a Stay of execution and the same was granted.

The petitioners filed with the Regional Trial Court of Pasig a Complaint with Prayer for Issuance of a Writ of Preliminary Attachment for collection of a sum of money with damages. The respondent Judge ordered the issuance of a writ of attachment. Thereafter, judgment was rendered in favor of the petitioners. Thereafter, the petitioners filed a Motion for Execution Pending Appeal. The respondent judge ordered the issuance of a writ of execution. However, the bank filed for a Stay of execution and the same was granted. Later on, the petitioners filed a Motion to Lift Stay of Execution it was opposed by respondent bank and in an order, respondent judge denied the said motion. Hence, the instant petition. The petition was given due course and the parties were required to file their respective memoranda which they subsequently complied with.

ISSUE

Whether or not respondent judge could legally stay execution of judgment that has already become final and executory.

RULING

Yes. The rule that once a decision becomes final and executory, it is the ministerial duty of the court to order its execution, admits of certain exceptions as in cases of special and exceptional nature where it becomes imperative in the higher interest of justice to direct the suspension of its execution; whenever it is necessary to accomplish the aims of justice; or when certain facts and circumstances transpired after the judgment became final which could render the execution of the judgment unjust.

In the instant case, the stay of the execution of judgment is warranted by the fact that respondent bank was placed under receivership. To execute the judgment would unduly deplete the assets of respondent bank to the obvious prejudice of other depositors and creditors, since, as aptly stated in Central Bank of the Philippines vs. Morfe (63 SCRA 114), after the Monetary Board has declared that a bank is insolvent and has ordered it to cease operations, the Board becomes the trustee of its assets for the equal benefit of all the creditors, including depositors. The assets of the insolvent banking institution are held in trust for the equal benefit of all creditors, and after its insolvency, one cannot obtain an advantage or a preference over another by an attachment, execution or otherwise.

• Overseas Bank of Manila vs. Court of Appeals, G.R. No. L-45866, April 19, 1989

OVERSEAS BANK OF MANILA, petitioner, vs.COURT OF APPEALS and NATIONAL WATERWORKS AND SEWERAGE AUTHORITY, respondents.

G.R. No. L-45866, FIRST DIVISION, April 19, 1989, Narvasa, J

The suspension of operations which took place in August, 1968, could not possibly excuse noncompliance with the obligations in question which matured in 1966. Again, the claim that the Central Bank, by suspending the Overseas Bank's banking operations, had made it impossible for the Overseas Bank to pay its debts, whatever validity might be accorded thereto, or the further claim that it had fallen into a "distressed financial situation," cannot in any sense excuse it from its obligation to the NAWASA, which had nothing whatever to do with the Central Bank's actuations or the events leading to the bank's distressed state.

FACTS

A contract of sale was executed between NAWASA and Bonifacio Regalado. By the authority of NAWASA's Board of Directors, the purchase price was placed under time deposit with Overseas Bank for a period of six months. This was made so that refund may quickly be given to Regalado in the event that his contract with NAWASA be disapproved by the Office of the President. A second payment was made and the same was also placed under time deposit with Overseas Bank but this time, the maturity date is after twelve months. Thereafter, NAWASA wrote a letter to the bank to request the withdrawal of the first time deposit which has already matured. They also manifested that they would withdraw the second one after 60 days.

Despite demands the bank failed to remit the value of the time deposit. However, they were able to pay the interest. Upon the maturity of the second time deposit, NAWASA sent demand letters to the bank but there was no response. NAWASA wrote a letter to Central Bank regarding the issue. Central Bank ordered the bank to transfer the said funds to Philippine National Bank or to Development Bank of the Philippines. Still, the bank did not respond. On August 1968, the Central bank released an order of suspension of operations to Overseas Bank.

NAWASA thus brought suit to recover its deposits and damages. The Overseas Bank failed to file its answer despite service of summons; it was declared in default; the Court received NAWASA's evidence ex parte and on the basis thereof, thereafter rendered judgment by default. The Overseas Bank made no effort whatever to have the order of default lifted, or to have the judgment by default reconsidered. After being served with notice of the judgment, it i simply brought the case up to the Court of Appeals.

The Court of Appeals, in its own judgment dated January 26, 1 1977, declared the appeal to be without merit and affirmed the decision against Overseas Bank. The petitioner bank now asks this Court through a petition for review on certiorari to reverse the judgment by default of the Court of First Instance and the affirming judgment of the Court of Appeals.

ISSUE

Whether or not the order of default be reversed

RULING

No. The first argument advanced by the Overseas Bank is that as of July 30,1 968, by reason of "punitive action taken by the Central Bank," it had been prevented from undertaking banking operations "which would have generated funds to pay not only its depositors and creditors but likewise, the interests due on the deposits." The argument is palpably without merit. There is in the first place absolutely no evidence of these facts in the record: and this is simply because the petitioner bank had made no effort whatever to set aside the default order against it so that it could present evidence in its behalf before the Trial Court. Moreover, the suspension of operations which took place in August, 1968, could not possibly excuse non-compliance with the obligations in question which matured in 1966. Again, the claim that the Central Bank, by suspending the Overseas Bank's banking operations, had made it impossible for the Overseas Bank to pay its debts, whatever validity might be accorded thereto, or the further claim that it had fallen into a "distressed financial situation," cannot in any sense excuse it from its obligation to the NAWASA, which had nothing whatever to do with the Central Bank's actuations or the events leading to the bank's distressed state.

Also futile is the petitioner's invocation of this Court's decision in G.R. No. L-29352, "Emerita M. Ramos, et al. v. Central Bank," promulgated October 4, 1971 and subsequent resolutions 11 ordering the "rehabilitation, normalization and stabilization of the Overseas Bank of Manila," and allegedly approving the rehabilitation plan and a proposed procedure for the payment of the bank's obligations. Obviously, the failure of the Court of Appeals to apply such a rehabilitation program to the case cannot be error, as the petitioner deposits since the program was approved after the Appellate Court had rendered judgment. Furthermore, that rehabilitation program or procedure of payment does not in any way negate or diminish the indebtedness of the Overseas Bank to the NAWASA incurred in 1966, for conceding full faith and credit to such a prescribed procedure of payment, it constitutes no obstacle to determining the principal and interests of the debts at issue at this time.

• Banco Filipino Savings and Mortgage Bank vs. Central Bank, G.R. No. 70054, December 11, 1991

BANCO FILIPINO SAVINGS AND MORTGAGE BANK VS. CENTRAL BANK G.R. No. 70054, EN BANC, December 11, 1991, Medialdea, J

There is no question that under Section 29 of the Central Bank Act, the following are the mandatory requirements to be complied with before a bank found to be insolvent is ordered closed and forbidden to do business in the Philippines: Firstly, an examination shall be conducted by the head of the appropriate supervising or examining department or his examiners or agents into the condition of the bank; secondly, it shall be disclosed in the examination that the condition of the bank is one of insolvency, or that its continuance in business would involve probable loss to its depositors or creditors; thirdly, the department head concerned shall inform the Monetary Board in writing, of the facts; and lastly, the Monetary Board shall find the statements of the department head to be true.

In the case at bar, We believe that the closure of the petitioner bank was arbitrary and committed with grave abuse of discretion. Granting in gratia argumenti that the closure was based on justified grounds to protect the public, the fact that petitioner bank was suffering from serious financial problems should not automatically lead to its liquidation. Section 29 of the Central Bank provides that a closed bank may be reorganized or otherwise placed in such a condition that it may be permitted to resume business with safety to its depositors, creditors and the general public.

FACTS

This case involves 9 consolidated cases. The first six cases involve the common issue of whether or not the liquidator appointed by the respondent Central Bank has the authority to prosecute as well as to defend suits, and to foreclose mortgages for and in behalf of the bank while the issue on the validity of the receivership and liquidation of the latter is pending resolution in G.R. No. 7004. On the other hand, the other three (3) cases, namely, G.R. Nos. 70054, which is the main case, 78767 and 78894 all seek to annul and set aside M.B. Resolution No. 75 issued by respondents Monetary Board and Central Bank on January 25, 1985.

G.R. Nos. 70054

Banco Filipino Savings and Mortgage Bank commenced operations on July 9, 1964. It has 89 operating branches with more than 3 million depositors. It has an approved emergency advance of P119.7 million. The Monetary Board placed Banco Filipino Savings and Mortgage Bank under conservatorship of Basilio Estanislao. He was later replaced by Gilberto Teodoro as conservator on August 10, 1984. Gilberto Teodoro submitted a report dated January 8, 1985 to respondent The Monetary Board on the conservatorship of the bank. Subsequently, another report dated January 23, 1985 was submitted to the Monetary Board by Ramon Tiaoqui regarding the major findings of examination on the financial condition of Banco Filipino Savings and Mortgage Bank as of July 31, 1984, finding the bank one of insolvency and illiquidity and provides sufficient justification for forbidding the bank from engaging in banking. The Monetary Board ordered the closure of Banco Filipino and designated Mrs. Carlota P. Valenzuela as Receiver.

Banco Filipino filed a complaint with the RTC to set aside the action of the Monetary Board placing the bank under receivership and filed with the SC the petition for certiorari and mandamus. Carlota Valenzuela, as Receiver and Arnulfo Aurellano and Ramon Tiaoqui as Deputy Receivers of Banco Filipino submitted their report on the receivership of the bank to the Monetary Board, finding that the condition of the banking institution continues to be one of insolvency, i.e., its realizable assets are insufficient to meet all its liabilities and that the bank cannot resume business with safety to its depositors, other creditors and the general public, and recommends the liquidation of the bank. Banco Filipino filed a motion before the SC praying that a restraining order or a writ of preliminary injunction be issued to enjoin respondents from causing the dismantling of Banco Filipino signs in its main office and 89 branches. The SC ordered the issuance of the temporary restraining order. The SC directed the Monetary Board and Central Bank hold hearings at which the Banco Filipino should be heard.

This refers to nine (9) consolidated cases concerning the legality of the closure and receivership of petitioner Banco Filipino Savings and Mortgage Bank (Banco Filipino for brevity) pursuant to the order of respondent Monetary Board. Six (6) of these cases, namely, G.R. Nos. 68878, 77255-68, 78766, 81303, 81304 and 90473 involve the common issue of whether or not the liquidator appointed by the respondent Central Bank (CB for brevity) has the authority to prosecute as well as to defend suits, and to foreclose mortgages for and in behalf of the bank while the issue on the

validity of the receivership and liquidation of the latter is pending resolution in G.R. No. 7004. Corollary to this issue is whether the CB can be sued to fulfill financial commitments of a closed bank pursuant to Section 29 of the Central Bank Act. On the other hand, the other three (3) cases, namely, G.R. Nos. 70054, which is the main case, 78767 and 78894 all seek to annul and set aside M.B. Resolution No. 75 issued by respondents Monetary Board and Central Bank on January 25, 1985.

ISSUES

1. Whether or not the liquidator appointed by the respondent Central Bank has the authority to prosecute as well as to defend suits, and to foreclose mortgages for and in behalf of the bank while the issue on the validity of the receivership and liquidation of the latter is pending resolution in G.R. No. 7004

2. Whether or not the Central Bank and the Monetary Board acted arbitrarily and in bad faith in finding and thereafter concluding that petitioner bank is insolvent, and in ordering its closure on January 25, 1985.

RULING

1. Yes, the liquidator appointed by the respondent Central Bank has the authority to prosecute as well as to defend suits, and to foreclose mortgages for and in behalf of the bank while the issue on the validity of the receivership and liquidation of the latter is pending resolution in G.R. No. 7004. When the issue on the validity of the closure and receivership of Banco Filipino bank was raised in G.R. No. 70054, pendency of the case did not diminish the powers and authority of the designated liquidator to effect and carry on the administration of the bank. In fact when We adopted a resolute on August 25, 1985 and issued a restraining order to respondents Monetary Board and Central Bank, We enjoined further acts of liquidation. Such acts of liquidation, as explained in Sec. 29 of the Central Bank Act are those which constitute the conversion of the assets of the banking institution to money or the sale, assignment or disposition of the s to creditors and other parties for the purpose of paying debts of such institution. We did not prohibit however acts a as receiving collectibles and receivables or paying off credits claims and other transactions pertaining to normal operate of a bank.

There is no doubt that the prosecution of suits collection and the foreclosure of mortgages against debtors the bank by the liquidator are among the usual and ordinary transactions pertaining to the administration of a bank. They did Our order in the same resolution dated August 25, 1985 for the designation by the Central Bank of a comptroller Banco Filipino alter the powers and functions; of the liquid insofar as the management of the assets of the bank is concerned. The mere duty of the comptroller is to supervise counts and finances undertaken by the liquidator and to d mine the propriety of the latter's expenditures incurred behalf of the bank. Notwithstanding this, the liquidator is empowered under the law to continue the functions of receiver is preserving and keeping intact the assets of the bank in substitution of its former management, and to prevent the dissipation of its assets to the detriment of the creditors of the bank. These powers and functions of the liquidator in directing the operations of the bank in place of the former management or former officials of the bank include the retaining of counsel of his choice in actions and proceedings for purposes of administration.

Clearly, in G.R. Nos. 68878, 77255-58, 78766 and 90473, the liquidator by himself or through counsel has the authority to bring actions for foreclosure of mortgages executed by debtors in favor of the bank. In G.R. No. 81303, the liquidator is likewise authorized to resist or defend suits instituted against the bank by debtors and creditors of the bank and by other private persons. Similarly, in G.R. No. 81304, due to the aforestated reasons, the Central Bank cannot be compelled to fulfill financial transactions entered into by Banco Filipino when the operations of the latter were suspended by reason of its closure. The Central Bank possesses those powers and functions only as provided for in Sec. 29 of the Central Bank Act.

2. Yes, the Monetary Board acted arbitrarily and in bad faith in finding and thereafter concluding that petitioner bank is insolvent, and in ordering its closure on January 25, 1985. There is no question that under Section 29 of the Central Bank Act, the following are the mandatory requirements to be complied with before a bank found to be insolvent is ordered closed and forbidden to do business in the Philippines: Firstly, an examination shall be conducted by the head of the appropriate supervising or examining department or his examiners or agents into the condition of the bank; secondly, it shall be disclosed in the examination that the condition of the bank is one of insolvency, or that its continuance in business would involve probable loss to its depositors or creditors; thirdly, the department head concerned shall inform the Monetary Board in writing, of the facts; and lastly, the Monetary Board shall find the statements of the department head to be true. Anent the first requirement, the Tiaoqui report, submitted on January 23, 1985. revealed that the finding of insolvency of petitioner was based on the partial list of exceptions and findings on the regular examination of the bank as of July 31, 1984 conducted by the Supervision and Examination Sector II of the Central Bank of the Philippines Central Bank. Clearly, Tiaoqui based his report on an incomplete examination of petitioner bank and outrightly concluded therein that the latter's financial status was one of insolvency or illiquidity. It is evident from the foregoing circumstances that the examination contemplated in Sec. 29 of the CB Act as a mandatory requirement was not completely and fully complied with. Despite the existence of the partial list of findings in the examination of the bank, there were still highly significant items to be weighed and determined such as the matter of valuation reserves, before these can be considered in the financial condition of the bank.

It would be a drastic move to conclude prematurely that a bank is insolvent if the basis for such conclusion is lacking and insufficient, especially if doubt exists as to whether such bases or findings faithfully represent the real financial status of the bank. The actuation of the Monetary Board in closing petitioner bank on January 25, 1985 barely four days after a conference with the latter on the examiners' partial findings on its financial position is also violative of what was provided in the CB Manual of Examination Procedures. Said manual provides that only after the examination is concluded, should a pre-closing conference led by the examiner-in-charge be held with the officers/representatives of the institution on the findings/exception, and a copy of the summary of the findings/violations should be furnished the institution examined so that corrective action may be taken by them as soon as possible (Manual of Examination Procedures, General Instruction, p. 14). It is hard to understand how a period of four days after the conference could be a reasonable opportunity for a bank to undertake a responsive and corrective action on the partial list of findings of the examiner-in-charge. In the instant case, the basic standards of substantial due process were not observed. Time and again, We have held in several cases, that the procedure of administrative tribunals must satisfy the fundamentals of fair play and that their judgment should express a wellsupported conclusion.

In view of the foregoing premises, We believe that the closure of the petitioner bank was arbitrary and committed with grave abuse of discretion. Granting in gratia argumenti that the closure was based on justified grounds to protect the public, the fact that petitioner bank was suffering from serious financial problems should not automatically lead to its liquidation. Section 29 of the Central Bank provides that a closed bank may be reorganized or otherwise placed in such a condition that it may be permitted to resume business with safety to its depositors, creditors and the general public.

• Central Bank of the Philippines vs. Court of Appeals, 208 SCRA 652 (1992)

CENTRAL BANK OF THE PHILIPPINES and HON. JOSE B. FERNANDEZ, petitioners, vs. HON. COURT OF APPEALS, RTC JUDGE TEOFILO GUADIZ, JR., PRODUCERS BANK OF THE PHILIPPINES and PRODUCERS PROPERTIES, INC., respondents.

ATTY. LEONIDA G. TANSINSIN-ENCARNACION, as the Acting Conservator of Producers Bank of the Philippines, and PRODUCERS BANK OF THE PHILIPPINES, petitioners, vs. PRODUCERS BANK OF THE PHILIPPINES, allegedly represented by HENRY L. CO, HON. COURT OF APPEALS, HON. TEOFILO GUADIZ, JR., and the "LAW FIRM OF QUISUMBING, TORRES AND EVANGELISTA" (RAMON J. QUISUMBING, VICENTE TORRES, RAFAEL E. EVANGELISTA, JR. and CHRISTOFER L. LIM), respondents.

G.R. No. 88353, EN BANC, May 8, 1992, Davide Jr., J

Board of Directors of a bank is not prohibited to file suit to lift the conservatorship over it, to question the validity of the conservator's fraudulent acts and abuses and the arbitrary action of the MB provided following requisites should be complied with:

1. The appropriate pleading must be filed by the stockholders of record representing the majority of the capital stock of the bank in the proper court;

2. Said pleading must be filed within ten (10) days from receipt of notice by said majority stockholders of the order placing the bank under conservatorship; and

3. There must be convincing proof, after hearing, that the action is plainly arbitrary and made in bad faith.

In the instant case, however, PBP's complaint was filed after the expiration of the 10-day period deferred to above. Accordingly, the order placing PBP under conservatorship had long become final and its validity could no longer be litigated upon before the trial court. Furthermore, it is important to note that the action instituted was not for the purpose of having the conservatorship lifted but it is an action for damage which must nevertheless be dismissed for failure of the PBP to pay the correct docket fees.

FACTS

Central Bank (CB) discovered that certain questionable loans extended by Producer's Bank of the Philippines (PBP), totalling approximately P300 million (the paid-in capital of PBP amounting only to P 140.544 million, were fictitious as they were extended, without collateral, to certain interests related to PBP owners themselves.

Subsequently and during the same year, several blind items about a family-owned bank in Binondo which granted fictitious loans to its stockholders appeared in major newspapers which triggered a bank-run in PBP and resulted in continuous over-drawings on the bank's demand deposit account with the Central Bank; reaching to P 143.955 million. Hence, on the basis of the report submitted by the Supervision and Examination Sector, the Monetary Board (MB), placed PBP under conservatorship.

PBP submitted a rehabilitation plan to the CB which proposed the transfer to PBP of 3 buildings owned by Producers Properties, Inc. (PPI), its principal stockholder and the subsequent mortgage of said properties to the CB as collateral for the bank's overdraft obligation but which was not approved due to disagreements between the parties.

Since no other rehabilitation program was submitted by PBP for almost 3 years its overdrafts with the CB continued to accumulate and swelled to a staggering P1.023 billion. Consequently, the CB Monetary Board decided to approve in principle what it considered a viable rehabilitation program for PBP. There being no response from both PBP and PPI on the proposed rehabilitation plan, the MB issued a resolution instructing Central Bank management to advise the bank that the conservatorship may be lifted if PBP complies with certain conditions.

Without responding to the communications of the CB, PBP filed a complaint with the Regional Trial Court of Makati against the CB, the MB and CB Governor alleging that the resolutions issued were arbitrary and made in bad faith. Respondent Judge issued a temporary restraining order and subsequently a writ of preliminary injunction. CB filed a motion to dismiss but was denied and ruled that the MB resolutions were arbitrarily issued. CB filed a petition for certiorari before the Court of Appeals seeking to annul the orders of the trial court but CA affirmed the said orders. Hence this petition.

The first case, G.R. No. 88353, is a petition for review on certiorari of the decision of 6 October 19882 and the resolution of 17 May 19893 of the respondent Court of Appeals in C.A.-G.R. No. SP-13624. The impugned decision upheld the 21 September 1987 Order of respondent Judge Teofilo Guadiz, Jr. in Civil Case No. 17692 granting the motion for issuance of a writ of preliminary injunction -- enjoining petitioners Central Bank of the Philippines (CB), Mr. Jose B. Fernandez, Jr. and the Monetary Board, or any of their agencies from implementing Monetary Board (MB) Resolutions No. 649 and No. 751, or from taking the threatened appropriate alternative action -- and the 27 October 1987 Order in the same case denying petitioners' motion to dismiss and vacate said injunction. The challenged resolution, on the other hand, denied petitioners' motion for reconsideration of the 6 October 1988 decision.

The second case, G.R. No. 92943, is a petition for review directed principally against the 17 January 1990 decision of the respondent Court of Appeals in C.A.-G.R. SP No. 16972. The said decision dismissed the petition therein filed and sustained the various Orders of the respondent Judge in Civil Case No. 17692, but directed the plaintiffs therein to amend the amended complaint by stating in its prayer the specific amount of damages which Producers Bank of the Philippines (PBP) claims to have sustained as a result of losses of operation and the conservator's bank frauds and abuses; the Clerk of Court was also ordered to determine the amount of filing fees which should be paid by the plaintiffs within the applicable prescriptive or reglementary period.

ISSUES

Whether an approval from the CB is necessary for the bank to bring action before the court? Whether the court is correct in issuing the preliminary injunction?

RULING

No, but the Court in this case ruled that the case filed by PB should be dismissed. A conservator, once appointed, takes over the management of the bank and assumes exclusive powers to oversee every aspect of the bank's operations and affairs. However, it must be stressed that a bank retains its juridical personality even if placed under conservatorship; it is neither replaced nor substituted by the conservator. Hence, the approval of the CB is not necessary where the action was instituted by the bank through the majority of the bank's stockholders. To contend otherwise would be to defeat the rights of such stockholders under the fifth paragraph of Section 29 of the Central Bank Act.

Therefore, the rule is the Board of Directors of a bank is not prohibited to file suit to lift the conservatorship over it, to question the validity of the conservator's fraudulent acts and abuses and the arbitrary action of the MB provided following requisites should be complied with:

1. The appropriate pleading must be filed by the stockholders of record representing the majority of the capital stock of the bank in the proper court;

2. Said pleading must be filed within ten (10) days from receipt of notice by said majority stockholders of the order placing the bank under conservatorship; and

3. There must be convincing proof, after hearing, that the action is plainly arbitrary and made in bad faith.

In the instant case, however, PBP's complaint was filed after the expiration of the 10-day period deferred to above. Accordingly, the order placing PBP under conservatorship had long become final and its validity could no longer be litigated upon before the trial court. Furthermore, it is important to note that the action instituted was not for the purpose of having the conservatorship lifted but it is an action for damage which must nevertheless be dismissed for failure of the PBP to pay the correct docket fees.

The court is not correct in issuing the preliminary injunction. It is well-settled that the closure of a bank may be considered as an exercise of police power. The action of the MB on this matter is final and executory. Such exercise may nonetheless be subject to judicial inquiry and can be set aside if found to be in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction. The records of this case revealed that there was neither arbitrariness nor bad faith in the issuance of MB Resolutions ordering for conservatorship.

It must be stressed in this connection that the banking business is properly subject to reasonable regulation under the police power of the state because of its nature and relation to the fiscal affairs of the people and the revenues of the state. It is then Government's responsibility to see to it that the financial interests of those who deal with banks and banking institutions, as depositors or

otherwise, are protected. Hence, the CB is authorized to take the necessary steps against any banking institution if its continued operation would cause prejudice to its depositors, creditors and the general public as well. This power has been expressly recognized by this Court.

• Rural Bank of San Miguel vs. Monetary Board, G.R. No. 150886, February 16, 2007

RURAL BANK OF SAN MIGUEL, INC. and HILARIO P. SORIANO, in his capacity as majority stockholder in the Rural Bankof San Miguel, Inc., Petitioners, vs.MONETARY BOARD, BANGKO SENTRAL NG PILIPINAS and PHILIPPINE DEPOSIT INSURANCE CORPORATION, Respondents.

G.R. No. 150886, FIRST DIVISION, February 16, 2007, Corona, J.

In RA 7653, only a "report of the head of the supervising or examining department" is necessary. The absence of an examination before the closure of RBSM did not mean that there was no basis for the closure order. Needless to say, the decision of the MB and BSP, like any other administrative body, must have something to support itself and its findings of fact must be supported by substantial evidence. But it is clear under RA 7653 that the basis need not arise from an examination as required in the old law.

FACTS

Petitioner Rural Bank of San Miguel, Inc. (RBSM) was a domestic corporation engaged in banking. On January 21, 2000, respondent Monetary Board (MB), the governing board of respondent Bangko Sentral ng Pilipinas (BSP), issued Resolution No. 105 prohibiting RBSM from doing business in the Philippines, placing it under receivership and designating respondent Philippine Deposit Insurance Corporation (PDIC) as receiver.

On the basis of the comptrollership/monitoring report as of October 31, 1999 as reported by Mr. Wilfredo B. Domo-ong, Director, Department of Rural Banks, , which report showed that [RBSM] (a) is unable to pay its liabilities as they become due in the ordinary course of business; (b) cannot continue in business without involving probable losses to its depositors and creditors; that the management of the bank had been accordingly informed of the need to infuse additional capital to place the bank in a solvent financial condition and was given adequate time within which to make the required infusion and that no infusion of adequate fresh capital was made. RBSM filed a petition for certiorari and prohibition to nullify the resolution placing it under receivership.

The Regional Trial Court and the Court of Appeals (CA) dismissed the petition. The CA found that RBSM was granted with emergency loans as a last trenche. The emergency loan was for the sole purpose of servicing and meeting withdrawals but RBSM did not use it for that purpose. Thereafter, RBSM declared a bank holiday which prompted BSP to ecamine its books. The Comptroller report was submitted before the MB and based on that, a closure and liquidation order was issued.

RBSM now argues that the resolution ordering the closure and liquidation of RBSM is void because there was no prior complete examination but merely a report.

On January 31, 2000, petitioners filed a petition for certiorari and prohibition in the Regional Trial Court (RTC) of Malolos, Branch 22 to nullify and set aside Resolution No. 105. However, on February 7, 2000, petitioners filed a notice of withdrawal in the RTC and, on the same day, filed a special civil action for certiorari and prohibition in the CA. On February 8, 2000, the RTC dismissed the case pursuant to Section 1, Rule 17 of the Rules of Court. In their petition before the CA, petitioners claimed that respondents MB and BSP committed grave abuse of discretion in issuing Resolution No. 105. The petition was dismissed by the CA on March 28, 2000. It held, among others, that the decision of the MB to issue Resolution No. 105 was based on the findings and recommendations of the Department of Rural Banks Supervision and Examination Sector, the comptroller reports as of October 31, 1999 and December 31, 1999 and the declaration of a bank holiday. Such could be considered as substantial evidence.

Pertinently, on June 9, 2000, on the basis of reports prepared by PDIC stating that RBSM could not resume business with sufficient assurance of protecting the interest of its depositors, creditors and the general public, the MB passed Resolution No. 966 directing PDIC to proceed with the liquidation of RBSM under Section 30 of RA 7653. Hence this petition.

ISSUE

Whether or not Sec. 30 of RA 7653 and applicable jurisprudence require a current and complete examination of the bank before it can be closed and placed under receivership.

RULING

No, a current and complete examination of the bank before it can be closed and placed under receivership is not necessary.

The argument of RBSM was in accordance with the ruling in Banco Filipino vs. Monetary Board. However, RBSM's reliance on such ruling is misplaced because the case was decided using Sec. 29 of the old law, RA 265. Thus in Banco Filipino, we ruled that an "examination [conducted] by the head of the appropriate supervising or examining department or his examiners or agents into the condition of the bank" is necessary before the MB can order its closure. However, RA 265, including Section 29 thereof, was expressly repealed by RA 7653 which took effect in 1993. Resolution No. 105 was issued on January 21, 2000. Hence, petitioners' reliance on Banco Filipino which was decided under RA 265 was misplaced.

In RA 7653, only a "report of the head of the supervising or examining department" is necessary. It is an established rule in statutory construction that where the words of a statute are clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. The word "report" has a definite and unambiguous meaning which is clearly different from "examination." A report, as a noun, may be defined as "something that gives information" or "a usually detailed account or statement." 2 On the other hand, an examination is "a search, investigation or scrutiny."

What is being raised here as grave abuse of discretion on the part of the respondents was the lack of an examination and not the supposed arbitrariness with which the conclusions of the director of

the Department of Rural Banks Supervision and Examination Sector had been reached in the report which became the basis of Resolution No. 105.

The absence of an examination before the closure of RBSM did not mean that there was no basis for the closure order. Needless to say, the decision of the MB and BSP, like any other administrative body, must have something to support itself and its findings of fact must be supported by substantial evidence. But it is clear under RA 7653 that the basis need not arise from an examination as required in the old law.

We thus rule that the MB had sufficient basis to arrive at a sound conclusion that there were grounds that would justify RBSM's closure. It relied on the report of Mr. Domo-ong, the head of the supervising or examining department, with the findings that: (1) RBSM was unable to pay its liabilities as they became due in the ordinary course of business and (2) that it could not continue in business without incurring probable losses to its depositors and creditors. The report was a 50-page memorandum detailing the facts supporting those grounds, an extensive chronology of events revealing the multitude of problems which faced RBSM and the recommendations based on those findings

• BSP Monetary Board vs. Hon. Antonio-Valenzuela, G.R. No. 184778, October 2, 2009

BANGKO SENTRAL NG PILIPINAS MONETARY BOARD and CHUCHI FONACIER, Petitioners, vs.HON. NINA G. ANTONIO-VALENZUELA, in her capacity as Regional Trial Court Judge of Manila, Branch 28; RURAL BANK OF PARAÑAQUE, INC.; RURAL BANK OF SAN JOSE (BATANGAS), INC.; RURAL BANK OF CARMEN (CEBU), INC.; PILIPINO RURAL BANK, INC.;
 PHILIPPINE COUNTRYSIDE RURAL BANK, INC.; RURAL BANK OF CALATAGAN (BATANGAS), INC. (now DYNAMIC RURAL BANK); RURAL BANK OF DARBCI, INC.; RURAL BANK OF KANANGA (LEYTE), INC. (now FIRST INTERSTATE RURAL BANK); RURAL BANK OF BISAYAS MINGLANILLA (now BANK OF EAST ASIA); and SAN PABLO CITY DEVELOPMENT BANK, INC. G.R. No. 184778, THIRD DIVISION, October 2, 2009, Velasco Jr., J

The issuance by the RTC of writs of preliminary injunction is an unwarranted interference with the powers of the MB refer to the appointment of a conservator or a receiver for a bank, which is a power of the MB for which they need the ROEs done by the supervising or examining department. The writs of preliminary injunction issued by the trial court hinder the MB from fulfilling its function under the law. The "close now, hear later" scheme is grounded on practical and legal considerations to prevent unwarranted dissipation of the bank's assets and as a valid exercise of police power to protect the depositors, creditors, stockholders, and the general public.

Moreover, the respondent banks have failed to show that they are entitled to copies of the ROEs. They can point to no provision of law, no section in the procedures of the BSP that shows that the BSP is required to give them copies of the ROEs. Sec. 28 of RA 7653, provides that the ROE shall be submitted to the MB; the bank examined is not mentioned as a recipient of the ROE.

FACTS

Supervision and Examination Department (SED) of the Bangko Sentral ng Pilipinas (BSP) conducted examinations of the books of the following banks:

Rural Bank of Parañaque, Inc. (RBPI), Rural Bank of San Jose (Batangas), Inc., Rural Bank of Carmen (Cebu), Inc., Pilipino Rural Bank, Inc., Philippine Countryside Rural Bank, Inc., Rural Bank of Calatagan (Batangas), Inc. (now Dynamic Rural Bank), Rural Bank of Darbci, Inc., Rural Bank of Kananga (Leyte), Inc. (now First Interstate Rural Bank), Rural Bank de Bisayas Minglanilla (now Bank of East Asia), and San Pablo City Development Bank, Inc.

After the examinations, exit conferences were held with the officers of the banks wherein SED provided copies of Lists of Findings containing the deficiencies discovered during the examinations. Banks were then required to comment and to undertake the remedial measures which included the infusion of additional capital. Though the banks claimed that they made the additional capital infusions, petitioner Chuchi Fonacier, officer-in-charge of the SED, sent separate letters to the Board of Directors of each bank, informing them that the SED found that the banks failed to carry out the required remedial measures. In response, the banks requested that they be given time to obtain BSP approval to amend their Articles of Incorporation, that they have an opportunity to seek investors. They requested as well that the basis for the capital infusion figures be disclosed, and noted that none of them had received the Report of Examination (ROE) which finalizes the audit findings. In response, Fonacier reiterated the banks' failure to comply with the directive for additional capital infusions.

RBPI filed a complaint for nullification of the BSP ROE with application for a TRO and writ of preliminary injunction before the RTC. Praying that Fonacier, her subordinates, agents, or any other person acting in her behalf be enjoined from submitting the ROE or any similar report to the Monetary Board (MB), or if the ROE had already been submitted, the MB be enjoined from acting on the basis of said ROE, on the allegation that the failure to furnish the bank with a copy of the ROE violated its right to due process.

The rest of the banks followed suit filing complaints with the RTC substantially similar to that of RBPI.

RTC denied the prayer for a TRO of Pilipino Rural Bank, Inc. The bank filed a motion for reconsideration the next day.Respondent Judge Nina Antonio-Valenzuela of Branch 28 granted RBPI's prayer for the issuance of a TRO.

The other banks separately filed motions for consolidation of their cases in Branch 28, which motions were granted. Petitioners assailed the validity of the consolidation of the nine cases before the RTC, alleging that the court had already prejudged the case by the earlier issuance of a TRO and moved for the inhibition of respondent judge. Petitioners filed a motion for reconsideration regarding the consolidation of the subject cases.

The RTC ruled that the banks were entitled to the writs of preliminary injunction prayed for. It held that it had been the practice of the SED to provide the ROEs to the banks before submission to the MB. It further held that as the banks are the subjects of examinations, they are entitled to copies of

the ROEs. The denial by petitioners of the banks' requests for copies of the ROEs was held to be a denial of the banks' right to due process.

Petitioners claims grave abuse of discretion on the part of Judge Valenzuela. The CA ruled that the RTC committed no grave abuse of discretion when it ordered the issuance of a writ of preliminary injunction and when it ordered the consolidation of the 10 cases. It held that petitioners should have first filed a motion for reconsideration of the assailed orders, and failed to justify why they resorted to a special civil action of certiorari instead.

On November 24, 2008, a TRO was issued by this Court, restraining the CA, RTC, and respondents from implementing and enforcing the CA Decision. By reason of the TRO issued by this Court, the SED was able to submit their ROEs to the MB. The MB then prohibited the respondent banks from transacting business and placed them under receivership

ISSUES

a. Whether or not the TRO issued by the RTC violated section 25 of the New Central Bank Act that prevented the MB to discharge functions.

b. Whether or not the respondents are required to be given copies of the ROEs before submission of such to the Monetary Board.

RULING

(A.) YES, Requisites for preliminary injunctive relief are: (a) the invasion of right sought to be protected is material and substantial; (b) the right of the complainant is clear and unmistakable; and (c) there is an urgent and paramount necessity for the writ to prevent serious damage. The twin requirements of a valid injunction are the existence of a right and its actual or threatened violations. Thus, to be entitled to an injunctive writ, the right to be protected and the violation against that right must be shown. These requirements are absent in the present case.

The issuance by the RTC of writs of preliminary injunction is an unwarranted interference with the powers of the MB refer to the appointment of a conservator or a receiver for a bank, which is a power of the MB for which they need the ROEs done by the supervising or examining department. The writs of preliminary injunction issued by the trial court hinder the MB from fulfilling its function under the law. The actions of the MB under Secs. 29 and 30 of RA 7653 "may not be restrained or set aside by the court except on petition for certiorari on the ground that the action taken was in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction. The respondent banks have shown no necessity for the writ of preliminary injunction to prevent serious damage. The serious damage contemplated by the trial court was the possibility of the imposition of closure could be imposed upon a bank by the BSP even without notice and hearing. This "close now, hear later" scheme is grounded on practical and legal considerations to prevent unwarranted dissipation of the bank's assets and as a valid exercise of police power to protect the depositors, creditors, stockholders, and the general public.

Judicial review enters the picture only after the MB has taken action; it cannot prevent such action by the MB. The threat of the imposition of sanctions, even that of closure, does not violate their right to due process, and cannot be the basis for a writ of preliminary injunction.

The "close now, hear later" doctrine has already been justified as a measure for the protection of the public interest.

(B) NO, The respondent banks have failed to show that they are entitled to copies of the ROEs. They can point to no provision of law, no section in the procedures of the BSP that shows that the BSP is required to give them copies of the ROEs. Sec. 28 of RA 7653, provides that the ROE shall be submitted to the MB; the bank examined is not mentioned as a recipient of the ROE.

The respondent banks cannot claim a violation of their right to due process if they are not provided with copies of the ROEs. The same ROEs are based on the lists of findings/exceptions containing the deficiencies found by the SED examiners when they examined the books of the respondent banks. As found by the RTC, these lists of findings/exceptions were furnished to the officers or representatives of the respondent banks, and the respondent banks were required to comment and to undertake remedial measures stated in said lists. Despite these instructions, respondent banks failed to comply with the SED's directive.

Respondent banks are already aware of what is required of them by the BSP, and cannot claim violation of their right to due process simply because they are not furnished with copies of the ROEs.

SPOUSES JAIME and MATILDE POON vs. PRIME SAVINGS BANK represented by the PHILIPPINE DEPOSIT INSURANCE CORPORATION as Statutory Liquidator (G.R. No. 183794, June 13, 2016, SERENO, CJ)

SPOUSES JAIME and MATILDE POON vs. PRIME SAVINGS BANK represented by the PHILIPPINE DEPOSIT INSURANCE CORPORATION as Statutory Liquidator G.R. No. 183794, FIRST DIVISION, June 13, 2016, SERENO, CJ

The period during which the bank cannot do business due to insolvency is not a fortuitous event, unless it is shown that the government's action to place a bank under receivership or liquidation proceedings is tainted with arbitrariness, or that the regulatory body has acted without jurisdiction.

FACTS

Petitioners owned a commercial building in Naga City. On 3 November 2006, Matilde Poon and respondent executed a 10-year Contract of Lease (Contract) over the building for the latter's use as its branch office in Naga City. They agreed to a fixed monthly rental of P60,000, with an advance payment of the rentals for the first 100 months in the amount of P6,000,000. As agreed, the advance payment was to be applied immediately.

In addition, paragraph 24 of the Contract provides:

Should the leased premises be closed, deserted or vacated by the LESSEE, the LESSOR shall have the right to terminate the lease without the necessity of serving a court order and to immediately repossess the leased premises. xxxxxxxxxx

The LESSOR shall thereupon have the right to enter into a new contract with another party. All advanced rentals shall be forfeited in favor of the LESSOR.

Barely three years later, however, the BSP placed respondent under the receivership of the Philippine Deposit Insurance Corporation (PDIC) for wilfully violating a cease and desist orders that has become final, involving acts or transactions which amount to fraud or a dissipation of the assets of the institution, among other grounds. The BSP eventually ordered respondent's liquidation.

On 12 May 2000, respondent vacated the leased premises and surrendered them to petitioners. Subsequently, the PDIC issued petitioners a demand letter asking for the return of the unused advance rental amounting to P3,480,000 on the ground that paragraph 24 of the lease agreement had become inoperative, because respondent's closure constituted force majeure. The PDIC likewise invoked the principle of rebus sic stantibus under Article 1267 of Republic Act No. 386 (Civil Code) as alternative legal basis for demanding the refund. Petitioners, however, refused the PDIC's demand. They maintained that they were entitled to retain the remainder of the advance rentals following paragraph 24 of their Contract. Consequently, respondent sued petitioners before the RTC of Naga City for a partial rescission of contract and/or recovery of a sum of money.

RTC ordered the partial rescission of the lease agreement and directed petitioner spouses Jaime and Matilde Poon to return or refund the sum of One Million Seven Hundred Forty Thousand Pesos (Pl,740,000) representing one-half of the unused portion of the advance rentals. CA affirmed the RTC Decision.

ISSUES

1. Whether respondent may be released from its contractual obligations to petitioners on grounds of fortuitous event under Article 1174 of the Civil Code and unforeseen event under Article 1267 of the Civil Code;

2. Whether the proviso in the parties' Contract allowing the forfeiture of advance rentals was a penal clause; and

3. Whether the penalty agreed upon by the parties may be equitably reduced under Article 1229 of the Civil Code.

RULING

1. The closure of respondent's business was neither a fortuitous nor an unforeseen event that rendered the lease agreement functus officio.

Respondent posits that it should be released from its contract with petitioners, because the closure of its business upon the BSP' s order constituted a fortuitous event as the Court held in Provident

Savings Bank. The cited case, however, must always be read in the context of the earlier Decision in Central Bank v. Court of Appeals. The Court ruled in that case that the Monetary Board had acted arbitrarily and in bad faith in ordering the closure of Provident Savings Bank. Accordingly, in the subsequent case of Provident Savings Bank it was held that fuerza mayor had interrupted the prescriptive period to file an action for the foreclosure of the subject mortgage.

In contrast, there is no indication or allegation that the BSP's action in this case was tainted with arbitrariness or bad faith. Instead, its decision to place respondent under receivership and liquidation proceedings was pursuant to Section 30 of Republic Act No. 7653. Moreover, respondent was partly accountable for the closure of its banking business. It cannot be said, then, that the closure of its business was independent of its will as in the case of Provident Savings Bank. The legal effect is analogous to that created by contributory negligence in quasi-delict actions.

The period during which the bank cannot do business due to insolvency is not a fortuitous event, unless it is shown that the government's action to place a bank under receivership or liquidation proceedings is tainted with arbitrariness, or that the regulatory body has acted without jurisdiction.

The Court cannot also give due course respondent lessee's invocation of the doctrine of unforeseen event under Article 1267 of the Civil Code, which provides:

Art. 1267. When the service has become so difficult as to be manifestly beyond the contemplation of the parties, the obligor may also be released therefrom, in whole or in part.

Tagaytay Realty Co., Inc. v. Gacutan lays down the requisites for the application of Article 1267, as follows:

1. The event or change in circumstance could not have been foreseen at the time of the execution of the contract.

2. It makes the performance of the contract extremely difficult but not impossible.

- 3. It must not be due to the act of any of the parties.
- 4. The contract is for a future prestation.

The first and the third requisites, however, are lacking. It must be noted that the lease agreement was for 10 years. As shown by the unrebutted testimony of Jaime Poon during trial, the parties had actually considered the possibility of a deterioration or loss of respondent's business within that period. Moreover, the closure of respondent's business was not an unforeseen event. As the lease was long-term, it was not lost on the parties that such an eventuality might occur, as it was in fact covered by the terms of their Contract. Besides, the event was not independent of respondent's will.

2. The forfeiture clause in the Contract is penal in nature.

It is settled that a provision is a penal clause if it calls for the forfeiture of any remaining deposit still in the possession of the lessor, without prejudice to any other obligation still owing, in the event of the termination or cancellation of the agreement by reason of the lessee's violation of any

of the terms and conditions thereof. This kind of agreement may be validly entered into by the parties. The clause is an accessory obligation meant to ensure the performance of the principal obligation by imposing on the debtor a special prestation in case of nonperformance or inadequate performance of the principal obligation. The forfeiture clauses of the Contract, therefore, served the two functions of a penal clause, i.e., (1) to provide for liquidated damages and (2) to strengthen the coercive force of the obligation by the threat of greater responsibility in case of breach.

3. A reduction of the penalty agreed upon by the parties is warranted under Article 1129 of the Civil Code.

At stake in this case are not just the rights of petitioners and the correlative liabilities of respondent lessee. Over and above those rights and liabilities is the interest of innocent debtors and creditors of a delinquent bank establishment. These overriding considerations justify the 50% reduction of the penalty agreed upon by petitioners and respondent lessee in keeping with Article 1229 of the Civil Code. Under the circumstances, it is neither fair nor reasonable to deprive depositors and creditors of what could be their last chance to recoup whatever bank assets or receivables the PDIC can still legally recover. Besides, nothing has prevented petitioners from putting their building to other profitable uses, since respondent surrendered the premises immediately after the closure of its business.

Distinguish a deposit substitute under the banking law and deposit substitute under the tax law. The distinction is on the purpose. If a bank or non-bank financial intermediary sells debt instruments to 20 or more lenders/placers at any one time, irrespective of outstanding amounts, for the purpose of relending or purchasing of receivables or obligations, it is considered to be performing a quasi-banking function. Under the National Internal Revenue Code, however, deposit substitutes include not only the issuances and sales of banks and quasi-banks for relending or purchasing receivables and other similar obligations, but also debt instruments issued by commercial, industrial, and other nonfinancial companies to finance their own needs or the needs of their agents or dealers. Banco de Oro v. Republic of the Philippines, G.R. No. 198756, August 16, 2016

g. Receivership

• Central Bank of the Philippines vs. Court of Appeals, G.R. No. L-45710, October 3, 1985

CENTRAL BANK OF THE PHILIPPINES and ACTING DIRECTOR ANTONIO T. CASTRO, JR. OF THE DEPARTMENT OF COMMERCIAL AND SAVINGS BANK, in his capacity as statutory receiver of Island Savings Bank, petitioners, vs. THE HONORABLE COURT OF APPEALS and SULPICIO M. TOLENTINO, respondents.

G.R. No. L-45710, SECOND DIVISION, October 3, 1985, Makasiar, J

Since ISB was in default under the agreement, Tolentino may choose between specific performance or rescission, but since ISB is now prohibited from doing further business, the only remedy left is rescission only for the P63,000 balance of the loan.

FACTS

April 28, 1965 - Island Savings Bank (ISB) approved the loan application for P80,000 of Sulpicio Tolentino, who, as a security for the loan, also executed a real estate mortgage over his 100-ha land. The approved loan application called for P80,000 loan, repayable in semi-annual installments for a period of 3 years, with 12% interest.

May 22, 1965 – a mere P17,000 partial release of the loan was made by ISB, and Tolentino and his wife Edita signed a promissory note for P17,000 at 12% annual interest, payable within 3 years from the date of execution of the contract at semi-annual installments of P3,459.

An advance interest for the P80,000 loan covering a 6-mo period amounting to P4,800was deducted from the partial release of P17,000, but this was refunded to Tolentino on July 23, 1965, after being informed by ISB that there was no fund yet available for the release of the P63,000 balance.

Aug. 13, 1965 – the Monetary Board of the Central Bank issued Resolution No. 1049, which prohibited ISB from making new loans and investments, after finding that it was suffering liquidity problems.

June 14, 1968 – the Monetary Board issued Resolution No. 967, which prohibited ISB from doing business in the Philippines, after finding that it failed to put up the required capital to restore its solvency.

Aug. 1, 1968 – ISB, in view of non-payment of the P17,000 covered by the promissory note, filed an application for the extra-judicial foreclosure of the real estate mortgage covering the 100-ha land; and the sheriff scheduled auction.

Tolentino filed a petition with the CFI for injunction, specific performance or rescission and damages with preliminary injunction, alleging that since ISB failed to deliver the P63,000 remaining balance of the loan, he is entitled to specific performance by ordering ISB to deliver it with interest of 12% per annum from April 28, 1965, and if said balance cannot be delivered, to rescind the real estate mortgage.

CFI issued a TRO enjoining ISB from continuing with the foreclosure of the mortgage, however, after finding Tolentino's petition unmeritorious, ordered the latter to pay ISB P17,000 plus legal interest and legal charges and lifting the TRO so the sheriff may proceed with the foreclosure. CA, on appeal by Tolentino, modified CFI's decision by affirming dismissal of Tolentino's petition for specific performance, but ruled that ISB can neither foreclose the mortgage nor collect the P17,000 loan.

ISSUES

- 1) WON the action of Tolenitno for specific performance can prosper. NO.
- 2) WON Tolentino is liable to pay the P17,000 debt covered by the promissory note. YES.

3) WON Tolentino's real estate mortgage can be foreclosed to satisfy the P17,000 if his liability to pay therefor subsists. NO.

RULING

1) Since ISB was in default under the agreement, Tolentino may choose between specific performance or rescission, but since ISB is now prohibited from doing further business, the only remedy left is Rescission only for the P63,000 balance of the loan.

2) The bank was deemed to have complied with its reciprocal obligation to furnish a P17,000 loan. The promissory note gave rise to Tolentino's reciprocal obligation to pay such loan when it falls due and his failure to pay the overdue amortizations under the promissory note made him a party in default, hence not entitled to rescission (Art. 1191, CC). ISB has the right to rescind the promissory note, being the aggrieved party.

Since both parties were in default in the performance of their reciprocal obligations, both are liable for damages. In case both parties have committed a breach of their reciprocal obligations, the liability of the first infractor shall be equirably tempered by the courts (Art. 1192, CC). The liability of ISB for damages in not furnishing the entire loan is offset by the liability of Tolentino for damages (penalties and surcharges) for not paying his overdue P17,000 debt. Since Tolentino derived some benefit for his use of the P17,000, he should account for the interest thereon (interest was not included in the offsetting).

3) The fact that when Tolentino executed his real estate mortgage, no consideration was then in existence, as there was no debt yet because ISB had not made any release on the loan, does not make the real estate mortgage void for lack of consideration.

It is not necessary that any consideration should pass at the time of the execution of the contract of real mortgage. When the consideration is subsequent to the mortgage, the latter can take effect only when the debt secured by it is created as a binding contract to pay. And when there is partial failure of consideration, the mortgage becomes unenforceable to the extent of such failure. Where the indebtedness actually owing to the holder of the mortgage is less than the sum named in the mortgage, the mortgage cannot be enforced for more than the actual sum due.

Since ISB failed to furnish the P63,000 balance, the real estate mortgage of Tolentino became unenforceable to such extent. P63,000 is 78.75% of P80,000, hence the mortgage covering 100 ha is unenforceable to the extent of 78.75 ha. The mortgage covering the remainder of 21.25 ha subsists as a security for the P17,000 debt.

• Spouses Romeo Lipana and Milagros Lipana vs. Development Bank of Rizal, G.R. No. 73884, September 24, 1987

SPOUSES ROMEO LIPANA and MILAGROS LIPANA, petitioners, vs. DEVELOPMENT BANK OF RIZAL, respondent.

G.R. No. 73884, SECOND DIVISION, September 24, 1987, PARAS, J

The rule that once a decision becomes final and executory, it is the ministerial duty of the court to order its execution, admits of certain exceptions as in cases of special and exceptional nature where it becomes imperative in the higher interest of justice to direct the suspension of its execution; whenever it is necessary to accomplish the aims of justice; or when certain facts and circumstances transpired after the judgment became final which could render the execution of the judgment unjust.

In the instant case, the stay of the execution of judgment is warranted by the fact that respondent bank was placed under receivership. To execute the judgment would unduly deplete the assets of respondent bank to the obvious prejudice of other depositors and creditors.

FACTS

During the period from 1982 to January, 1984, herein petitioners opened and maintained both time and savings deposits with Development Bank of Rizal all in the aggregate amount of P939,737.32. When some of the Time Deposit Certificates matured, petitioners were not able to cash them but instead were issued a manager's check which was dishonored upon presentment. Demands for the payment of both time and savings deposits were made but the bank did not respond. The petitioners filed with the Regional Trial Court of Pasig a Complaint with Prayer for Issuance of a Writ of Preliminary Attachment for collection of a sum of money with damages. The respondent Judge ordered the issuance of a writ of attachment. Thereafter, judgment was rendered in favor of the petitioners.

Meanwhile the Monetary Board issued a resolution finding that the condition of respondent bank was one of insolvency and that its continuance in business would result in probable loss to its depositors and creditors. Consequently, the bank was placed under receivership. Thereafter, the petitioners filed a Motion for Execution Pending Appeal. The respondent judge ordered the issuance of a writ of execution. However, the bank filed for a Stay of execution and the same was granted.

The petitioners filed with the Regional Trial Court of Pasig a Complaint with Prayer for Issuance of a Writ of Preliminary Attachment for collection of a sum of money with damages. The respondent Judge ordered the issuance of a writ of attachment. Thereafter, judgment was rendered in favor of the petitioners. Thereafter, the petitioners filed a Motion for Execution Pending Appeal. The respondent judge ordered the issuance of a writ of execution. However, the bank filed for a Stay of execution and the same was granted. Later on, the petitioners filed a Motion to Lift Stay of Execution it was opposed by respondent bank and in an order, respondent judge denied the said motion. Hence, the instant petition. The petition was given due course and the parties were required to file their respective memoranda which they subsequently complied with.

ISSUE

Whether or not respondent judge could legally stay execution of judgment that has already become final and executory.

RULING

Yes. The rule that once a decision becomes final and executory, it is the ministerial duty of the court to order its execution, admits of certain exceptions as in cases of special and exceptional nature where it becomes imperative in the higher interest of justice to direct the suspension of its execution; whenever it is necessary to accomplish the aims of justice; or when certain facts and circumstances transpired after the judgment became final which could render the execution of the judgment unjust.

In the instant case, the stay of the execution of judgment is warranted by the fact that respondent bank was placed under receivership. To execute the judgment would unduly deplete the assets of respondent bank to the obvious prejudice of other depositors and creditors, since, as aptly stated in Central Bank of the Philippines vs. Morfe (63 SCRA 114), after the Monetary Board has declared that a bank is insolvent and has ordered it to cease operations, the Board becomes the trustee of its assets for the equal benefit of all the creditors, including depositors. The assets of the insolvent banking institution are held in trust for the equal benefit of all creditors, and after its insolvency, one cannot obtain an advantage or a preference over another by an attachment, execution or otherwise.

• Abacus Real Estate Development Center, Inc.,vs. Manila Banking Corp., G.R. No. 162270, April 06, 2005

ABACUS REAL ESTATE DEVELOPMENT CENTER, INC., Petitioners, vs. THE MANILA BANKING CORPORATION, Respondents.

G.R. No. 162270. THIRD DIVISION, April 06, 2005, GARCIA, J.

The appointment of a receiver operates to suspend the authority of the bank and of its directors and officers over its property and effects, such authority being reposed in the receiver, and in this respect, the receivership is equivalent to an injunction to restrain the bank officers from intermeddling with the property of the bank in any way."

With respondent bank having been already placed under receivership, its officers, inclusive of its acting president, Vicente G. Puyat, were no longer authorized to transact business in connection with the bank's assets and property. Clearly then, the "exclusive option to purchase" granted by Vicente G. Puyat was and still is unenforceable against Manila Bank.

Moreover, the receiver has no power to ratify the "exclusive option to purchase" agreements entered into by the parties

FACTS

Manila Bank owns a parcel of land located along Gil Puyat Avenue Extension, Makati City. Prior to 1984, the bank started constructing a building on the said land but it was left unfinished because the bank encountered some financial difficulties. Later on, Central Bank (now BSP) ordered the closure of the bank and placed it under the receivership. Feliciano Miranda was appointed receiver. Thereafter, the Central Bank ordered the liquidation of Manila Bank. Atty. Renan V. Santos was appointed as Liquidator (later, the designation was amended to Statutory Receiver). The

Liquidation was held in abeyance pending the result of the suit filed by the bank questioning the legality of the closure.

Meanwhile, Vicente G. Puyat (the then acting president of the Bank) started scouting for possible investors who could finance the completion of the building. A group of investors (referred to as the Laureano group) offered to lease the building for ten (10) years and to advance the cost to complete the same. The letter-offer stated that in consideration of advancing the construction cost, the group wanted to be given the "exclusive option to purchase" the building and the lot on which it was constructed. Since no disposition of assets could be made due to the litigation concerning Manila Bank's closure, an arrangement was made whereby the property would first be leased to Manila Equities Corporation (MEQCO) a subsidiary owned by Manila Bank, with MEQCO thereafter subleasing the property to the Laureano group. Vicente G. Puyat accepted the Laureano group's offer and granted it an "exclusive option to purchase" the lot and building for ₱150,000,000.00. The building was leased to MEQCO for a period of ten years pursuant to a contract of lease. MEQCO subleased the property to petitioner Abacus Real Estate Development Center, Inc. (Abacus), a corporation formed by the Laureano group for the purpose, under identical provisions as that of the lease contract between Manila Bank and MEQCO.

The Laureano group failed to finish the building due to the economic crisis brought about by the failed December 1989 coup attempt. Because of this, the Laureano group offered its rights in Abacus and its "exclusive option to purchase" to Benjamin Bitanga (Bitanga), for (₱20,500,000.00). (Bitanga later allege that he sought the approval of Atty. Santos, the receiver appointed by CB, and that the latter gave a verbal approval). The Laureano group transferred and assigned to Bitanga all of its rights in Abacus and the "exclusive option to purchase" the subject land and building. Abacus sent a letter to Manila Bank informing the latter of its desire to exercise its "exclusive option to purchase". However, Manila Bank refused to honor the same.

ABACUS filed for specific performance and damages against Manila Bank and/or the Estate of Vicente G. Puyat before the RTC of Makati. Manila Bank and the Estate of Vicente G. Puyat filed separate motions to dismiss the complaint. The RTC granted the motion to dismiss filed by the Estate of Vicente Puyat. On the other hand, Manila Bank was ordered to file an answer. The RTC ruled in favor of Abacus and ordered Manila Bank to sell the parcel of land to for attorney's fees. Manila bank filed a motion for reconsideration but it was denied. Manila Bank filed an appeal before the CA. The CA reversed and set aside the decision of the RTC. ABACUS filed a motion for reconsideration but it was denied a petition for review under rule 45 before the SC.

ISSUES

1. Whether or not the option to purchase the lot and building in question granted to it by the late Vicente G. Puyat, then acting president of Manila Bank, was binding upon the latter despite having placed under the receivership at the time of its granting?

2. Whether or not Renan Santos, as a receiver, can ratify the "exclusive option to purchase"?

RULING

1. NO. The appellate court was correct in declaring that Vicente G. Puyat was without authority to grant the exclusive option to purchase the lot and building in question. The appointment of a receiver operates to suspend the authority of the bank and of its directors and officers over its property and effects, such authority being reposed in the receiver, and in this respect, the receivership is equivalent to an injunction to restrain the bank officers from intermeddling with the property of the bank in any way." With respondent bank having been already placed under receivership, its officers, inclusive of its acting president, Vicente G. Puyat, were no longer authorized to transact business in connection with the bank's assets and property. Clearly then, the "exclusive option to purchase" granted by Vicente G. Puyat was and still is unenforceable against Manila Bank.

2. NO. The receiver has no power to ratify the "exclusive option to purchase" agreements entered into by the parties. Under Section 29, the receiver appointed by the Central Bank to take charge of the properties of Manila Bank only had authority to administer the same for the benefit of its creditors. Granting or approving an "exclusive option to purchase" is not an act of administration, but an act of strict ownership, involving, as it does, the disposition of property of the bank. Not being an act of administration, the so-called "approval" by Atty. Renan Santos amounts to no approval at all, a bank receiver not being authorized to do so on his own. For sure, Congress itself has recognized that a bank receiver only has powers of administration. Section 30 of the New Central Bank Act expressly provides that "[t]he receiver shall immediately gather and take charge of all the assets and liabilities of the institution, administer the same for the benefit of its creditors, and exercise the general powers of a receiver under the Revised Rules of Court but shall not, with the exception of administrative expenditures, pay or commit any act that will involve the transfer or disposition of any asset of the institution..."

• Alfeo D. Vivas, vs. Monetary Board and PDIC, G.R. No. 191424, August 7, 2013

ALFEO D. VIVAS, ON HIS BEHALF AND ON BEHALF OF THE SHAREHOLDERS OF EUROCREDIT COMMUNITY BANK, PETITIONER, vs. THE MONETARY BOARD OF THE BANGKO SENTRAL NG PILIPINAS AND THE PHILIPPINE DEPOSIT INSURANCE CORPORATION, RESPONDENTS. G.R. No. 191424, THIRD DIVISION, August 7, 2013 Mendoza, J

The Monetary Board under R.A. 7653 has been invested with more power of closure and placement of a bank under receivership for insolvency or illiquidity or because of the bank's continuance in business world probably results in the loss to depositors or creditors. To address the growing concerns in the banking industry, the legislature has sufficiently empowered the Monetary Board to effectively monitor and supervise and financial institutions and if circumstances warrant, to forbid them to do business, to take over their management or to place them under receivership. Thus any act of the Monetary Board placing bank receivership, conservatorship or liquidation may not be restrained or set aside except on a petition for certiorari.

FACTS

Petitioner Vivas and his principals acquired the controlling interest in Rural Bank Faire, a bank whose corporate life has already expired. BSP authorized extending the banks' corporate life and

was later renamed to EuroCredit Community Bank (ECBI). Through a series of examinations conducted by the BSP, the findings bore that ECBI was illiquid, insolvent, and was performing transactions which are considered unsafe and unsound banking practices. Consequently ECBI was placed under receivership. Petitioner contends that the implementation of the questioned resolution was tainted with arbitrariness and bad faith, stressing that ECBI was placed under receivership without due and prior hearing in violation of his and the bank's right to due process. The petitioner files for prohibition with prayer for the issuance of a status quo ante order or writ of preliminary injunction ordering the respondents to desist from closing EuroCredit Community Bank, Incorporated (ECBI) and from pursuing the receivership thereof. The petition likewise prays that the management and operation of ECBI be restored to its Board of Directors (BOD) and its officers.

Vivas files a petition for prohibition with prayer for the issuance of a status quo ante order or writ of preliminary injunction ordering the respondents to desist from closing EuroCredit Community Bank, Incorporated (ECBI) and from pursuing the receivership thereof. The petition likewise prays that the management and operation of ECBI be restored to its Board of Directors (BOD) and its officers.

The Supreme Court said to begin with, Vivas availed of the wrong remedy. The MB issued Resolution No. 276, dated March 4, 2010, in the exercise of its power under R.A. No. 7653. Under Section 30 thereof, any act of the MB placing a bank under conservatorship, receivership or liquidation may not be restrained or set aside except on a petition for certiorari.

The Petition Should Have Been Filed in the CA. Even if treated as a petition for certiorari, the petition should have been filed with the CA. (Doctrine of Hierarchy of Courts)

ISSUE

Whether or not ECBI was entitled to due and prior hearing before its being placed under receivership and whether or not MB placing bank under conservatorship, receivership or liquidation may not be restrained or set aside?

RULING

The Court has taken this into account, but it appears from all over the records that ECBI was given every opportunity to be heard and improve on its financial standing. The records disclose that BSP officials and examiners met with the representatives of ECBI, including Vivas, and discussed their findings.34 There were also reminders that ECBI submit its financial audit reports for the years 2007 and 2008 with a warning that failure to submit them and a written explanation of such omission shall result in the imposition of a monetary penalty.35 More importantly, ECBI was heard on its motion for reconsideration. For failure of ECBI to comply, the MB came out with Resolution No. 1548 denying its request for reconsideration of Resolution No. 726. Having been heard on its motion for reconsideration, ECBI cannot claim that it was deprived of its right under the Rural Bank Act.

At any rate, if circumstances warrant it, the MB may forbid a bank from doing business and place it under receivership without prior notice and hearing.

In the case of Bangko Sentral Ng Pilipinas Monetary Board v. Hon. Antonio-Valenzuela, the Court reiterated the doctrine of "close now, hear later," stating that it was justified as a measure for the protection of the public interest. Thus:

The "close now, hear later" doctrine has already been justified as a measure for the protection of the public interest. Swift action is called for on the part of the BSP when it finds that a bank is in dire straits. Unless adequate and determined efforts are taken by the government against distressed and mismanaged banks, public faith in the banking system is certain to deteriorate to the prejudice of the national economy itself, not to mention the losses suffered by the bank depositors, creditors, and stockholders, who all deserve the protection of the government.

In Rural Bank of Buhi, Inc. v. Court of Appeals, the Court also wrote that

x x x due process does not necessarily require a prior hearing; a hearing or an opportunity to be heard may be subsequent to the closure. One can just imagine the dire consequences of a prior hearing: bank runs would be the order of the day, resulting in panic and hysteria. In the process, fortunes may be wiped out and disillusionment will run the gamut of the entire banking community.

The doctrine is founded on practical and legal considerations to obviate unwarranted dissipation of the bank's assets and as a valid exercise of police power to protect the depositors, creditors, stockholders, and the general public. Swift, adequate and determined actions must be taken against financially distressed and mismanaged banks by government agencies lest the public faith in the banking system deteriorate to the prejudice of the national economy.

The Monetary Board under R.A. 7653 has been invested with more power of closure and placement of a bank under receivership for insolvency or illiquidity or because of the bank's continuance in business world probably results in the loss to depositors or creditors. To address the growing concerns in the banking industry, the legislature has sufficiently empowered the Monetary Board to effectively monitor and supervise and financial institutions and if circumstances warrant, to forbid them to do business, to take over their management or to place them under receivership. Thus any act of the Monetary Board placing bank receivership, conservatorship or liquidation may not be restrained or set aside except on a petition for certiorari.

> • Spouses Chugani v. Philippine Deposit Insurance Corp., G.R. No. 230037, [March 19, 2018]

SPOUSES CHUGANI V PHILIPPINE DEPOSIT INSURANCE CORP. G.R. No. 230037, March 19, 2018 FIRST DIVISION (Tijam, *J.*)

The PDIC was created by Republic Act (R.A.) No. 3591 as an insurer of deposits in all banks entitled to the benefits of insurance under the PDIC Charter to promote and safeguard the interests of the depositing public by way of providing permanent and continuing insurance coverage of all insured deposits. In order for the claim for deposit insurance with the PDIC may prosper, it is necessary that the corresponding deposit must be placed in the insured bank. In the case at bar, upon investigation by the PDIC, it was discovered that the money allegedly placed by the petitioners in RBMI was in fact

credited to the personal account of the president of RBMI, hence, they could not be construed as valid liabilities of RBMI to petitioners.

FACTS

Petitioners Spouses Chugani, signified their intention to open Time Deposits with Rural Bank of Mawab (Davao), Inc., (RBMI) through inter-branch deposits to the accounts of RBMI maintained in Metrobank and China Bank- Tagum, Davao Branches. Thereafter, Certificates of Time Deposits (CTDs) and Official Receipts were issued to Spouses Chugani.

Sometime in September 2011, Spouses Chugani came to know that the Monetary Board of the Bangko Sentral ng Pilipinas placed RBMI under receivership and thereafter closed the latter. Spouses Chugani, then filed claims for insurance of their time deposits.

Respondent Philippine Deposit Insurance Corporation (PDIC) denied the claims on the following grounds: 1.) based on bank records submitted by RBMI, Spouses Chugani's deposit accounts are not part of RBMI's outstanding deposit liabilities; 2.) the time deposits of Spouses Chugani are fraudulent and their CTDs were not duly issued by RBMI, but were mere replicas of unissued CTD's in the inventory submitted by RBMI to PDIC; and 3.) the amounts purportedly deposited by the petitioners were credited to the personal account of the president of RBMI, hence, they could not be construed as valid liabilities of RBMI.

Spouses Chugani filed a request for reconsideration of PDIC's denial of their claim. PDIC however rejected the same. Hence, Spouses Chugani filed a Petition for Certiorari under Rule 65 of the Rules of Court with the Regional Trial Court (RTC).

RTC issued an Order dismissing the Petition for Certiorari filed by Spouses Chugani for lack of jurisdiction. Aggrieved, Spouses Chugani appealed the RTC's Decision to the Court of Appeals (CA). Meanwhile, CA denied the appeal of Spouses Chugani ruling that, RTC has no jurisdiction over the Petitions for Certiorari filed by the petitioners questioning the PDIC's denial of their claim for deposit insurance.

ISSUES

- 1. Whether or not RTC has jurisdiction over the Petitions for Certiorari questioning PDIC'S denial of Spouses Chugani's claim for deposit.
- 2. Whether or not PDIC acted in grave abuse of discretion in denying the claim for deposit insurance.

RULING

1. NO. The RTC has no jurisdiction. Consistent with Section 4,Rule 65, the CA has the jurisdiction to rule on the alleged grave abuse of discretion of the PDIC. Therefore, the CA is correct when it held that the RTC has no jurisdiction over the Petitions for Certiorari filed by the petitioners questioning the PDIC's denial of their claim for deposit insurance. Nevertheless, any question as to where the petition for certiorari should be filed to question

PDIC's decision on claims for deposit insurance has been put to rest by R.A. No. 10846. Section 7 therein provides:

x x x x

"The actions of the Corporation taken under Section 5(g) shall be final and executory, and may only be restrained or set aside by the Court of Appeals, upon appropriate petition for certiorarion the ground that the action was taken in excess of jurisdiction or with such grave abuse of discretion as to amount to a lack or excess of jurisdiction. The petition for certiorari may only be filed within thirty (30) days from notice of denial of claim for deposit insurance".

2. NO. PDIC did not acted in grave abuse of discretion.

Based on its charter, the PDIC has the duty to grant or deny claims for deposit insurance. Upon investigation by the PDIC, it was discovered that 1) the money allegedly placed by the petitioners in RBMI was in fact credited to the personal account of the president of RBMI, hence, they could not be construed as valid liabilities of RBMI to petitioners; 2) based on bank records and the certified list of the bank's outstanding deposit liabilities, the alleged deposits of petitioners are not part of RBMI's outstanding liabilities; and 3) the CTDs are not validly issued by RBMI, but were mere replicas of the unissued and unused CTDs still included in the inventory of RBMI. Considering the above disquisitions, it is sufficiently established that the PDIC, did not commit any grave abuse of discretion in denying petitioners' claim for deposit insurance as the same were validly grounded on the facts, law and regulations issued by the PDIC

So v. Philippine Deposit Insurance Corp., G.R. No. 230020, [March 19, 2018]

SO V. PHILIPPINE DEPOSIT INSURANCE CORP.

G.<mark>R. No. 230020</mark> March 19, <mark>2018 FIRST DIVISION (Tijam</mark>, J.)

PDIC exercises judicial discretion and judgment in determining whether a claimant is entitled to a deposit insurance claim, which determination results from its investigation of facts and weighing of evidence presented before it. Noteworthy also is the fact that the law considers PDIC's action as final and executory and may be reviewed only on the ground of grave abuse of discretion.

FACTS

Petitioner Peter So (So) opened an account with the Cooperative Rural Bank Bulacan (CRBB) amounting to P300,000, for which he was assigned the Special Incentive Savings Account (SISA) No. 05-15712-1.

On the same year, however, So learned that CRBB closed its operations and was placed under Philippine Deposit Insurance Corporation's (PDIC's) receivership. This prompted So, together with other depositors, to file an insurance claim with the PDIC. Acting upon such claim, PDIC sent a letter/notice requiring So to submit additional documents, which So averred of having complied with. Upon investigation, the PDIC found that So's account originated from and was funded by the proceeds of a terminated SISA (mother account), jointly owned by a certain Reyes family. Thus, based on the determination that So's account was among the product of the splitting of the said mother account which is prohibited by law, PDIC denied So's claim for payment of deposit insurance. So then filed a Request for Reconsideration, which was likewise denied by the PDIC.

Aggrieved, So filed a Petition for *Certiorari* under Rule 65 before the RTC.RTC upheld the factual findings and conclusions of the PDIC. According to the RTC, based on the records, the PDIC correctly denied So's claim for insurance on the ground of splitting of deposits which is prohibited by law.

RTC also declared that, pursuant to its Charter (RA 3591), PDIC is empowered to determine and pass upon the validity of the insurance deposits claims, it being the deposit insurer. As such, when it rules on such claims, it is exercising a quasi-judicial function. Thus, it was held that petitioner's remedy to the dismissal of his claim is to file a petition for *certiorari* with the Court of Appeals under Section 4, Rule 65, stating that if the petition involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or the rules, it shall be filed in and cognizable only by the Court of Appeals (CA).

ISSUE

Whether or not RTC have jurisdiction over a petition for *certiorari* filed under Rule 65, assailing the PDIC's denial of a deposit insurance claim.

RULING

NO. PDIC was created under RA 3591 as an insurer of deposits in all banks entitled to the benefits of insurance under the said Act to promote and safeguard the interests of the depositing public. As such, PDIC has the duty and authority to determine the validity of and grant or deny deposit insurance claims. Section 16(a) of its Charter, as amended, provides that PDIC shall commence the determination of insured deposits due the depositors of a closed bank upon its actual take over of the closed bank. Also, Section 1 of PDIC's Regulatory Issuance No. 2011-03, provides that as it is tasked to promote and safeguard the interests of the depositing public by way of providing permanent and continuing insurance coverage on all insured deposits, and in helping develop a sound and stable banking system at all times, PDIC shall pay all legitimate deposits held by bona fide depositors and provide a mechanism by which depositors may seek reconsideration from its decision, denying a deposit insurance claim.

Further, it bears stressing that as stated in Section 4(f) of its Charter, as amended, PDIC's action, such as denying a deposit insurance claim, is considered as final and executory and may be reviewed by the court only through a petition for *certiorari* on the ground of grave abuse of discretion.

Considering the foregoing, the legislative intent in creating the PDIC as a quasi-judicial agency is clearly manifest. Accordingly, the actions of the Corporation taken under Section 5(g) shall be final and executory, and may only be restrained or set aside by the Court of Appeals, upon appropriate petition for *certiorari* on the ground that the action was taken in excess of jurisdiction or with such grave abuse of discretion as to amount to a lack or excess of jurisdiction. The petition for *certiorari* may only be filed within thirty (30) days from notice of denial of claim for deposit insurance.

As it stands, the controversy as to which court has jurisdiction over a petition for *certiorari* filed to question the PDIC's action is already settled

• Banco Filipino Savings and Mortgage Bank v. Bangko Sentral ng Pilipinas, G.R. No. 200678, [June 4, 2018]

BANCO FILIPINO SAVINGS AND MORTGAGE BANK V. BANGKO SENTRAL NG PILIPINAS G.R. No. 200678, THIRD DIVISION, June 4, 2018, Leonen, J.

A closed bank under receivership can only sue or be sued through its receiver, the Philippine Deposit Insurance Corporation (PDIC). Hence, the petition filed by the petitioner bank which has been placed under receivership is dismissible as it did not join PDIC as a party to the case.

FACTS

Petitioner bank has been placed under receivership when it filed a Petition for Certiorari with the Supreme Court. Said Petition was assailed by the respondent that contended that the same should be dismissed outright for being led without Philippine Deposit Insurance Corporation's authority. It asserts that petitioner was placed under receivership on March 17, 2011, and thus, petitioner's Executive Committee would have had no authority to sign for or on behalf of petitioner absent the authority of its receiver, Philippine Deposit Insurance Corporation. They also point out that both the Philippine Deposit Insurance Corporation Charter and Republic Act No. 7653 categorically state that the authority to file suits or retain counsels for closed banks is vested in the receiver. Thus, the verification and certification of non-forum shopping signed by petitioner's Executive Committee has no legal effect.

ISSUE

Whether or not petitioner Banco Filipino, as a closed bank under receivership, could file this Petition for Review without joining its statutory receiver, the Philippine Deposit Insurance Corporation, as a party to the case.

RULING

A closed bank under receivership can only sue or be sued through its receiver, the Philippine Deposit Insurance Corporation. Under Republic Act No. 7653, when the Monetary Board finds a bank insolvent, it may "summarily and without need for prior hearing forbid the institution from doing business in the Philippines and designate the Philippine Deposit Insurance Corporation as receiver of the banking institution."

The relationship between the Philippine Deposit Insurance Corporation and a closed bank is fiduciary in nature. Section 30 of Republic Act No. 7653 directs the receiver of a closed bank to "immediately gather and take charge of all the assets and liabilities of the institution" and "administer the same for the benefit of its creditors." The law likewise grants the receiver "the general powers of a receiver under the Revised Rules of Court." Under Rule 59, Section 6 of the Rules of Court, "a receiver shall have the power to bring and defend, in such capacity, actions in his [or her] own name." Thus, Republic Act No. 7653 provides that the receiver shall also "in the name

of the institution, and with the assistance of counsel as [it] may retain, institute such actions as may be necessary to collect and recover accounts and assets of, or defend any action against, the institution." Considering that the receiver has the power to take charge of all the assets of the closed bank and to institute for or defend any action against it, only the receiver, in its fiduciary capacity, may sue and be sued on behalf of the closed bank.

When petitioner was placed under receivership, the powers of its Board of Directors and its officers were suspended. Thus, its Board of Directors could not have validly authorized its Executive Vice Presidents to file the suit on its behalf. The Petition, not having been properly verified, is considered an unsigned pleading. 124 124 A defect in the certification of non-forum shopping is likewise fatal to petitioner's cause. 125 125 Considering that the Petition was led by signatories who were not validly authorized to do so, the Petition does not produce any legal effect. Being an unauthorized pleading, this Court never validly acquired jurisdiction over the case. The Petition, therefore, must be dismissed



APOLLO M. SALUD, as Attorney-in-Fact for its Stockholders, in his behalf and for and in behalf of the Rural Bank of Muntinlupa, Inc., Hon. VICENTE R. CAMPOS, Presiding Judge, Regional Trial Court, National Capital Region, Br. CLXIV, petitioners, vs. CENTRAL BANK OF THE PHILIPPINES, AND CONSOLACION V. ODRA, in her capacity as Liquidator of the Rural Bank of Muntinlupa, Inc., respondents.

G.<mark>R. No. L-17620, FIRST DIVISION, August 19, 1986, Narva</mark>sa, J

There is no provision of law which expressly or even by implication imposes the requirement for a separate proceeding exclusively occupied with adjudicating this issue. Moreover, to declare the issue as beyond the scope of matters cognizable in a proceeding for assistance in liquidation would be to engender that multiplicity of proceedings which the law abhors.

FACTS

Central Bank issued two resolutions. The first one forbids the Rural Bank of Muntinlupa (RBM) from doing business and designates Consolacion Odra as its receiver. The second one orders the liquidation of RBM after confirmation that it was insolvent and cannot resume business. Central Bank the filed a petition for assistance in the liquidation of RBM based on Sec. 29 of the Central Bank Act. RBM assailed that the resolution ordered by the Monetary Board is tainted with arbitrariness because RBM is still capable of rehabilitation. Central Bank contends that the court in which the petition for assistance in liquidation is filed has no jurisdiction to resolve the issue of arbitrariness. Such issue can only be raised in a separate action.

Central Bank the filed a petition for assistance in the liquidation before the RTC. RBM filed an opposition which was treated as a motion to dismiss. RTC ruled in favor of RBM. Failing in two attempts to have this Order reconsidered, 7 the Central Bank and its Liquidator instituted in this Court a special civil action of certiorari and mandamus, under Rule 65 of the Rules of Court, praying

that the Regional Trial Court's orders be annulled because "issued without or in excess of jurisdiction or with grave abuse of discretion," and that it be compelled to grant their application for assistance. The petition was referred to the Intermediate Appellate Court. The IAC remanded the case to the RTC but upon motion for reconsideration, IAC declared the ruling of the RTC null and void. Hence, this petition.

ISSUE

Whether or not a separate action is necessary to determine the issue on arbitrariness of the Monetary Board's order placing a bank under receivership and liquidation

RULING

No, a separate action is not necessary.

This Court perceives no reason whatever why a banking institution's claim that a resolution of the Monetary Board under Section 29 of the Central Bank Act should be set aside as plainly arbitrary and made in bad faith cannot be asserted as an affirmative defense or a counterclaim in the proceeding for assistance in liquidation, but only as a cause of action in a separate and distinct action. Nor can this Court see why "a full-blown hearing" on the issue is possible only if it is asserted as a cause of action, but not when set up by way of an affirmative defense, or a counterclaim. There is no provision of law which expressly or even by implication imposes the requirement for a separate proceeding exclusively occupied with adjudicating this issue. Moreover, to declare the issue as beyond the scope of matters cognizable in a proceeding for assistance in liquidation would be to engender that multiplicity of proceedings which the law abhors.

Banco Filipino Savings and Mortgage Bank vs. Central Bank, G.R. No. 70054, December 11, 1991

BANCO FILIPINO SAVINGS AND MORTGAGE BANK VS. CENTRAL BANK G.R. No. 70054, EN BANC, December 11, 1991, Medialdea, J

There is no question that under Section 29 of the Central Bank Act, the following are the mandatory requirements to be complied with before a bank found to be insolvent is ordered closed and forbidden to do business in the Philippines: Firstly, an examination shall be conducted by the head of the appropriate supervising or examining department or his examiners or agents into the condition of the bank; secondly, it shall be disclosed in the examination that the condition of the bank is one of insolvency, or that its continuance in business would involve probable loss to its depositors or creditors; thirdly, the department head concerned shall inform the Monetary Board in writing, of the facts; and lastly, the Monetary Board shall find the statements of the department head to be true.

In the case at bar, We believe that the closure of the petitioner bank was arbitrary and committed with grave abuse of discretion. Granting in gratia argumenti that the closure was based on justified grounds to protect the public, the fact that petitioner bank was suffering from serious financial problems should not automatically lead to its liquidation. Section 29 of the Central Bank provides that a closed bank may be reorganized or otherwise placed in such a condition that it may be permitted to resume business with safety to its depositors, creditors and the general public.

FACTS

This case involves 9 consolidated cases. The first six cases involve the common issue of whether or not the liquidator appointed by the respondent Central Bank has the authority to prosecute as well as to defend suits, and to foreclose mortgages for and in behalf of the bank while the issue on the validity of the receivership and liquidation of the latter is pending resolution in G.R. No. 7004. On the other hand, the other three (3) cases, namely, G.R. Nos. 70054, which is the main case, 78767 and 78894 all seek to annul and set aside M.B. Resolution No. 75 issued by respondents Monetary Board and Central Bank on January 25, 1985.

G.R. Nos. 70054

Banco Filipino Savings and Mortgage Bank commenced operations on July 9, 1964. It has 89 operating branches with more than 3 million depositors. It has an approved emergency advance of P119.7 million. The Monetary Board placed Banco Filipino Savings and Mortgage Bank under conservatorship of Basilio Estanislao. He was later replaced by Gilberto Teodoro as conservator on August 10, 1984. Gilberto Teodoro submitted a report dated January 8, 1985 to respondent The Monetary Board on the conservatorship of the bank. Subsequently, another report dated January 23, 1985 was submitted to the Monetary Board by Ramon Tiaoqui regarding the major findings of examination on the financial condition of Banco Filipino Savings and Mortgage Bank as of July 31, 1984, finding the bank one of insolvency and illiquidity and provides sufficient justification for forbidding the bank from engaging in banking. The Monetary Board ordered the closure of Banco Filipino and designated Mrs. Carlota P. Valenzuela as Receiver.

Banco Filipino filed a complaint with the RTC to set aside the action of the Monetary Board placing the bank under receivership and filed with the SC the petition for certiorari and mandamus. Carlota Valenzuela, as Receiver and Arnulfo Aurellano and Ramon Tiaoqui as Deputy Receivers of Banco Filipino submitted their report on the receivership of the bank to the Monetary Board, finding that the condition of the banking institution continues to be one of insolvency, i.e., its realizable assets are insufficient to meet all its liabilities and that the bank cannot resume business with safety to its depositors, other creditors and the general public, and recommends the liquidation of the bank. Banco Filipino filed a motion before the SC praying that a restraining order or a writ of preliminary injunction be issued to enjoin respondents from causing the dismantling of Banco Filipino signs in its main office and 89 branches. The SC ordered the issuance of the temporary restraining order. The SC directed the Monetary Board and Central Bank hold hearings at which the Banco Filipino should be heard.

This refers to nine (9) consolidated cases concerning the legality of the closure and receivership of petitioner Banco Filipino Savings and Mortgage Bank (Banco Filipino for brevity) pursuant to the order of respondent Monetary Board. Six (6) of these cases, namely, G.R. Nos. 68878, 77255-68, 78766, 81303, 81304 and 90473 involve the common issue of whether or not the liquidator appointed by the respondent Central Bank (CB for brevity) has the authority to prosecute as well as to defend suits, and to foreclose mortgages for and in behalf of the bank while the issue on the validity of the receivership and liquidation of the latter is pending resolution in G.R. No. 7004. Corollary to this issue is whether the CB can be sued to fulfill financial commitments of a closed bank pursuant to Section 29 of the Central Bank Act. On the other hand, the other three (3) cases, namely, G.R. Nos. 70054, which is the main case, 78767 and 78894 all seek to annul and set aside

M.B. Resolution No. 75 issued by respondents Monetary Board and Central Bank on January 25, 1985.

ISSUES

1. Whether or not the liquidator appointed by the respondent Central Bank has the authority to prosecute as well as to defend suits, and to foreclose mortgages for and in behalf of the bank while the issue on the validity of the receivership and liquidation of the latter is pending resolution in G.R. No. 7004

2. Whether or not the Central Bank and the Monetary Board acted arbitrarily and in bad faith in finding and thereafter concluding that petitioner bank is insolvent, and in ordering its closure on January 25, 1985.

RULING

1. Yes, the liquidator appointed by the respondent Central Bank has the authority to prosecute as well as to defend suits, and to foreclose mortgages for and in behalf of the bank while the issue on the validity of the receivership and liquidation of the latter is pending resolution in G.R. No. 7004. When the issue on the validity of the closure and receivership of Banco Filipino bank was raised in G.R. No. 70054, pendency of the case did not diminish the powers and authority of the designated liquidator to effect and carry on the administration of the bank. In fact when We adopted a resolute on August 25, 1985 and issued a restraining order to respondents Monetary Board and Central Bank, We enjoined further acts of liquidation. Such acts of liquidation, as explained in Sec. 29 of the Central Bank Act are those which constitute the conversion of the assets of the banking institution to money or the sale, assignment or disposition of the s to creditors and other parties for the purpose of paying debts of such institution. We did not prohibit however acts a as receiving collectibles and receivables or paying off credits claims and other transactions pertaining to normal operate of a bank.

There is no doubt that the prosecution of suits collection and the foreclosure of mortgages against debtors the bank by the liquidator are among the usual and ordinary transactions pertaining to the administration of a bank. They did Our order in the same resolution dated August 25, 1985 for the designation by the Central Bank of a comptroller Banco Filipino alter the powers and functions; of the liquid insofar as the management of the assets of the bank is concerned. The mere duty of the comptroller is to supervise counts and finances undertaken by the liquidator and to d mine the propriety of the latter's expenditures incurred behalf of the bank. Notwithstanding this, the liquidator is empowered under the law to continue the functions of receiver is preserving and keeping intact the assets of the bank in substitution of its former management, and to prevent the dissipation of its assets to the detriment of the creditors of the bank. These powers and functions of the liquidator in directing the operations of the bank in place of the former management or former officials of the bank include the retaining of counsel of his choice in actions and proceedings for purposes of administration. Clearly, in G.R. Nos. 68878, 77255-58, 78766 and 90473, the liquidator by himself or through counsel has the authority to bring actions for foreclosure of mortgages executed by debtors in favor of the bank. In G.R. No. 81303, the liquidator is likewise authorized to resist or defend suits instituted against the bank by debtors and creditors of the bank and by other private persons. Similarly, in G.R. No. 81304, due to the aforestated reasons, the Central Bank cannot be compelled to fulfill financial transactions entered into by Banco Filipino when the operations of the latter were suspended by reason of its closure. The Central Bank possesses those powers and functions only as provided for in Sec. 29 of the Central Bank Act.

2. Yes, the Monetary Board acted arbitrarily and in bad faith in finding and thereafter concluding that petitioner bank is insolvent, and in ordering its closure on January 25, 1985. There is no question that under Section 29 of the Central Bank Act, the following are the mandatory requirements to be complied with before a bank found to be insolvent is ordered closed and forbidden to do business in the Philippines: Firstly, an examination shall be conducted by the head of the appropriate supervising or examining department or his examiners or agents into the condition of the bank; secondly, it shall be disclosed in the examination that the condition of the bank is one of insolvency, or that its continuance in business would involve probable loss to its depositors or creditors; thirdly, the department head concerned shall inform the Monetary Board in writing, of the facts; and lastly, the Monetary Board shall find the statements of the department head to be true. Anent the first requirement, the Tiaoqui report, submitted on January 23, 1985, revealed that the finding of insolvency of petitioner was based on the partial list of exceptions and findings on the regular examination of the bank as of July 31, 1984 conducted by the Supervision and Examination Sector II of the Central Bank of the Philippines Central Bank. Clearly, Tiaoqui based his report on an incomplete examination of petitioner bank and outrightly concluded therein that the latter's financial status was one of insolvency or illiquidity. It is evident from the foregoing circumstances that the examination contemplated in Sec. 29 of the CB Act as a mandatory requirement was not completely and fully complied with. Despite the existence of the partial list of findings in the examination of the bank, there were still highly significant items to be weighed and determined such as the matter of valuation reserves, before these can be considered in the financial condition of the bank.

It would be a drastic move to conclude prematurely that a bank is insolvent if the basis for such conclusion is lacking and insufficient, especially if doubt exists as to whether such bases or findings faithfully represent the real financial status of the bank. The actuation of the Monetary Board in closing petitioner bank on January 25, 1985 barely four days after a conference with the latter on the examiners' partial findings on its financial position is also violative of what was provided in the CB Manual of Examination Procedures. Said manual provides that only after the examination is concluded, should a pre-closing conference led by the examiner-in-charge be held with the officers/representatives of the institution on the findings/exception, and a copy of the summary of the findings/violations should be furnished the institution examined so that corrective action may be taken by them as soon as possible (Manual of Examination Procedures, General Instruction, p. 14). It is hard to understand how a period of four days after the conference could be a reasonable opportunity for a bank to undertake a responsive and corrective action on the partial list of findings of the examiner-in-charge. In the instant case, the basic standards of substantial due process were not observed. Time and again, We have held in several cases, that the procedure of administrative tribunals must satisfy the fundamentals of fair play and that their judgment should express a wellsupported conclusion.

In view of the foregoing premises, We believe that the closure of the petitioner bank was arbitrary and committed with grave abuse of discretion. Granting in gratia argumenti that the closure was based on justified grounds to protect the public, the fact that petitioner bank was suffering from serious financial problems should not automatically lead to its liquidation. Section 29 of the Central Bank provides that a closed bank may be reorganized or otherwise placed in such a condition that it may be permitted to resume business with safety to its depositors, creditors and the general public.

• Jerry Ong vs. Court of Appeals, G.R. No. 112830, February 1, 1996

JERRY ONG, petitioner, vs. COURT OF APPEALS and RURAL BANK OF OLONGAPO, INC., represented by its Liquidator, GUILLERMO G. REYES, JR. and Deputy Liquidator ABEL ALLANIGUE, respondents.

G.R. No. 112830. FIRST DIVISION, February 1, 1996 BELLOSILLO, J.

All disputed claims against the bank should be filed before the liquidation proceeding. As explained in a previous case, the judicial liquidation is intended to prevent multiplicity of actions against the insolvent bank. It is a pragmatic arrangement designed to establish due process and orderliness in the liquidation of the bank, to obviate the proliferation of litigations and to avoid injustice and arbitrariness.

FACTS

Omnibus Finance Inc. obtained a loan from Jerry Ong and the Rural Bank of Olongapo mortgaged its two parcels of land situated in Tagaytay City to guarantee the payment of the said obligation. Omnibus Finance Inc., failed settle it obligation to Ong which prompted the latter to move for the extrajudicial foreclosure of the mortgages. A certificate of sale was issued to him by the City Sheriff of Tagaytay City. The said certificate of sale was duly registered in the Registry of Deeds. Respondents failed to seasonably redeem said parcels of land, for which reason, petitioner has executed an Affidavit of Consolidation of Ownership which, to date, has not been submitted to the Registry of Deeds of Tagaytay City, in view of the fact that possession of the aforesaid titles or owners duplicate certificates of title remains with the RBO. To date, petitioner has not been able to register of said parcels of land in his name in view of the persistent refusal of respondents to surrender RBOs copies of its owners certificates of title for the parcels of land covered.

Jerry Ong filed with the Regional Trial Court of Quezon City a petition for the surrender of TCT Nos. 13769 and 13770 against Rural Bank of Olongapo, Inc. (RBO), represented by its liquidator Guillermo G. Reyes, Jr. and deputy liquidator Abel Allanigue. Respondent RBO filed a motion to dismiss on the ground of res judicata alleging that petitioner had earlier sought a similar relief from the Regional Trial Court of Tagaytay City, which case was dismissed with finality on appeal before the Court of Appeals. In a supplemental motion to dismiss, respondent RBO contended that it was undergoing liquidation and, pursuant to prevailing jurisprudence, it is the liquidation court which has exclusive jurisdiction to take cognizance of petitioners claim. The RTC denied the motion to dismiss. RBO filed a motion for reconsideration which was also rejected. The RTC held that the parcels of land were already sold to the petitioner in a public sale and no longer part of the assets of the RBO when it was put under liquidation and when its petition for assistance in its liquidation was approved by the RTC of Olongapo. RBO filed for an MR claiming that the certificate of sale was still not final since the same were still subject of a pending litigation between the parties in a separate case. RTC denied the MR.

The bank elevated the case to the CA by way of a petition for certiorari and prohibition. The CA annuled the decision of the RTC and held that Sec. 29, par. 3, of R.A. 265 as amended by P.D. 1827[6] does not limit the jurisdiction of the liquidation court to claims against the assets of the insolvent bank. The provision is general in that it clearly and unqualifiedly states that the liquidation court shall have jurisdiction to adjudicate disputed claims against the bank. Disputed claims refer to all claims, whether they are against the assets of the insolvent bank, for specific performance, breach of contract, damages, or whatever. To limit the jurisdiction of the liquidation court to those claims against the assets of the bank is to remove significantly and without basis the cases that may be brought against a bank in case of insolvency. Respondent court also noted that the certificates of title are still in the name of respondent RBO. As far as third persons are concerned (and these include claimants in the liquidation court), registration is the operative act which would convey title to the property. This prompted the petitioner to elevate the case before the SC.

ISSUE

Whether or not the civil case the petitioner filed before the RTC should be filed before the liquidation proceeding?

RULING

YES. All disputed claims against the bank should be filed before the liquidation proceeding. As explained in a previous case, the judicial liquidation is intended to prevent multiplicity of actions against the insolvent bank. It is a pragmatic arrangement designed to establish due process and orderliness in the liquidation of the bank, to obviate the proliferation of litigations and to avoid injustice and arbitrariness. The lawmaking body contemplated that for convenience only one court, if possible, should pass upon the claims against the insolvent bank and that the liquidation court should assist the Superintendent of Banks and regulates his operations. The term disputed claim in the provision includes all contentious cases that might arise in the course of liquidation wherein a full-dress hearing would be required and legal issues would have to be resolved. Hence, it would be necessary injustice to all concerned that a Court of First Instance (now Regional Trial Court) assist and supervise the liquidation and act as umpire or arbitrator in the allowance and disallowance of claims. Petitioner must have overlooked the fact that since respondent RBO is insolvent other claimants not privy to their transaction may be involved. As far as those claimants are concerned, in the absence of certificates of title in the name of petitioner, subject lots still form part of the assets of the insolvent bank.

This, however, does not prejudice the right of the petitioner to file his claim before the RTC of Olongapo wherein the liquidation proceeding is being held.

• Domingo Manalo vs. Court of Appeals, G.R. No. 141297, October 8, 2001

DOMINGO R. MANALO, petitioner, vs. COURT OF APPEALS (Special Twelfth Division) and PAIC SAVINGS AND MORTGAGE BANK, respondents.

G.R. No. 141297, FIRST DIVISION, October 8, 2001, Puno, J

The pertinent provision of the law which states the liquidation court "shall have jurisdiction in the same proceedings to assist in the adjudication of disputed claims against the bank...xxx" only finds operation in cases where there are claims against an insolvent bank. In fine, the exclusive jurisdiction of the liquidation court pertains only to the adjudication of claims against the bank. It does not cover the reverse situation where it is the bank which files a claim against another person or legal entity

To be sure, the liquidator took the proper course of action when it applied for a writ in the Pasay City RTC because under Act 3135, it is mandated that jurisdiction over a Petition for Writ of Possession lies with the court of the province, city, or municipality where the property subject thereof is situated.

Furthermore, a bank which had been ordered closed by the monetary board retains its juridical personality which can sue and be sued through its liquidator

FACTS

S. Villanueva Enterprise thru its president, Therese Vargas, obtained a loan of 3M and 1M from the respondent PAIC Savings and Mortgage Bank and the Philippine American Investments Corporation (PAIC) respectively. As a security, Vargas executed a Joint First Mortgage over her two parcels of land in favor of the respondent and PAIC. S. Villanueva Enterprise failed to settle its loan obligation which prompted the respondent to institute an extrajudicial foreclosure proceeding over the mortgage lots. A public sale was held and the property was sold to the respondent. A certificate of sale was issued and it's duly annotated in the title of the land. Vargas failed to redeem the property, thus, the title was consolidated in respondent's name. Meanwhile, the respondent bank was put under liquidation a petition for assistance was granted by the RTC. Vargas tried to negotiate with the liquidator of the bank to repurchase the property but she cannot afford the same. Vargas then filed a case for annulment of the mortgage and the extrajudicial foreclosure which was later on dismissed by the RTC. Vargas appealed before the CA but the decision of the RTC was affirmed and later on, this decision became final and executory.

In the meantime, the respondent bank filed a petition before the RTC for the issuance of a writ of possession for the subject property. Vargas and the Villanueva Enterprise filed an opposition. While the case was still pending, Vargas sold the disputed property to a certain Armando Angsico. After this sale, Vargas, representing herself as the lawful owner of the same property, leased it to Doming R. Manalo for a period of 10 years. Later on, Angsico assigned his rights over the property to Manalo. Then, the RTC granted the petition and issued the writ of possession and ordered Vargas and any and all persons claiming rights under her title to vacate the property. Villanueva Enterprise and Vargas moved for the quashal of the said writ. Manalo filed a motion to intervene. The RTC denied both the said motions. Manalo filed a Motion for Reconsideration which was also denied. Manalo filed a Petition for Certiorari before the CA. Petitioner contended that the lower court should have dismissed respondents Ex-Parte Petition for Issuance of Writ of Possession for want of jurisdiction over the subject matter of the claim. The power to hear the same, he insists, exclusively vests with the Liquidation Court pursuant to Section 29 of Republic Act No. 265, otherwise known as The Central Bank Act. He then cites the decision in Valenzuela v. Court of Appeals, where it was

held that if there is a judicial liquidation of an insolvent bank, all claims against the bank should be filed in the liquidation proceeding. For going to another court, the respondent, he accuses, is guilty of forum shopping. While this case was pending, Manalo entered into a lease agreement with the respondent over the same property. The CA dismissed the petition of Manalo. Hence, this appeal before the SC.

ISSUES

1. Whether or not the Liquidation Court has the exclusive jurisdiction over the petition for the issuance of writ of possession filed by the respondent bank in another court?

2. Whether or not the respondent bank can still file and maintain a suit despite the fact that it is already under liquidation?

RULING

NO. The pertinent provision of the law which states the liquidation court "shall have 1. jurisdiction in the same proceedings to assist in the adjudication of disputed claims against the bank...xxx" only finds operation in cases where there are claims against an insolvent bank. In fine, the exclusive jurisdiction of the liquidation court pertains only to the adjudication of claims against the bank. It does not cover the reverse situation where it is the bank which files a claim against another person or legal entity. This interpretation of Section 29 becomes more obvious in the light of its intent. The requirement that all claims against the bank be pursued in the liquidation proceedings filed by the Central Bank is intended to prevent multiplicity of actions against the insolvent bank and designed to establish due process and orderliness in the liquidation of the bank, to obviate the proliferation of litigations and to avoid injustice and arbitrariness. The lawmaking body contemplated that for convenience, only one court, if possible, should pass upon the claims against the insolvent bank and that the liquidation court should assist the Superintendents of Banks and regulates his operations. It then ought to follow that petitioner's reliance on Section 29 and the Valenzuela case is misplaced. The Petition for the Issuance of a Writ of Possession in Civil Case No. 9011 is not in the nature of a disputed claim against the bank. On the contrary, it is an action instituted by the respondent bank itself for the preservation of its asset and protection of its property. It was filed upon the instance of the respondent's liquidator in order to take possession of a tract of land over which it has ownership claims. To be sure, the liquidator took the proper course of action when it applied for a writ in the Pasay City RTC because under Act 3135, it is mandated that jurisdiction over a Petition for Writ of Possession lies with the court of the province, city, or municipality where the property subject thereof is situated.

2. YES. A bank which had been ordered closed by the monetary board retains its juridical personality which can sue and be sued through its liquidator. The only limitation being that the prosecution or defense of the action must be done through the liquidator. Otherwise, no suit for or against an insolvent entity would prosper. In such situation, banks in liquidation would lose what justly belongs to them through a mere technicality.

• Rural Bank of Sta. Catalina vs. Land Bank of the Philippines, G.R. No. 148019, July 26, 2004

RURAL BANK OF STA. CATALINA, INC., represented by The Philippine Deposit Insurance Corporation, in its capacity as Liquidator, petitioner, vs. LAND BANK OF THE PHILIPPINES, G.R. No. 148019, SECOND DIVISION, July 26, 2004, Callejo Sr., J.

Such party declared in default is proscribed from seeking a modification or reversal of the assailed decision on the basis of the evidence submitted by him in the Court of Appeals, for if it were otherwise, he would thereby be allowed to regain his right to adduce evidence, a right which he lost in the trial court when he was declared in default, and which he failed to have vacated. In this case, the petitioner sought the modification of the decision of the trial court based on the evidence submitted by it only in the Court of Appeals.

The petitioner is, thus, barred from relying on the orders of the Monetary Board of the Central Bank of the Philippines placing its assets and affairs under receivership and ordering its liquidation.

FACTS

Land Bank of the Philippines filed a complaint against, Sta. Catalina Rural Bank, Inc., in the Regional Trial Court for the collection of the sum of P2,809,280.25, capitalized and accrued interests, penalties and surcharges, and for such other equitable reliefs. For its failure to file its answer to the complaint, the trial court declared the petitioner bank in default. Despite its receipt of the copy of the said order, the petitioner bank failed to file a motion to set aside the order of default.

In the meantime, the Monetary Board approved the placement of the petitioner bank's assets under receivership. The Philippine Deposit Insurance Corporation (PDIC) was designated as receiver (conservator) of the petitioner, and the latter was prohibited from doing business in the Philippines. Unaware of the action of the CB, the trial court rendered judgment by default against the petitioner bank ordering the bank to pay its obligation to respondent LBP plus interests and damages.

The petitioner, through the PDIC, appealed the decision to the Court of Appeals. The petitioner bank claim that since it was placed under receivership and prohibited from doing business in the Philippines it should no longer be held liable for interests and penalties on its account to the respondent bank. However, CA rendered judgment affirming the decision of the RTC.

ISSUE

Whether or not Rural bank of Sta. Catalina is liable for Interests or Penalties when it was placed under receivership.

RULING

NO, Such party declared in default is proscribed from seeking a modification or reversal of the assailed decision on the basis of the evidence submitted by him in the Court of Appeals, for if it were otherwise, he would thereby be allowed to regain his right to adduce evidence, a right which he lost in the trial court when he was declared in default, and which he failed to have vacated. In this case, the petitioner sought the modification of the decision of the trial court based on the evidence submitted by it only in the Court of Appeals.

Petitioner was served with a copy of summons and the complaint, but failed to file its answer thereto. It also failed to file a verified motion to set aside the order of default despite its receipt of a copy thereof. We note that the trial court rendered judgment only on April 7, 1998 or more than a year after the issuance of the default order; yet, the petitioner failed to file any verified motion to set aside the said order before the rendition of the judgment of default. The PDIC was designated by the Central Bank of the Philippines as receiver (conservator) as early as January 14, 1998, and in the course of its management of the petitioner bank's affairs, it should have known of the pendency of the case against the latter in the trial court. Moreover, the petitioner, through the PDIC, received a copy of the decision of the trial court but did not bother filing a motion for partial reconsideration appending thereto the orders of the Monetary Board or a motion to set aside the order of default order of the trial court. The petitioner is, thus, barred from relying on the orders of the Monetary Board of the Central Bank of the Philippines placing its assets and affairs under receivership and ordering its liquidation.

Leticia G. Miranda vs. Philippine Deposit Insurance Corporation, G.R. No. 169334, September 8, 2006

LETICIA G. MIRANDA, petitioner, vs. PHILIPPINE DEPOSIT INSURANCE CORPORATION, BANGKO SENTRAL NG PILIPINAS and PRIME SAVINGS BANK, Respondents. G.R. No. 169334, FIRST DIVISION, September 8, 2006, Justice Ynares-Santiago

"Disputed claims" refer to all claims, whether they be against the assets of the insolvent bank, for specific performance, breach of contract, damages, or whatever. Petitioner's claim which involved the payment of the two cashier's checks that were not honored by Prime Savings Bank due to its closure falls within the ambit of a claim against the assets of the insolvent bank. The issuance of the cashier's checks by Prime Savings Bank to the petitioner created a debtor/creditor relationship between them. This disputed claim should therefore be lodged in the liquidation proceedings by the petitioner as creditor, since the closure of Prime Savings Bank has rendered all claims subsisting at that time moot which can best be threshed out by the liquidation court and not the regular courts.

FACTS

Leticia G. Miranda was a depositor of Prime Savings Bank. She then wanted to withdrew 5.5M from her account, but instead of cash she opted to be issued a crossed cashier's check in the sum of P2,500,000 and cashier's check in the amount of P3,002,000. Petitioner deposited the two checks into her account in another bank on the same day, however, Bangko Sentral ng Pilipinas suspended the clearing privileges of Prime Savings Bank effective 2:00 p.m. of June 3, 1999. The two checks of petitioner were returned to her unpaid. Subsequently, Prime Savings Bank declared a bank holiday. The BSP placed Prime Savings Bank under the receivership of the Philippine Deposit Insurance Corporation (PDIC).

Miranda filed a civil action for sum of money in the Regional Trial Court to recover the funds from her unpaid checks against Prime Savings Bank, PDIC and the BSP. The court rendered judgment against defendants and ordered them to pay the plaintiff. On appeal, the Court of Appeals reversed the trial court and ruled in favor of the PDIC and BSP, dismissing the case against them, without prejudice to the right of petitioner to file her claim before the court designated to adjudicate on claims against Prime Savings Bank. Petitioner's motion for reconsideration was denied. Hence, this petition.

ISSUES

(1)Whether the claim lodged by the petitioner is a disputed claim under Section 30 of Republic Act (R.A.) No. 7653, otherwise known as the New Central Bank Act, and therefore, under the jurisdiction of the liquidation court.

(2)Whether the respondents are solidarily liable to the petitioner

RULING

(1) YES, the claim lodged by the petitioner qualifies as a disputed claim subject to the jurisdiction of the liquidation court. Regular courts do not have jurisdiction over actions filed by claimants against an insolvent bank, unless there is a clear showing that the action taken by the BSP, through the Monetary Board in the closure of financial institutions was in excess of jurisdiction, or with grave abuse of discretion.

The power and authority of the Monetary Board to close banks and liquidate them thereafter when public interest so requires is an exercise of the police power of the State. Police power, however, is subject to judicial inquiry. It may not be exercised arbitrarily or unreasonably and could be set aside if it is either capricious, discriminatory, whimsical, arbitrary, unjust, or is tantamount to a denial of due process and equal protection clauses of the Constitution.

"Disputed claims" refer to all claims, whether they be against the assets of the insolvent bank, for specific performance, breach of contract, damages, or whatever. Petitioner's claim which involved the payment of the two cashier's checks that were not honored by Prime Savings Bank due to its closure falls within the ambit of a claim against the assets of the insolvent bank. The issuance of the cashier's checks by Prime Savings Bank to the petitioner created a debtor/creditor relationship between them. This disputed claim should therefore be lodged in the liquidation proceedings by the petitioner as creditor, since the closure of Prime Savings Bank has rendered all claims subsisting at that time moot which can best be threshed out by the liquidation court and not the regular courts.

(2) NO, it is only Prime Savings Bank that is liable to pay for the amount of the two cashier's checks. Solidary liability cannot attach to the BSP, in its capacity as government regulator of banks, and the PDIC as statutory receiver under R.A. No. 7653, because they are the principal government agencies mandated by law to determine the financial viability of banks and quasi-banks, and facilitate receivership and liquidation of closed financial institutions, upon a factual determination of the latter's insolvency.

As correctly pointed out by the Court of Appeals, the BSP should not be held liable on the crossed cashier's checks for it was not a party to the issuance of the same; nor can it be held liable for imposing the sanctions on Prime Savings Bank which indirectly affected Miranda, since it is mandated under Sec. 37 of R.A. No. 7653 to act accordingly.26 The BSP, through the Monetary Board was well within its discretion to exercise this power granted by law to issue a resolution suspending the interbank clearing privileges of Prime Savings Bank, having made a factual

determination that the bank had deficient cash reserves deposited before the BSP. There is no showing that the BSP abused this discretionary power conferred upon it by law.

• In Re : Petition for Assistance in the Liquidation in the Rural Bank of Bokod (Benguet), PDIC vs. Bureau of Internal Revenue, 511 SCRA 123 (2006)

IN RE: PETITION FOR ASSISTANCE IN THE LIQUIDATION OF THE RURAL BANK OF BOKOD (BENGUET), INC., PHILIPPINE DEPOSIT INSURANCE CORPORATION, petitioner, vs. BUREAU OF INTERNAL REVENUE

G.R. NO. 158261, FIRST DIVISION, December 18, 2006, Justice Chico-Nazario

Section 52(C) of the Tax Code of 1997 and the BIR-SEC Regulations No. 1 regulate the relations only as between the SEC and the BIR, making a certificate of tax clearance a prior requirement before the SEC could approve the dissolution of a corporation. In Spec. Proc. No. 91-SP-0060 pending before the RTC, RBBI was placed under receivership and ordered liquidated by the BSP, not the SEC; and the SEC is not even a party in the said case, although the BIR is. This Court cannot find any basis to extend the SEC requirements for dissolution of a corporation to the liquidationproceedings of RBBI before the RTC when the SEC is not even involved therein.

FACTS

Rural Bank of Bokod (Benguet), Inc. (RBBI) conducted a special examination of RBBI was conducted by the Supervision and Examination Sector (SES) Department III of what is now the Bangko Sentral ng Pilipinas (BSP),4 wherein various loan irregularities were uncovered. In a letter, dated 20 May 1986, the SES Department III required the RBBI management to infuse fresh capital into the bank, within 30 days from date of the advice, and to correct all the exceptions noted. However, up to the termination of the subsequent general examination conducted by the SES Department III, no concrete action was taken by the RBBI management. A memorandum and report, dated 28 August 1990, were submitted by the Director of the SES Department III concluding that the RBBI remained in insolvent financial condition and it can no longer safely resume business with the depositors, creditors, and the general public.

BSP liquidator of RBBI caused the filing with the RTC of a Petition for Assistance in the Liquidation of RBBI, the Monetary Board transferred to herein petitioner Philippine Deposit Insurance Corporation (PDIC) the receivership/liquidation of RBBI.The respondent Bureau of Internal Revenue (BIR), through Atty. Justo Reginaldo, manifested that PDIC should secure a tax clearance certificate from the appropriate BIR Regional Office, pursuant to Section 52(C) of Republic Act No. 842. PDIC argues that the closure of banks under Section 30 of the New Central Bank Act is summary in nature and procurement of tax clearance as required under Section 52(C) of the Tax Code of 1997 is not a condition precedent.

ISSUE

Whether or not submission of tax clearance is a requirement for a bank to be close and placed under receivership.

RULING

No. Section 52(C) of the Tax Code of 1997 and the BIR-SEC Regulations No. 1 regulate the relations only as between the SEC and the BIR, making a certificate of tax clearance a prior requirement before the SEC could approve the dissolution of a corporation. In Spec. Proc. No. 91-SP-0060 pending before the RTC, RBBI was placed under receivership and ordered liquidated by the BSP, not the SEC; and the SEC is not even a party in the said case, although the BIR is. This Court cannot find any basis to extend the SEC requirements for dissolution of a corporation to the liquidation proceedings of RBBI before the RTC when the SEC is not even involved therein.

The receiver shall immediately gather and take charge of all the assets and liabilities of the institution, administer the same for the benefit of its creditors, and exercise the general powers of a receiver under the Revised Rules of Court but shall not, with the exception of administrative expenditures, pay or commit any act that will involve the transfer or disposition of any asset of the institution: Provided, That the receiver may deposit or place the funds of the institution in non-speculative investments. The receiver shall determine as soon as possible, but not later than ninety (90) days from takeover, whether the institution may be rehabilitated or otherwise placed in such a condition that it may be permitted to resume business with safety to its depositors and creditors and the general public: Provided, That any determination for the resumption of business of the institution shall be subject to prior approval of the Monetary Board.

• Cu v. Small Business Guarantee and Finance Corp., G.R. No. 211222, August 7, 2017, Justice Caguioa New Central Bank Act, Liquidation of Banks

CU v. SMALL BUSINESS GUARANTEE AND FINANCE CORP G.R. No. 211222, August 7, 2017, First Division, CAGUIOA, J.

A criminal case for vio<mark>lation of BP 22 against a bank placed under receivership</mark> by the Monetary Board may be dismissed for th<mark>e demandabili</mark>ty of the obligation to be performed has been suspended.

FACTS

Golden 7 Bank (G7 Bank) was granted a credit line worth Php 50 million by respondent Small Business Guarantee and Finance Corp. The bank's officers, herein petitioner Fidel Cu, Allan Cu and others were made signatories to the loan documents including the postdated checks which were issued in payment for the drawdowns on the credit line.

BSP placed G7 Bank under receivership by the Philippine Deposit Insurance Corporation (PDIC). PDIC eventually took over the bank's premises, per the closure order issued by the Monetary Board. In effect, the Deputy Receiver of PDIC took over the bank and issued a cease and desist order which allowed PDIC to close all of G7 Bank's deposit accounts with other banks.

The postdated checks issued by Cu the matured and when SB Corp deposited the same to its account with the LBP Makati Branch, they were all dishonored for the reason that the account was already closed. SB Corp sent demand letters to Cu, demanding payment. Despite such, Cu failed to comply thus SB Corp filed a criminal complaint against Cu and others for violation of BP 22. A

petition for assistance in the liquidation of G7 Bank's assets was then filed by PDIC in the Naga City court.

The MeTC dismissed the BP 22 cases, and the dismissal was upheld by the RTC, by the reason that the appointment of a receiver operates to suspend the authority of the bank and its officers to intermeddle with its own property and transfer its assets to make do the payment with SB Corp. The CA reversed the ruling, hence Cu's petition.

ISSUE

Whether the criminal case for BP 22 against the bank officers should be dismissed due to the order for receivership and despite a subsequent pending petition for assistance for liquidation.

RULING

YES, the SC found that both the MeTC and the RTC acted correctly when it ordered the dismissal of the BP 22 cases against Cu. The Court found that:

- (1) the closure of G7 Bank, placing it under receivership per Monetary Board Orders and the filing of the petition for assistance in the liquidation proceedings effectively suspended the demandability of the loan, thus the BP 22 case cannot proceed and was properly dismissed; and
- (2) the filing of a petition for assistance in liquidation by PDIC as receiver as a result of the Monetary Bank's order for closure made it legally impossible for Cu to comply with his obligation with SB Corp, thus the filing was clearly in bad faith

It applied the doctrine in the case of *Gidwani v. People*, in which the demandability of the payment for the embroidery services rendered by the exporter was "suspended" by an SEC order, which ordered the account from which the payments were to be drawn against, to be closed, after the exporter filed a petition for declaration of a state of suspension of payments.

"In other words, the SEC Order also created a suspensive condition. When a contract is subject to a suspensive condition, its birth takes place or its effectivity commences only if and when the event that constitutes the condition happens or is fulfilled. Thus, at the time the payee presented the September and October 1997 checks for encashment, it had no right to do so, as there was yet no obligation due from the exporter, through its President."

"Consequently, because there was a suspension of the exporter's obligations, its President may not be held liable for civil obligations of the corporation covered by the bank checks at the time this case arose. However, it must be emphasized that the President's non-liability should not prejudice the right of the payee to pursue its claim through the remedies available to it, subject to the SEC proceedings regarding the application for corporate rehabilitation."

The Court pointed out that that G7 Bank was placed under receivership prior to the demand of the payments. This means that when SB Corp. deposited the postdated checks, it was surely aware that

G7 Bank was already under receivership and PDIC had already taken over the bank by virtue of the Monetary Board's closure thereof. SB Corp clearly acted in bad faith because it was aware that it was legally impossible for Cu to fund those checks on the dates indicated therein, which were all past G7 Bank's closure because all the bank accounts of G7 Bank were closed by PDIC.

Further, the effect of a petition for assistance in the liquidation of a cloased bank is that it gives the liquidation court the exclusive jurisdiction to adjudicate disputed claims against the closed bank, assist in the individual liabilities of the stockholders, directors, and officers, and decide on all other issues as may be material to implement the distribution plan adopted by the PDIC for general application to all closed banks.

Considering the amount to be received by SB Corp was not yet determine as the liquidation proceeding was still pending, the debtor's obligation to pay or perform is suspended. This however, does not preclude the proper filing of claims in the liquidation proceedings.

• APEX BANCRIGHTS HOLDINGS, INC., LEAD BANCFUND HOLDINGS, et al., v. BANGKO SENTRAL NG PILIPINAS and PHILIPPINE DEPOSIT INSURANCE CORPORATION, G.R. No. 214866, October 2, 2017, Second Division, PERLAS-BERNABE, J.

APEX BANCRIGHTS HOLDINGS, INC., LEAD BANCFUND HOLDINGS, et al., v. BANGKO SENTRAL NG PILIPINAS and PHILIPPINE DEPOSIT INSURANCE CORPORATION,

G.R. No. 214866, October 2, 2017, Second Division, PERLAS-BERNABE, J.

The Monetary Board may summarily and without need for prior hearing forbid the institution from doing business in the Philippines and designate the Philippine Deposit Insurance Corporation as receiver of the banking institution.

The receiver shall immediately gather and take charge of all the assets and liabilities of the institution, administer the same for the benefit of its creditors, and exercise the general powers of a receiver under the Revised Rules of Court. If the receiver determines that the institution cannot be rehabilitated or permitted to resume business in accordance with the next preceding paragraph, the Monetary Board shall notify in writing the board of directors of its findings and direct the receiver to proceed with the liquidation of the institution.

FACTS

EIB, entered into a three-way merger with Urban Bank, Inc. (UBI) and Urbancorp Investments, Inc. (UII) in an attempt to rehabilitate UBI which was then under receivership. However, EIB then encountered its own financial difficulties and failed to overcome those thus leading to PDIC placing it under receivership pursuant to Section 30 of RA 7653 or the New Central Bank Act. Accordingly, PDIC took over EIB. PDIC submitted its initial receivership report to the Monetary Board which contained its finding that EIB can be rehabilitated or permitted to resume business; *provided*, that a bidding for its rehabilitation would be conducted, and that the following conditions would be met: (*a*) there are qualified interested banks that will comply with the parameters for rehabilitation of a closed bank, capital strengthening, liquidity, sustainability and viability of operations, and strengthening of bank governance; and (*b*) all parties (including

creditors and stockholders) agree to the rehabilitation and the revised payment terms and conditions of outstanding liabilities.

A public bidding was scheduled by PDIC, but the same failed as no bid was submitted. A rebidding was then set which also did not materialize as no bids were submitted. Thereafter, PDIC informed BSP that EIB can hardly be rehabilitated and so the Monetary Board directed PDIC to proceed with the liquidation.

Petitioners, who are stockholders representing the majority stock of EIB, filed a petition for *certiorari* before the CA challenging the Resolution of Liquidation. In essence, petitioners blame PDIC for the failure to rehabilitate EIB, contending that PDIC: (*a*) imposed unreasonable and oppressive conditions which delayed or frustrated the transaction between BDO and EIB; (*b*) frustrated EIB's efforts to increase its liquidity when PDIC disapproved EIB's proposal to sell its MRT bonds to a private third party and, instead, required EIB to sell the same to government entities; (*c*) imposed impossible and unnecessary bidding requirements; and (*d*) delayed the public bidding which dampened investors' interest.

In defense, PDIC countered that petitioners were already estopped from assailing the placement of EIB under receivership and its eventual liquidation since they had already surrendered full control of the bank to the BSP. For its part, BSP maintained that it had ample factual and legal bases to order EIB's liquidation.

The CA ruled in favor of the BSP noting that nothing in the Section 30 of RA 7653requires the Monetary Board to make its own independent factual determination on the bank's viability before ordering its liquidation. The law only provides that the Monetary Board "shall notify in writing the board of directors of its findings and direct the receiver to proceed with the liquidation of the institution," which it did in this case.

ISSUE

Whether or not the monetary board did not gravely abuse its discretion when it directed the PDIC to proceed with the liquidation of EIB.

RULING

NO. As per Section 30 (c) of RA 7653 on the Proceedings in Receivership and Liquidation provides that "the Monetary Board may summarily and without need for prior hearing forbid the institution from doing business in the Philippines and designate the Philippine Deposit Insurance Corporation as receiver of the banking institution".

The receiver shall immediately gather and take charge of all the assets and liabilities of the institution, administer the same for the benefit of its creditors, and exercise the general powers of a receiver under the Revised Rules of Court. If the receiver determines that the institution cannot be rehabilitated or permitted to resume business in accordance with the next preceding paragraph, the Monetary Board shall notify in writing the board of directors of its findings and direct the receiver to proceed with the liquidation of the institution.

The actions of the Monetary Board taken under this section or under Section 29 of this Act shall be final and executory and may not be restrained or set aside by the court except on petition for *certiorari* on the ground that the action taken was in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction.

It is settled that "the power and authority of the Monetary Board to close banks and liquidate them thereafter when public interest so requires is an exercise of the police power of the State. Police power, however, is subject to judicial inquiry. It may not be exercised arbitrarily or unreasonably and could be set aside if it is either capricious, discriminatory, whimsical, arbitrary, unjust, or is tantamount to a denial of due process and equal protection clauses of the Constitution."

Here, there was no grave abuse of discretion. In an attempt to forestall EIB's liquidation, petitioners insist that the Monetary Board must first make its own independent finding that the bank could no longer be rehabilitated — instead of merely relying on the findings of the PDIC — before ordering the liquidation of a bank. Such position is untenable.

As correctly held by the CA, nothing in Section 30 of RA 7653 requires the BSP, through the Monetary Board, to make an independent determination of whether a bank may still be rehabilitated or not. As expressly stated in the afore-cited provision, once the receiver determines that rehabilitation is no longer feasible, the Monetary Board is simply obligated to: (*a*) notify in writing the bank's board of directors of the same; and (*b*) direct the PDIC to proceed with liquidation.

E. Law on Secrecy of Bank Deposits (R.A. No. 1405, as amended)

6. Purpose

BS<mark>B Group, Inc. vs. Sally Go, G.R.</mark> No. 168644, February 16, 2010

BSB GROUP, INC., represented by its President, Mr. RICARDO BANGAYAN,Petitioner,-versus-SALLY GO a.k.a. SALLY GO-BANGAYAN,Respondent.

G.R. No. 168644, THIRD DIVISION, February 16, 2010, PERALTA, J.

R.A. No. 1405 has two allied purposes. It hopes to discourage private hoarding and at the same time encourage the people to deposit their money in banking institutions, so that it may be utilized by way of authorized loans and thereby assist in economic development. Owing to this piece of legislation, the confidentiality of bank deposits remains to be a basic state policy in the Philippines.

We hold that the testimony of Marasigan on the particulars of respondents supposed bank account with Security Bank and the documentary evidence represented by the checks adduced in support thereof, are not only incompetent for being excluded by operation of R.A. No. 1405. They are likewise irrelevant to the case, inasmuch as they do not appear to have any logical and reasonable connection to the prosecution of respondent for qualified theft.

FACTS

Petitioner, the BSB Group, Inc., is a duly organized domestic corporation presided by its herein representative, Ricardo Bangayan (Bangayan). Respondent Sally Go, alternatively referred to as

Sally Sia Go and Sally Go-Bangayan, is Bangayans wife, who was employed in the company as a cashier, and was engaged, among others, to receive and account for the payments made by the various customers of the company.

In 2002, Bangayan filed with the Manila Prosecutors Office a complaint for *estafa* and/or qualified theft against respondent, alleging that several checks representing the aggregate amount of P1,534,135.50 issued by the companys customers in payment of their obligation were, instead of being turned over to the companys coffers, indorsed by respondent who deposited the same to her personal banking account maintained at Security Bank and Trust Company (Security Bank).

Accordingly, respondent was charged before the Regional Trial Court of Manila.

Respondent entered a negative plea when arraigned. The trial ensued. On the premise that respondent had allegedly encashed the subject checks and deposited the corresponding amounts thereof to her personal banking account, the prosecution moved for the issuance of subpoena *ducestecum /ad testificandum* against the respective managers or records custodians of Security Banks Divisoria Branch, as well as of the Asian Savings Bank (now Metropolitan Bank & Trust Co. [Metrobank]). The trial court granted the motion and issued the corresponding subpoena. Respondent filed a motion to quash the subpoena, addressed to Metrobank, noting to the court that in the complaint-affidavit filed with the prosecutor, there was no mention made of the said bank account, to which respondent, in addition to the Security Bank account, allegedly deposited the proceeds of the supposed checks.

Petitioner, opposing respondents move, argued for the relevancy of the Metrobank account on the ground that the complaint-affidavit showed that there were two checks which respondent allegedly deposited in an account with the said bank. To this, respondent filed a supplemental motion to quash, invoking the absolutely confidential nature of the Metrobank account under the provisions of Republic Act (R.A.) No. 1405. The trial court did not sustain respondent; hence, it denied the motion to quash for lack of merit.

Meanwhile, the prosecution was able to present in court the testimony of Elenita Marasigan (Marasigan), the representative of Security Bank. In a nutshell, Marasigans testimony sought to prove that between 1988 and 1989, respondent, while engaged as cashier at the BSB Group, Inc., was able to run away with the checks issued to the company by its customers, endorse the same, and credit the corresponding amounts to her personal deposit account with Security Bank. In the course of the testimony, the subject checks were presented to Marasigan for identification and marking as the same checks received by respondent, endorsed, and then deposited in her personal account with Security Bank.

But before the testimony could be completed, respondent filed a Motion to Suppress, seeking the exclusion of Marasigans testimony and accompanying documents thus far received, bearing on the subject Security Bank account. This time respondent invokes, in addition to irrelevancy, the privilege of confidentiality under R.A. No. 1405.

The Trial court denied said motion as well as the motion for reconsideration filed by the respondent. CA reversed the decision and ordered that the witness' testimony be stricken out from the record.

In this Petition under Rule 45, petitioner averred in the main that the Court of Appeals had seriously erred in reversing the assailed orders of the trial court, and in effect striking out Marasigans testimony dealing with respondents deposit account with Security Bank. It asserted that apart from the fact that the said evidence had a direct relation to the subject matter of the case for qualified theft and, hence, brings the case under one of the exceptions to the coverage of confidentiality under R.A. 1405.

For her part, respondent claimed that the money represented by the Security Bank account was neither relevant nor material to the case, because nothing in the criminal information suggested that the money therein deposited was the subject matter of the case. Thus, the checks which the prosecution had Marasigan identify, as well as the testimony itself of Marasigan, should be suppressed by the trial court at least for violating respondents right to due process. More in point, respondent opined that admitting the testimony of Marasigan, as well as the evidence pertaining to the Security Bank account, would violate the secrecy rule under R.A. No. 1405.

ISSUES

WON the testimony of Marasigan and the accompanying documents are irrelevant to the case, and whether they are also violative of the absolutely confidential nature of bank deposits and, hence, excluded by operation of R.A. No. 1405.

RULING

YES. The Court, after deliberative estimation, finds the subject evidence to be indeed inadmissible. It is conceded that while the fundamental law has not bothered with the triviality of specifically addressing privacy rights relative to banking accounts, there, nevertheless, exists in our jurisdiction a legitimate expectation of privacy governing such accounts. The source of this right of expectation is statutory, and it is found in R.A. No. 1405, otherwise known as the Bank Secrecy Act of 1955.

R.A. No. 1405 has two allied purposes. It hopes to discourage private hoarding and at the same time encourage the people to deposit their money in banking institutions, so that it may be utilized by way of authorized loans and thereby assist in economic development. Owing to this piece of legislation, the confidentiality of bank deposits remains to be a basic state policy in the Philippines.

In taking exclusion from the coverage of the confidentiality rule, petitioner in the instant case posits that the account maintained by respondent with Security Bank contains the proceeds of the checks that she has fraudulently appropriated to herself and, thus, falls under one of the exceptions in Section 2 of R.A. No. 1405 that the money kept in said account is the subject matter in litigation. To highlight this thesis, petitioner avers, citing *Mathay v. Consolidated Bank and Trust Col* that the subject matter of the action refers to the physical facts; the things real or personal; the money, lands, chattels and the like, in relation to which the suit is prosecuted, which in the instant case should refer to the money deposited in the Security Bank account. On the surface, however, it seems that petitioners theory is valid to a point, yet a deeper treatment tends to show that it has argued quite off-tangentially. This, because, while *Mathay* did explain what the subject matter of an action is, it nevertheless did so only to determine whether the class suit in that case was properly brought to the court.

What indeed constitutes the subject matter in litigation in relation to Section 2 of R.A. No. 1405 has been pointedly and amply addressed in *Union Bank of the Philippines v. Court of Appeals*, in which the Court noted that the inquiry into bank deposits allowable under R.A. No. 1405 must be premised on the fact that the money deposited in the account is itself the subject of the action.

In other words, it can hardly be inferred from the indictment itself that the Security Bank account is the ostensible subject of the prosecutions inquiry. Without needlessly expanding the scope of what is plainly alleged in the Information, the subject matter of the action in this case is the money amounting to P1,534,135.50 alleged to have been stolen by respondent, and not the money equivalent of the checks which are sought to be admitted in evidence. Thus, it is that, which the prosecution is bound to prove with its evidence, and no other.

In sum, we hold that the testimony of Marasigan on the particulars of respondents supposed bank account with Security Bank and the documentary evidence represented by the checks adduced in support thereof, are not only incompetent for being excluded by operation of R.A. No. 1405. They are likewise irrelevant to the case, inasmuch as they do not appear to have any logical and reasonable connection to the prosecution of respondent for qualified theft. We find full merit in and affirm respondents objection to the evidence of the prosecution. The Court of Appeals was, therefore, correct in reversing the assailed orders of the trial court.

7. Prohibited Acts

Oñate vs. Abrogar, G.R. No. 107303, February 23, 1995

EMMANUEL C. OÑATE and ECON HOLDINGS CORPORATION, petitioners, vs. HON. ZUES C. ABROGAR, as Presiding Judge of Branch 150 of the Regional Trial Court of Makati, and SUN LIFE ASSURANCE COMPANY OF CANADA, respondents.

G.R. No. 107303, SECOND DIVISION, February 23, 1995, MENDOZA, J.:

Hence, whether the transaction is considered a sale or money placement does not make the money the "subject matter of litigation" within the meaning of § 2 of Republic Act No. 1405 which prohibits the disclosure or inquiry into bank deposits except "in cases where the money deposited or invested is the subject matter of litigation." Nor will it matter whether the money was "swindled" as Sun Life contends.

FACTS

Petitioners maintain that, in accordance with prior decisions of this Court, the attachment of their properties was void because the trial court had not at that time acquired jurisdiction over them and that the subsequent service of summons on them did not cure the invalidity of the levy. They further contend that the examination of the books and ledgers of the Bank of the Philippine Islands (BPI), the Philippine National Bank (PNB) and the Urban Bank was a "fishing expedition" which the trial court should not have authorized because petitioner Emmanuel C. Oñate, whose accounts were examined, was not a signatory to any of the documents evidencing the transaction between Sun Life Assurance of Canada (Sun Life) and Brunner Development Corporation (Brunner).

On the other hand private respondent Sun Life stresses the fact that the trial court eventually acquired jurisdiction over petitioners and contends that this cured the invalidity of the attachment of petitioners' properties. With respect to the second contention of petitioners, private respondent argues that the examination of petitioner Oñate's bank account was justified because it was he who signed checks transferring huge amounts from Brunner's account in the Urban Bank to the PNB and the BPI.

ISSUES

Whether respondent Judge had acted with grave abuse of discretion amounting to lack or in excess of jurisdiction in allowing the examination of the bank records though no notice was given.

RULING

YES. The records show that, on January 21, 1992, respondent judge ordered the examination of the books of accounts and ledgers of Brunner at the Urban Bank, Legaspi Village branch, and on January 30, 199 the records of account of petitioner Oñate at the BPI, even as he ordered the PNB to produce the records regarding certain checks deposited in it.

First. Sun Life defends these court orders on the ground that the money paid by it to Brunner was subsequently withdrawn from the Urban Bank after it had been deposited by Brunner and then transferred to BPI and to the unnamed account in the petitioner Oñate's account in the BPI and to the unnamed account in the PNB.

The issue before the trial court, however, concerns the nature of the transaction between petitioner Brunner and Sun Life. In its complaint, Sun Life alleges that Oñate, in his personal capacity and as president of Econ, offered to sell to Sun Life P46,990,000.00 worth of treasury bills owned by Econ and Brunner at the discounted price of P39,526,500.82; that on November 27, 1991, Sun Life paid the price by means of a check payable to Brunner; that Brunner, through its president Noel L. Diño, issued to it a receipt with undertaking to deliver the treasury bills to Sun Life; and that on December 4, 1991, Brunner and Diño delivered instead a promissory note, dated November 27, 1991, in which it was made to appear that the transaction was a money placement instead of sale of treasury bills.

Thus the issue is whether the money paid to Brunner was the consideration for the sale of treasury bills, as Sun Life claims, or whether it was money intended for placement, as petitioners allege. Petitioners do not deny receipt of P39,526,500.82 from Sun Life. Hence, whether the transaction is considered a sale or money placement does not make the money the "subject matter of litigation" within the meaning of § 2 of Republic Act No. 1405 which prohibits the disclosure or inquiry into bank deposits except "in cases where the money deposited or invested is the subject matter of litigation." Nor will it matter whether the money was "swindled" as Sun Life contends.

Second. The examination of bank books and records cannot be justified under Rule 57, § 10. This provision states:

Sec. 10. Examination of party whose property is attached and persons indebted to him or controlling his property; delivery of property to officer. — Any person owing debts to the

party whose property is attached or having in his possession or under his control any credit or other personal property belonging to such party, may be required to attend before the court in which the action is pending, or before a commissioner appointed by the court, and be examined on oath respecting the same. The party whose property is attached may also be required to attend for the purpose of giving information respecting his property, and may be examined on oath. The court may, after such examination, order personal property capable of manual delivery belonging to him, in the possession of the person so required to attend before the court, to be delivered to the clerk of the court, sheriff, or other proper officer on such terms as may be just, having reference to any lien thereon or claims against the same, to await the judgment in the action.

Since, as already stated, the attachment of petitioners' properties was invalid, the examination ordered in connection with such attachment must likewise be considered invalid. Under Rule 57, § 10, as quoted above, such examination is only proper where the property of the person examined has been validly attached.

Philippine Commercial International Bank vs. Court of Appeals, 255 SCRA 299 (1996)

PHILIPPINE COMMERCIAL INTERNATIONAL BANK, petitioner, vs. COURT OF APPEALS and RORY W. LIM, respondents;

G.R. No. 97785, THIRD DIVISION, March 29, 1996, Francisco, J.

Undoubtedly, the services being offered by a banking institution like petitioner are imbued with public interest. The use of telegraphic transfers have now become commonplace among businessmen because it facilitates commercial transactions. Any attempt to completely exempt one of the contracting parties from any liability in case of loss notwithstanding its bad faith, fault or negligence, as in the instant case, cannot be sanctioned for being inimical to public interest and therefore contrary to public policy.

FACTS

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Private respondent Rory Lim delivered to his cousin Lim Ong Tian PCIB Check in the amount of P200,000.00 for the purpose of obtaining a telegraphic transfer from petitioner PCIB in the same amount. The money was to be transferred to Equitable Banking Corporation, and credited to private respondents account at the said bank. Upon purchase of the telegraphic transfer, petitioner issued the corresponding receipt which contained the assailed provision that in case of fund transfer, the undersigned hereby will be made without any responsibility on the part of the BANK, or its correspondents, for any loss occasioned by errors, or delays in the transmission of message by telegraph or cable companies or by the correspondents or agencies, necessarily employed by this BANK in the transfer of this money, all risks for which are assumed by the undersigned.

Subsequent to the purchase of the telegraphic transfer, petitioner in turn issued and delivered eight (8) Equitable Bank checksto his suppliers as payment for the merchandise. When the checks were presented for payment, five of them bounced for insufficiency of funds, while the remaining three were held overnight for lack of funds upon presentment. Such happening came to private respondents' attention only when Equitable Bank notified him of the penalty charges and after

receiving letters from his suppliers that his credit was being cut-off due to the dishonor of the checks he issued.

Aggrieved, private respondent demanded from petitioner PCIB that he be compensated for the resulting damage that he suffered due to petitioners failure to make the timely transfer of funds which led to the dishonor of his checks. Petitioner refused to heed private respondents demand prompting the latter to file a complaint for damages with the Regional Trial Court of Gingoog City. Petitioner denied any liability to private respondent and interposed alleged the lack of privity between it and private respondent as it was not private respondent himself who purchased the telegraphic transfer from petitioner. Additionally, petitioner pointed out that private respondent is nevertheless bound by the stipulation in the telegraphic transfer application/form receipt.

The Regional Trial Court held petitioner liable for breach of contract. The provision amounted to a contract of adhesion wherein the objectionable portion was unilaterally inserted by petitioner in all its application forms without giving any opportunity to the applicants to question the same and express their conformity thereto. The Court of Appeals affirmed with modifications the judgment of the trial court.

ISSUE

Whether or not petitioner is exempt from liability in the loss resulting from errors or delays in the transfer of funds

RULING

No. A contract of adhesion is defined as one in which one of the parties imposes a ready-made form of contract, which the other party may accept or reject, but which the latter cannot modify. One party prepares the stipulation in the contract, while the other party merely affixes his signature or his adhesion thereto, giving no room for negotiation and depriving the latter of the opportunity to bargain on equal footing. Nevertheless, these types of contracts have been declared as binding as ordinary contracts, the reason being that the party who adheres to the contract is free to reject it entirely. It has been declared that a contract of adhesion may be struck down as void and unenforceable, for being subversive to public policy, only when the weaker party is imposed upon in dealing with the dominant bargaining party and is reduced to the alternative of taking it or leaving it, completely deprived of the opportunity to bargain on equal footing.

Having established that petitioner acted fraudulently and in bad faith, we find it implausible to absolve petitioner from its wrongful acts on account of the assailed provision exempting it from any liability. In Geraldez *vs.* Court of Appeals, it was unequivocally declared that notwithstanding the enforceability of a contractual limitation, responsibility arising from a fraudulent act cannot be exculpated because the same is contrary to public policy. Freedom of contract is subject to the limitation that the agreement must not be against public policy and any agreement or contract made in violation of this rule is not binding and will not be enforced.

Undoubtedly, the services being offered by a banking institution like petitioner are imbued with public interest. The use of telegraphic transfers have now become commonplace among businessmen because it facilitates commercial transactions. Any attempt to completely exempt one

of the contracting parties from any liability in case of loss notwithstanding its bad faith, fault or negligence, as in the instant case, cannot be sanctioned for being inimical to public interest and therefore contrary to public policy

• Union Bank of the Philippines vs. Court of Appeals, G.R. No. 134699, December 23, 1999

UNION BANK OF THE PHILIPPINES, petitioner, vs. COURT OF APPEALS and ALLIED BANK CORPORATION, respondents.

G.R. No. 134699, FIRST DIVISION, December 23, 1999, Kapunan, J.

Sec. 2 of the Law on Secrecy of Bank Deposits, as amended, declares bank deposits to be "absolutely confidential" except:

(1) In an examination made in the course of a special or general examination of a bank that is specifically authorized by the Monetary Board after being satisfied that there is reasonable ground to believe that a bank fraud or serious irregularity has been or is being committed and that it is necessary to look into the deposit to establish such fraud or irregularity,

(2) In an examination made by an independent auditor hired by the bank to conduct its regular audit provided that the examination is for audit purposes only and the results thereof shall be for the exclusive use of the bank,

- (3) Upon written permission of the depositor,
- (4) In cases of impeachment,
- (5) Upon order of a competent court in cases of bribery or dereliction of duty of public officials, or
- (6) In cases where the money deposited or invested is the subject matter of the litigation.

FACTS:

On March 21, 1990, a check in the amount of P1,000,000.00 was drawn against Account No. 0111-01854-8 with private respondent Allied Bank payable to the order of one Jose Ch. Alvarez. The payee deposited the check with petitioner Union Bank who credited the P1,000,000.00 to the account of Mr. Alvarez. Petitioner then sent the check for clearing through the Philippine Clearing House Corporation (PCHC). When the check was presented for payment, a clearing discrepancy was committed by Union Bank's clearing staff when the amount 1M was erroneously "under-encoded" to 1,000php only.

Petitioner only discovered the under-encoding almost a year later. Thus, on May 7, 1991, Union Bank notified Allied Bank of the discrepancy by way of a charge slip for P999,000.00 for automatic debiting against of Allied Bank. The latter, however, refused to accept the charge slip "since [the] transaction was completed per your [Union Bank's] original instruction and client's account is now insufficiently funded."

The cause of action against defendant arose from defendant's deliberate violation of the provisions of the PCHC Rule Book, Sec. 25.3, specifically on Under-Encoding of check amounting to P1,000,000.00 drawn upon defendant's Tondo Branch which was deposited with plaintiff, which was erroneously encoded at P1,000.00 which defendant as the receiving bank thereof, never called nor notified the plaintiff of the error committed thus causing actual losses to plaintiff in the principal amount of P999,000.00 exclusive of opportunity losses and interest.

Union Bank filed a complaint against Allied Bank before the PCHC Arbitration Committee (Arbicom), praying that judgment be rendered in favor of plaintiff against defendant sentencing it to pay plaintiff: The sum of P999,000.00, and other damages. Petitioner's theory is that private respondent Allied Bank should have informed petitioner of the under-encoding pursuant to the provisions of Section 25.3.1 of the PCHC Handbook. Failing in that duty, petitioner holds private respondent directly liable for the P999,000.00 and other damages.

Union Bank filed in the RTC of Makati a petition for the examination of Account No. 111-01854-8. Judgment on the arbitration case was held in abeyance pending the resolution of said petition.

RTC dismissed the petition. It held that the case of the herein petitioner does not fall under any of the foregoing exceptions to warrant a disclosure of or inquiry into the ledgers/books of account of Allied Checking Account No. 111-01854-8. Needless to say, the complaint filed by herein petitioner against Allied Banking Corporation before the PCHC Arbitration Committee and is not one for bribery or dereliction of duty of public officials much less is there any showing that the subject matter thereof is the money deposited in the account in question.

The Court of Appeals affirmed the dismissal of the petition, ruling that the case was not one where the money deposited is the subject matter of the litigation.

Hence, Union Bank is now before this Court insisting that the money deposited in Account No. 0111-01854-8 is the subject matter of the litigation which warrants the examination of the bank deposits.

ISSUES

Whether or not the case at bar falls under the last exception on Secrecy of Bank Deposits

RULING

No, it does not fall under the last exception.

Sec. 2 of the Law on Secrecy of Bank Deposits, as amended, declares bank deposits to be "absolutely confidential" except

(1) In an examination made in the course of a special or general examination of a bank that is specifically authorized by the Monetary Board after being satisfied that there is reasonable ground to believe that a bank fraud or serious irregularity has been or is being committed and that it is necessary to look into the deposit to establish such fraud or irregularity,

(2) In an examination made by an independent auditor hired by the bank to conduct its regular audit provided that the examination is for audit purposes only and the results thereof shall be for the exclusive use of the bank,

(3) Upon written permission of the depositor,

(4) In cases of impeachment,

(5) Upon order of a competent court in cases of bribery or dereliction of duty of public officials, or

(6) In cases where the money deposited or invested is the subject matter of the litigation.

In the case at bar, petitioner is only fishing for information so it can determine the culpability of private respondent and the amount of damages it can recover from the latter. It appears that the true purpose for the examination is to aid petitioner in proving the extent of Allied Bank's liability.

It does not seek recovery of the very money contained in the deposit. The subject matter of the dispute may be the amount of P999,000.00 that petitioner seeks from private respondent as a result of the latter's alleged failure to inform the former of the discrepancy; but it is not the P999,000.00 deposited in the drawer's account. By the terms of R.A. No. 1405, the "money deposited" itself should be the subject matter of the litigation.

That petitioner feels a need for such information in order to establish its case against private respondent does not, by itself, warrant the examination of the bank deposits. The necessity of the inquiry, or the lack thereof, is immaterial since the case does not come under any of the exceptions allowed by the Bank Deposits Secrecy Act.

8. Deposits Covered

Intengan vs. Court of Appeals, G.R. No. 128996, February 15, 2002

CARMEN LL. INTENGAN, ROSARIO LL. NERI, and RITA P. BRAWNER, petitioners, vs. COURT OF APPEALS, DEPARTMENT OF JUSTICE, AZIZ RAJKOTWALA, WILLIAM FERGUSON, JOVEN REYES, and VIC LIM, respondents.

G.R. No. 128996, SECOND DIVISION, February 15, 2002, Justice De Leon, Jr.

The accounts in question are U.S. dollar deposits; consequently, the applicable law is not Republic Act No. 1405 but Republic Act (RA) No. 6426, known as the Foreign Currency Deposit Act of the Philippines. Under R.A. No. 6426 there is only a single exception to the secrecy of foreign currency deposits, that is, disclosure is allowed only upon the written permission of the depositor.

FACTS

Citibank filed a complaint for violation of section 31, in relation to section 144of the Corporation Code against two (2) of its officers, Dante L. Santos and MarilouGenuino. Attached to the complaint was an affidavitexecuted by private respondent Vic Lim, a vice-president of Citibank. According to

Lim, the two with the use of two (2) companies in which they have personal financial interest, namely Torrance Development Corporation and Global Pacific Corporation, managed or caused existing bank clients/depositors to divert their money from Citibank, N.A., such as those placed in peso and dollar deposits and money placements, to products offered by other companies that were commanding higher rate of yields. This was done by first transferring bank clients monies to Torrance and Global which in turn placed the monies of the bank clients in securities, shares of stock and other certificates of third parties. It also appeared that out of these transactions, Mr. Dante L. Santos and Ms.MarilouGenuino derived substantial financial gains.

As evidence, Lim annexed bank records purporting to establish the deception practiced by Santos and Genuino. Some of the documents pertained to the dollar deposits of petitioners.

The Assistant Provincial Prosecutor recommended the dismissal of petitioners complaints. The recommendation was overruled by Provincial Prosecutor, directing the filing of informations against private respondents for alleged violation of Republic Act No. 1405, otherwise known as the Bank Secrecy Law. Private respondents counsel then filed an appeal before the Department of Justice (DOJ).

DOJ Secretary Franklin M. Drilon issued a Resolution ordering, the withdrawal of the aforesaid informations against private respondents. Petitioners motion for reconsideration was denied by DOJ. Initially, petitioners sought the reversal of the DOJ resolutions *via* a petition for *certiorari* and *mandamus* filed with the Supreme Court. However, the former First Division of the Court referred the matter to the Court of the Appeals, on the basis of the latter tribunals concurrent jurisdiction to issue the extraordinary writs therein prayed for.

The Court of Appeals rendered judgment dismissing the petition. According to the CA the disclosure of petitioners deposits was necessary to establish the allegation that Santos and Genuino had violated Section 31 of the Corporation Code in acquiring any interest adverse to the corporation in respect of any matter which has been reposed in him in confidence. Petitioners motion for reconsideration was similarly denied. Hence, petitioners filed a petition for review on *certiorari*, seeking the reversal of the decision of the Court of Appeals

ISSUE

Whether or not private respondents violated R.A. NO. 1405?

RULING

No, they did not. A case for violation of *Republic Act No. 6426* should have been the proper case brought against private respondents. Private respondents Lim and Reyes admitted that they had disclosed details of petitioners dollar deposits *without the latters written permission*. It does not matter if that such disclosure was necessary to establish Citibanks case against Dante L. Santos and MarilouGenuino.

The accounts in question are U.S. dollar deposits; consequently, the applicable law is *not Republic Act No. 1405* but *Republic Act (RA) No. 6426*, known as the Foreign Currency Deposit Act of the Philippines.

Under R.A. No. 6426 there is only a *single* exception to the secrecy of foreign currency deposits, that is, disclosure is allowed only upon the written permission of the depositor. Incidentally, the acts of private respondents complained of happened before the enactment on September 29, 2001 of R.A. No. 9160 otherwise known as the Anti-Money Laundering Act of 2001.

• Ejercito vs. Sandiganbayan, G.R. Nos. 157294-95, November 30, 2006

JOSEPH VICTOR G. EJERCITO, Petitioner, vs. SANDIGANBAYAN (Special Division) and PEOPLE OF THE PHILIPPINES, Respondents.

G.R. Nos. 157294-95, EN BANC, November 30, 2006, Carpio Morales, J

An examination of the law shows that the term "deposits" used therein is to be understood broadly and not limited only to accounts which give rise to a creditor-debtor relationship between the depositor and the bank.

The policy behind the law is laid down in Section 1. If the money deposited under an account may be used by banks for authorized loans to third persons, then such account, regardless of whether it creates a creditor-debtor relationship between the depositor and the bank, falls under the category of accounts which the law precisely seeks to protect for the purpose of boosting the economic development of the country.

Trust Account No. 858 is, without doubt, one such account. The Trust Agreement between petitioner and Urban Bank provides that the trust account covers "deposit, placement or investment of funds" by Urban Bank for and in behalf of petitioner. The money deposited under Trust Account No. 858, was, therefore, intended not merely to remain with the bank but to be invested by it elsewhere. To hold that this type of account is not protected by R.A. 1405 would encourage private hoarding of funds that could otherwise be invested by banks in other ventures, contrary to the policy behind the law.

FACTS

Three resolutions were issued in the Criminal Case, "People of the Philippines v. Joseph Ejercito Estrada, et al.," for plunder.

In said case, the Special Prosecution Panelfiled before the Sandiganbayan a Request for Issuance of Subpoena DucesTecum for the issuance of a subpoena directing the President of Export and Industry Bank (EIB, formerly Urban Bank) or his/her authorized representative to produce various documents during the hearings.

The Special Prosecution Panel also filed a Request for Issuance of Subpoena DucesTecum/Ad Testificandum directed to the authorized representative of Equitable-PCI Bank to produce statements of account pertaining to certain accounts in the name of "Jose Velarde" and to testify thereon.

The SB granted both requests and subpoenas were accordingly issued.

The Special Prosecution Panel filed still another Request for Issuance of Subpoena Duces Tecum/Ad Testificandum for the President of EIB or his/her authorized representative to produce the same documents subject of the first Subpoena DucesTecum and to testify thereon on the hearings scheduled and subsequent dates until completion of the testimony. The request was likewise granted by the Sandiganbayan.

Petitioner, unassisted by counsel, thus filed a Motion to Quash Subpoena DucesTecum/Ad Testificandum the subpoenas previously issued to the President of the EIB. In his Motion to Quash, petitioner claimed that his bank accounts are covered by R.A. No. 1405 (The Secrecy of Bank Deposits Law) and do not fall under any of the exceptions stated therein. He further claimed that the specific identification of documents in the questioned subpoenas, including details on dates and amounts, could only have been made possible by an earlier illegal disclosure thereof by the EIB and the Philippine Deposit Insurance Corporation (PDIC) in its capacity as receiver of the then Urban Bank.

Before the Motion to Quash was resolved by the Sandiganbayan, the prosecution filed another Request for the Issuance of Subpoena DucesTecum/Ad Testificandum, again to direct the President of the EIB to produce, on the hearings the same documents.

The prosecution also filed a Request for the Issuance of Subpoena DucesTecum/Ad Testificandum directed to Aurora C. Baldoz, Vice President-CR-II of the PDIC for her to produce the various documents. The subpoenas prayed for in both requests were issued by the Sandiganbayan.

The petitioner filed various motions to quash the various Subpoenas DucesTecum/Ad Testificandum previously issued, but were denied.

In connection with the Criminal Case for plunder, the Special Prosecution Panel filed before the Sandiganbayan a request for issuance of Subpoena DucesTecum/Ad Testificandum for the production of various documents relating to the said case. Resolutions have been issued by the Sandiganbayan granting the request. The petitioner filed for Motion to Quash; however, it was denied. Consequently, petitioner filed Motion for Reconsideration seeking a reconsideration of the Resolutions, but it was denied. Hence, the present petition for certiorari under Rule 65 assailing the Sandiganbayan Resolutions denying petitioner Joseph Victor G. Ejercito's Motions to Quash Subpoenas DucesTecum/Ad Testificandum, and Resolution denying his Motion for Reconsideration of the first two resolutions.

ISSUES

1. Whether or not petitioner's Trust Account No. 858 is covered by the term "deposit" as used in R.A. 1405;

2. Whether or not petitioner's Trust Account No. 858 and Savings Account No. 0116-17345-9 are protected by R.A. 1405; and

3. Whether or not the "extremely-detailed" information contained in the Special Prosecution Panel's requests for subpoena was obtained through a prior illegal disclosure of petitioner's bank accounts, in violation of the "fruit of the poisonous tree" doctrine.

RULING

1. Yes, trust account is covered by the term "deposit" as used in RA 1405.

An examination of the law shows that the term "deposits" used therein is to be understood broadly and not limited only to accounts which give rise to a creditor-debtor relationship between the depositor and the bank.

The policy behind the law is laid down in Section 1. If the money deposited under an account may be used by banks for authorized loans to third persons, then such account, regardless of whether it creates a creditor-debtor relationship between the depositor and the bank, falls under the category of accounts which the law precisely seeks to protect for the purpose of boosting the economic development of the country.

Trust Account No. 858 is, without doubt, one such account. The Trust Agreement between petitioner and Urban Bank provides that the trust account covers "deposit, placement or investment of funds" by Urban Bank for and in behalf of petitioner. The money deposited under Trust Account No. 858, was, therefore, intended not merely to remain with the bank but to be invested by it elsewhere. To hold that this type of account is not protected by R.A. 1405 would encourage private hoarding of funds that could otherwise be invested by banks in other ventures, contrary to the policy behind the law.

Section 2 of the same law in fact even more clearly shows that the term "deposits" was intended to be understood broadly. The phrase "of whatever nature" proscribes any restrictive interpretation of "deposits." Moreover, it is clear from the immediately quoted provision that, generally, the law applies not only to money which is deposited but also to those which are invested. This further shows that the law was not intended to apply only to "deposits" in the strict sense of the word. Otherwise, there would have been no need to add the phrase "or invested."

Clearly, therefore, R.A. 1405 is broad enough to cover Trust Account No. 858.

2. No, it is not protected by such law.

Petitioner contends that since plunder is neither bribery nor dereliction of duty, his accounts are not excepted from the protection of R.A. 1405. The Court disagrees. Cases for plunder involve unexplained wealth.

Furthermore, cases of unexplained wealth are similar to cases of bribery or dereliction of duty and no reason is seen why these two classes of cases cannot be excepted from the rule making bank deposits confidential. The policy as to one cannot be different from the policy as to the other. This policy expresses the notion that a public office is a public trust and any person who enters upon its discharge does so with the full knowledge that his life, so far as relevant to his duty, is open to public scrutiny.

The crime of bribery and the overt acts constitutive of plunder are crimes committed by public officers, and in either case the noble idea that "a public office is a public trust and any person who enters upon its discharge does so with the full knowledge that his life, so far as relevant to his duty, is open to public scrutiny" applies with equal force.

Plunder being thus analogous to bribery, the exception to R.A. 1405 applicable in cases of bribery must also apply to cases of plunder.

3. No, the application of fruit of poisonous tree doctrine is misplaced.

Petitioner relies on *Marquez v. Desierto* where the Court held:

We rule that before an in camera inspection may be allowed <u>there must be a pending case before a</u> <u>court of competent jurisdiction</u>. Further, the account must be clearly identified, the inspection limited to the subject matter of the pending case before the court of competent jurisdiction. The bank personnel and <u>the account holder must be notified to be present during the inspection</u>, and such inspection may cover only the account identified in the pending case. (Underscoring supplied) As no plunder case against then President Estrada had yet been filed before a court of competent jurisdiction at the time the Ombudsman conducted an investigation, petitioner concludes that the information about his bank accounts were acquired illegally, hence, it may not be lawfully used to facilitate a subsequent inquiry into the same bank accounts.

Petitioner's attempt to make the exclusionary rule applicable to the instant case fails. R.A. 1405, it bears noting, nowhere provides that an unlawful examination of bank accounts shall render the evidence obtained therefrom inadmissible in evidence. Section 5 of R.A. 1405 only states that "[a]ny violation of this law will subject the offender upon conviction, to an imprisonment of not more than five years or a fine of not more than twenty thousand pesos or both, in the discretion of the court." Even assuming *arguendo*, however, that the exclusionary rule applies in principle to cases involving R.A. 1405, the Court finds no reason to apply the same in this particular case.

Clearly, the "fruit of the poisonous tree" doctrine presupposes a violation of law. If there was no violation of R.A. 1405 in the instant case, then there would be no "poisonous tree" to begin with, and, thus, no reason to apply the doctrine.

IN SUM, the Court finds that the Sandiganbayan did not commit grave abuse of discretion in issuing the challenged subpoenas for documents pertaining to petitioner's Trust Account No. 858 and Savings Account No. 0116-17345-9 for the following reasons:

1. These accounts are no longer protected by the Secrecy of Bank Deposits Law, there being two exceptions to the said law applicable in this case, namely: (1) the examination of bank accounts is upon order of a competent court in cases of bribery or dereliction of duty of public officials, and (2) the money deposited or invested is the subject matter of the litigation. Exception (1) applies since the plunder case pending against former President Estrada is analogous to bribery or dereliction of duty, while exception (2) applies because the money deposited in petitioner's bank accounts is said to form part of the subject matter of the same plunder case.

2. The "fruit of the poisonous tree" principle, which states that once the primary source (the "tree") is shown to have been unlawfully obtained, any secondary or derivative evidence (the "fruit") derived from it is also inadmissible, does not apply in this case. In the first place, R.A. 1405 does not provide for the application of this rule. Moreover, there is no basis for applying the same in this case

since the primary source for the detailed information regarding petitioner's bank accounts – the investigation previously conducted by the Ombudsman – was lawful.

3. At all events, even if the subpoenas issued by the Sandiganbayan were quashed, the Ombudsman may conduct on its own the same inquiry into the subject bank accounts that it earlier conducted last February-March 2001, there being a plunder case already pending against former President Estrada. To quash the challenged subpoenas would, therefore, be pointless since the Ombudsman may obtain the same documents by another route. Upholding the subpoenas avoids an unnecessary delay in the administration of justice.

• Sibayan v. Alda, G.R. No. 233395, [January 17, 2018]

SIBAYAN V. ALDA G.R. No. 233395, January 17, 2018 THIRD DIVISION, Velasco, Jr., J.

The denial of the motion for production of bank documents is justified as the bank accounts sought to be examined are privileged. Section 2 of Republic Act No. 1405, otherwise known as The Law on Secrecy of Bank Deposit, provides that all deposits of whatever nature with banks or banking institutions in the Philippines may not be examined, inquired or looked into by any person, government official, bureau or office, except upon written permission of the depositor, among others.

In fine, the OGCLS-BSP's issuance of the assailed orders did not violate Norlina's right to due process and was in accord with the summary nature of administrative proceedings before the BSP. The opportunity accorded to Norlina was enough to comply with the requirements of due process in an administrative case. The formalities usually attendant in court hearings need not be present in an administrative investigation, as long as the parties are heard and given the opportunity to adduce their respective sets of evidence.

FACTS

Respondent Elizabeth, through her daughter Ruby O. Aida (Ruby) charged Norlina of unauthorized deduction of her BDO Savings Account as well as for failure to post certain check deposits to the said accountwith the Office of Special Investigation of the Bangko Sentral ng Pilipinas (OSI-BSP). Norlina argued that the charges were only meant to harass her and BDO as Norlina previously filed a criminal case against Elizabeth, Ruby, and their cohorts, for theft, estafa, and violation of the Access Devise Regulation Act of 1998.

Meanwhile, during the investigation, parties submitted their respective pleadings. The OSI-BSP issued a Resolution finding a *prima facie* case against Norlina for Conducting Business in an Unsafe or Unsound Manner under The General Banking Law of 2000. OGCLS-BSP then directed Norlina to submit her sworn answer to the formal charge filed by the OSI-BSP.

Norlina then filed a Request to Answer Written Interrogatories addressed to Elizabeth. She likewise filed a Motion for Production of Documents praying that the bank to allow her inspect and copy the Statement of Account of Ruby. She alleged that Ruby is the legal and beneficial owner of said account in connection to the earlier case of theft Norlina filed against the her.

Unfortunately, the Motion for Production of Bank Documents filed by the Norlina is denied. Norlina counter-argued that the examination is exempted from the rule on secrecy of bank deposit because the money deposited in the subject bank accounts is the subject matter of litigation.

OGCLS-BSP rules otherwise. It said that the present action is an administrative proceeding aimed at determining respondent's liability, if any, for violation of banking laws and that a deposit account may only be examined or looked into if it is the subject matter of a pending litigation.

ISSUE

Whether or not the bank account sought to be examined is privileged under Section 2 of Republic Act No. 1405, otherwise known as The Law on Secrecy of Bank Deposit

RULING

YES. The denial of the motion for production of bank documents pertaining to the statement of account of Ruby is justified as the bank accounts sought to be examined are privileged. Section 2 of Republic Act No. 1405, otherwise known as The Law on Secrecy of Bank Deposit, provides:

Section 2. All deposits of whatever nature with banks or banking institutions in the Philippines including investments in bonds issued by the Government of the Philippines, its political subdivisions and its instrumentalities, are hereby considered as of an absolutely confidential nature and may not be examined, inquired or looked into by any person, government official, bureau or office, except upon written permission of the depositor, or in cases of impeachment, or upon order of a competent court in cases of bribery or dereliction of duty of public officials, or in cases where the money deposited or invested is the subject matter of the litigation.

Norlina bemoans that by suppressing her right to avail of discovery measures, the OGCLS-BSP violated her right to due process. She maintains that the administrative character of the proceedings involved is not sufficient to defeat such right.

Administrative due process cannot be fully equated with due process in its strict judicial sense. It is enough that the party is given the chance to be heard before the case against him is decided. As established by the facts, Norlina was afforded the opportunity to be heard and to explain her side before the OGCLS-BSP. She was allowed to submit her answer and all documents in support of her defense. In fact, her defense of fraud committed by Ruby is sufficiently contained in the pleadings and attachments submitted by the parties to aid the OGCLSBSP in resolving the case before it. Clearly then, the Requests to Answer Written Interrogatories and Motion for Production of Documents were both unnecessary and improper

9. Exceptions

• PNB vs. Gancayco, 15 SCRA 91 (1965)

PHILIPPINE NATIONAL BANK and EDUARDO Z. ROMUALDEZ, in his capacity as President of the Philippine National Bank, plaintiffs-appellants, plaintiffs-appellants, vs. EMILIO A. GANCAYCO and FLORENTINO FLOR, Special Prosecutors of the Dept. of Justice, defendantsappellees

G.R. No. L-18343, EN BANC, September 30, 1965, Regala, J.

Section 8 of the Anti-Graft Law is intended to amend section 2 of Republic Act No. 1405 by providing additional exception to the rule against the disclosure of bank deposits.

FACTS

Defendants Emilio A. Gancayco and Florentino Flor, as special prosecutors of the Department of Justice, required the plaintiff Philippine National Bank to produce at a hearing the records of the bank deposits of Ernesto T. Jimenez, former administrator of the Agricultural Credit and Cooperative Administration, who was then under investigation for unexplained wealth. Plaintiff declined and invoked Republic Act No. 1405. On the other hand, the defendants cited the Anti-Graft and Corrupt Practices Act (Republic Act No. 3019) in support of their claim of authority. Because of the threat of prosecution, plaintiffs filed an action for declaratory judgment in the Manila Court of First Instance.

After trial, the court rendered judgment, sustaining the power of the defendants to compel the disclosure of bank accounts of Jimenez. The court said that, by enacting section 8 of, the Anti-Graft and Corrupt Practices Act, Congress clearly intended to provide an additional ground for the examination of bank deposits.

From that judgment, plaintiffs appealed to the Supreme Court. Plaintiff argued that section 8 of the Anti-Graft Law "simply means that such bank deposits may be included or added to the assets of the Government official or employee for the purpose of computing his unexplained wealth if and when the same are discovered or revealed in the manner authorized by Section 2 of Republic Act 1405, which are (1) Upon written permission of the depositor; (2) In cases of impeachment; (3) Upon order of a competent court in cases of bribery or dereliction of duty of public officials; and (4) In cases where the money deposited or invested is the subject matter of the litigation."

In support of their position, plaintiffs contended, first, that the Anti-Graft Law (which took effect on August 17, 1960) is a general law which cannot be deemed to have impliedly repealed section 2 of Republic Act No. 1405 (which took effect on Sept. 9, 1955), because of the rule that repeals by implication are not favored. Second, they argue that to construe section 8 of the Anti-Graft Law as allowing inquiry into bank deposits would be to negate the policy expressed in section 1 of Republic Act No. 1405 which is "to give encouragement to the people to deposit their money in banking institutions and to discourage private hoarding so that the same may be utilized by banks in authorized loans to assist in the economic development of the country."

ISSUES

- 1. Whether or not Anti-Graft Law amended Section 2 of Republic Act No. 1405?
- 2. Whether or not the disclosure of the bank deposit would be contrary to the policy, making
- 3. bank deposits confidential?

RULING

1. Yes, section 8 of the Anti-Graft Law is intended to amend section 2 of Republic Act No. 1405 by providing additional exception to the rule against the disclosure of bank deposits.

2.

The truth is that these laws are so repugnant to each other than no reconciliation is possible. Thus, while Republic Act No. 1405 provides that bank deposits are "absolutely confidential ... and [therefore] may not be examined, inquired or looked into," except in those cases enumerated therein, the Anti-Graft Law directs in mandatory terms that bank deposits "shall be taken into consideration in the enforcement of this section, notwithstanding any provision of law to the contrary."

Indeed, it is said that if the new law is inconsistent with or repugnant to the old law, the presumption against the intent to repeal by implication is overthrown because the inconsistency or repugnancy reveals an intent to repeal the existing law.

3. No, cases of unexplained wealth are similar to cases of bribery or dereliction of duty and no reason is seen why these two classes of cases cannot be excepted from the rule making bank deposits confidential. The policy as to one cannot be different from the policy as to the other. This policy express the motion that a public office is a public trust and any person who enters upon its discharge does so with the full knowledge that his life, so far as relevant to his duty, is open to public scrutiny.

Banco Filipino Saving and Mortgage Bank vs. Purisima, 161 SCRA 576 (1988)

BANCO FILIPINO SAVINGS AND MORTGAGE BANK, petitioner, vs. HON. FIDEL PURISIMA, etc., and HON. VICENTE ERICTA and JOSE DEL FIERO, etc., respondents.

G.R. No. L-56429, FIRST DIVISION, May 28, 1988, Narvasa, J.

While Republic Act No. 1405 provides that bank deposits are "absolutely confidential and may not be examined, inquired or looked into," except in those cases enumerated therein, the Anti-Graft Law directs in mandatory terms that bank deposits "shall be taken into consideration in the enforcement of this section, notwithstanding any provision of law to the contrary." The only conclusion possible is that section 8 of the Anti-Graft Law is intended to amend section 2 of Republic Act No. 1405 by providing an additional exception to the rule against the disclosure of bank deposits

FACTS

The Customs special agent involved is Manuel Caturla, and the accusation against him was filed by the Bureau of Internal Revenue. The *Tanodbayan* issued a subpoena ducestecum to the Banco Filipino Savings & Mortgage Bank, commanding its representative to appear at a specified time at the Office of the Tanodbayan and furnish the latter with duly certified copies of the records in all its branches and extension offices, of the loans, savings and time deposits and other banking transactions, dating back to 1969, appearing in the names of Caturla, his wife, PuritaCaturla, and their children Manuel, Jr., Marilyn and Michael and/or Pedro Escuyos.

Caturla moved to quash the subpoena ducestecum arguing that compliance therewith would result in a violation of Sections 2 and 3 of the Law on Secrecy of Bank Deposits.

Tanodbayan Vicente Ericta not only denied the motion for lack of merit, and directed compliance with the subpoena, but also expanded its scope through a second subpoena ducestecum, this time requiring production by Banco Filipino of the bank records in all its branches and extension offices, of Siargao Agro-Industrial Corporation, Pedro Escuyos or his wife, EmeterioEscuyos, PuritaCaturla, Lucia Escuyos or her husband, Romeo Escuyos, Emerson Escuyos, FraternoCaturla, AmparoMontilla, Cesar Caturla, Manuel Caturla or his children, Manuel Jr., Marilyn and Michael, LTD Pub/Restaurant, and Jose Buo or his wife, Evelyn. Two other subpoena of substantially the same tenor as the second were released by the *Tanodbayan*'s Office. The last required obedience under sanction of contempt.

The Banco Filipino Savings & Mortgage Bank filed a complaint for declaratory relief with the Court of First Instance of Manila, which was assigned by raffle to the *sala* of respondent Judge Fidel Purisima. BF Bank prayed for a judicial declaration as to whether its compliance with the subpoenae *ducestecum* would constitute an infringement of the provisions of Sections 2 and 3 of R.A. No. 1405 in relation to Section 8 of R.A. No. 3019. It also asked that pending final resolution of the question, the *Tanodbayan* be provisionally restrained from exacting compliance with the *subpoenae*.

Respondent Judge Purisima issued an Order denying for lack of merit the application by BF Bank for a preliminary injunction and/or restraining order. This Order is impugned in the instant certiorari action instituted by BF Bank before this Court, as having been issued with grave abuse of discretion, amounting to lack of jurisdiction

ISSUES

(1) Whether or not the "Law on Secrecy of Bank Deposits" precludes production by subpoena *ducestecum* of bank records of transactions by or in the names of the wife, children and friends of a special agent of the Bureau of Customs, accused before the *Tanodbayan* of having allegedly acquired property manifestly out of proportion to his salary and other lawful income, in violation of the "Anti-Graft and Corrupt Practices Act."

RULING

NO. While Republic Act No. 1405 provides that bank deposits are "absolutely confidential and may not be examined, inquired or looked into," except in those cases enumerated therein, the Anti-Graft Law directs in mandatory terms that bank deposits "shall be taken into consideration in the enforcement of this section, *notwithstanding* any provision of law to the contrary." The only conclusion possible is that section 8 of the Anti-Graft Law is intended to amend section 2 of Republic Act No. 1405 by providing an additional exception to the rule against the disclosure of bank deposits:

... Cases of unexplained wealth are similar to cases of bribery or dereliction of duty and no reason is seen why these two classes of cases cannot be excepted from the rule making bank deposits confidential. The policy as to one cannot be different from the policy as to the

other. This policy expresses the notion that a public office is a public trust and any person who enters upon its discharge does so with the full knowledge that his life, so far as relevant to his duty, is open to public scrutiny.

The inquiry into illegally acquired property — or property NOT "legitimately acquired" — extends to cases where such property is concealed by being held by or recorded in the name of other persons. This proposition is made clear by R.A. No. 3019 which quite categorically states that the term, "legitimately acquired property of a public officer or employee shall not include property unlawfully acquired by the respondent, but its ownership is concealed by its being recorded in the name of, or held by, respondent's spouse, ascendants, descendants, relatives or any other persons." To sustain the petitioner's theory, and restrict the inquiry only to property held by or in the name of the government official or employee, or his spouse and unmarried children is unwarranted in the light of the provisions of the statutes in question, and would make available to persons in government who illegally acquire property an easy and fool-proof means of evading investigation and prosecution; all they would have to do would be to simply place the property in the possession or name of persons other than their spouse and unmarried children. This is an absurdity that we will not ascribe to the lawmakers. The power of the Tanodbayan to issue subpoenae ad *testificandcum* and subpoenae *ducestecum* at the time in question is not disputed, and at any rate does not admit of doubt. The subpoenae issued by him, will be sustained against the petitioner's impugnation.

RCBC vs. De Castro, G.R. No. L-34548, November 29, 1988

RIZAL COMMERCIAL BANKING CORPORATION, petitioner, vs. THE HONORABLE PACIFICO P. DE CASTRO and PHILIPPINE VIRGINIA TOBACCO ADMINISTRATION, respondents. G.R. No. L-34548, THIRD DIVISION, November 29, 1988, Cortes, /

RCBC cannot therefore be compelled to make restitution solidarily with the plaintiff BADOC. Plaintiff BADOC alone was responsible for the issuance of the Writ of Execution and Order of Payment and so, the plaintiff alone should bear the consequences of a subsequent annulment of such court orders; hence, only the plaintiff can be ordered to restore the account of the PVTA.

FACTS

In the Civil Case "Badoc Planters, Inc. versus Philippine Virginia Tobacco Administration, et al.," which was an action for recovery of unpaid tobacco deliveries, an Order (Partial Judgment) was issued by the Hon. Lourdes P. San Diego, then Presiding Judge, ordering the defendants therein to pay jointly and severally, the plaintiff Badoc Planters, Inc. within 48 hours the aggregate amount of P206,916.76, with legal interests thereon.

BADOC filed an Urgent Ex-Parte Motion for a Writ of Execution of the said Partial Judgment which was granted on the same day by the herein respondent judge who acted in place of the Hon. Judge San Diego who had just been elevated as a Justice of the Court of Appeals. Accordingly, the Branch Clerk of Court on the very same day, issued a Writ of Execution addressed to Special Sheriff Faustino Rigor, who then issued a Notice of Garnishment addressed to the General Manager and/or Cashier of RCBC.

Upon an Urgent Ex-Parte Motion filed by BADOC, the respondent Judge issued an Order granting the Ex-Parte Motion and directing the herein petitioner "to deliver in check the amount garnished to Sheriff Faustino Rigor and Sheriff Rigor in turn is ordered to cash the check and deliver the amount to the plaintiff's representative and/or counsel on record."

Respondent PVTA filed a Motion for Reconsideration which was granted in an Order, setting aside the Orders of Execution and of Payment and the Writ of Execution and ordering petitioner and BADOC "to restore, jointly and severally, the account of PVTA with the said bank in the same condition and state it was before the issuance of the aforesaid Orders by reimbursing the PVTA of the amount of P 206, 916.76 with interests at the legal rate.

Initially, respondent judge granted the garnishment of the funds of PVTA by virtue of the Urgent Exparte motion filed by BADOC. However, upon motion for reconsideration by PVTA, the respondent judge set aside the orders of execution. This caused the petitioner to file a motion for reconsideration but it was denied. Petitioner then filed a Notice of Appeal to the CA. this case was then certified by the CA to this Honorable Court, involving as it does purely questions of law.

ISSUES

1. Whether or not PVTA funds are public funds not subject to garnishment;

2. Whether or not the respondent Judge correctly ordered the herein petitioner to reimburse the amount paid to the Special Sheriff by virtue of the execution issued pursuant to the Order/Partial Judgment dated January 15, 1970

RULING

1. The Court holds that they are not.

Republic Act No. 2265 created the PVTA as an ordinary corporation with all the attributes of a corporate entity subject to the provisions of the Corporation Law. Hence, it possesses the power "to sue and be sued" and "to acquire and hold such assets and incur such liabilities resulting directly from operations authorized by the provisions of this Act or as essential to the proper conduct of such operations." [Section 3, Republic Act No. 2265.]

Among the specific powers vested in the PVTA are: 1) to buy Virginia tobacco grown in the Philippines for resale to local bona fide tobacco manufacturers and leaf tobacco dealers [Section 4(b), R.A. No. 2265]; 2) to contracts of any kind as may be necessary or incidental to the attainment of its purpose with any person, firm or corporation, with the Government of the Philippines or with any foreign government, subject to existing laws [Section 4(h), R.A. No. 22651; and 3) generally, to exercise all the powers of a corporation under the Corporation Law, insofar as they are not inconsistent with the provisions of this Act [Section 4(k), R.A. No. 2265.]

From the foregoing, it is clear that PVTA has been endowed with a personality distinct and separate from the government which owns and controls it. Accordingly, this Court has heretofore declared that the funds of the PVTA can be garnished since "funds of public corporation which can sue and be sued were not exempt from garnishment"

2. No. Petitioner cannot be held solidarily liable with BADOC for the reimbursement of the garnished funds.

It is contended that RCBC was bound to inquire into the legality and propriety of the Writ of Execution and Notice of Garnishment issued against the funds of the PVTA deposited with said bank. But the bank was in no position to question the legality of the garnishment since it was not even a party to the case. As correctly pointed out by the petitioner, it had neither the personality nor the interest to assail or controvert the orders of respondent Judge. It had no choice but to obey the same inasmuch as it had no standing at all to impugn the validity of the partial judgment rendered in favor of the plaintiff or of the processes issued in execution of such judgment.

RCBC cannot therefore be compelled to make restitution solidarily with the plaintiff BADOC. Plaintiff BADOC alone was responsible for the issuance of the Writ of Execution and Order of Payment and so, the plaintiff alone should bear the consequences of a subsequent annulment of such court orders; hence, only the plaintiff can be ordered to restore the account of the PVTA.

Mellon Bank, N.A. vs. Magsino, G.R. No. 71479, October 18, 1990

MELLON BANK, N.A., petitioner, vs.HON. CELSO L. MAGSINO, in his capacity as Presiding Judge of Branch CLIX of the Regional Trial Court at Pasig; MELCHOR JAVIER, JR., VICTORIA JAVIER; HEIRS OF HONORIO POBLADOR, JR., namely: Elsa AlunanPoblador, HonorioPoblador III, Rafael Poblador, Manuel Poblador, Ma. Regina Poblador, Ma. Concepcion Poblador& Ma. Dolores Poblador; F.C. HAGEDORN & CO., INC.; DOMINGO JHOCSON, JR.; JOSE MARQUEZ; ROBERTO GARINO; ELNOR INVESTMENT CO., INC.; PARAMOUNT FINANCE CORPORATION; RAFAEL CABALLERO; and TRI-ARC INVESTMENT and MANAGEMENT CO., INC. respondents. G.R. No. 71479, THIRD DIVISION, October 18, 1990, FERNAN, C.J.

Section 2 of said law allows the disclosure of bank deposits in cases where the money deposited is the subject matter of the litigation. Inasmuch as Civil Case No. 26899 is aimed at recovering the amount converted by the Javiers for their own benefit, necessarily, an inquiry into the whereabouts of the illegally acquired amount extends to whatever is concealed by being held or recorded in the name of persons other than the one responsible for the illegal acquisition.

FACTS

Dolores Ventosa requested the transfer of \$1,000 from the First National Bank of Moundsville, West Virginia, U.S.A. to Victoria Javier in Manila through the Prudential Bank.

Accordingly, the First National Bank requested the petitioner, Mellon Bank, to effect the transfer. Unfortunately, the wire sent by Mellon Bank to Manufacturers Hanover Bank, a correspondent of Prudential Bank, indicated the amount transferred as "US\$1,000,000.00" instead of US\$1,000.00. Hence Manufacturers Hanover Bank transferred one million dollars less bank charges of \$ 6.30 to the Prudential Bank for the account of Victoria Javier.

Javier opened a new dollar account in the Prudential Bank and deposited \$999,943.70. Victoria Javier and her husband, Melchor Javier, Jr., made withdrawals from the account, deposited them in

several banks only to withdraw them later in an apparent plan to conceal, "launder" and dissipate the erroneously sent amount.

Javier withdrew \$475,000 from account No. 343 and converted it into eight cashier's checks made out to the following: (a) F.C. Hagedorn& Co., Inc., two cheeks for the total amount of P1,000,000; (b) Elnor Investment Co., Inc., two checks for P1,000,000; (c) Paramount Finance Corporation, two checks for P1,000,000; and (d) M. Javier, Jr., two checks for P496,000. The first six checks were delivered to Jose Marquez and HonorioPoblador, Jr.

Mellon Bank also filed in the Court of First Instance of Rizal, a complaint against the Javier spouses, HonorioPoblador, Jr., Domingo L. Jhocson, Jr., Jose Marquez, Roberto Gariño, Elnor Investment Co., Inc., F.C. Hagedorn& Co., Inc. and Paramount Finance Corporation. After its amendment, Rafael Caballero and Tri-Arc Investment & Management Company, Inc. were also named defendants.

It prayed that: (a) the Javiers, Poblador, Elnor, Jhocson and Gariño be ordered to account for and pay jointly and severally unto the plaintiff US\$999,000.00 plus increments, additions, fruits and interests earned by the funds from receipt thereof until fully paid; (b) the other defendants be ordered to account for and pay unto the plaintiff jointly and severally with the Javiers to the extent of the amounts which each of them may have received directly or indirectly from the US\$999,000.00 plus increments, additions, fruits and interests; (c) Marquez be held jointly and severally liable with Poblador for the amount received by the latter for the sale of the 160-acre lot in California City; and (d) defendants be likewise held liable jointly and severally for attomey's fees and litigation expenses plus exemplary damages.

Mellon Bank traced these checks to Account 2825-1 of the Philippine Veterans Bank in the name of CiprianoAzada, Poblador's law partner and counsel to the Javiers.

Mellon Bank then subpoenaed ErlindaBaylosis of the Philippine Veterans Bank to show that Azada deposited HSBC checks No. 339736 and 339737 amounting to P874,490.75 in his personal current account with said bank. It also subpoenaed Pilologo Red, Jr. of Hongkong& Shanghai Banking Corporation to prove that said amount was returned by Azada to Hagedorn.

The testimonies of these witnesses were objected to by the defense on the grounds of *res inter aliosacta*, immateriality, irrelevancy and confidentiality. The defendants then moved to strike off the testimonies of Baylosis and Red from the record.

ISSUE

Whether or not disclosure of bank deposits in cases where the money is the subject matter of litigation violates RA 1405.

RULING

NO. Private respondents' protestations that to allow the questioned testimonies to remain on record would be in violation of the provisions of Republic Act No. 1405 on the secrecy of bank deposits, is unfounded.

Section 2 of said law allows the disclosure of bank deposits in cases where the money deposited is the subject matter of the litigation. Inasmuch as Civil Case No. 26899 is aimed at recovering the amount converted by the Javiers for their own benefit, necessarily, an inquiry into the whereabouts of the illegally acquired amount extends to whatever is concealed by being held or recorded in the name of persons other than the one responsible for the illegal acquisition.

• PCIB vs. Court of Appeals, G.R. No. 84526, January 28, 1991

PHILIPPINE COMMERCIAL & INDUSTRIAL BANK and JOSE HENARES, petitioners, vs. THE HON. COURT OF APPEALS and MARINDUQUE MINING AND INDUSTRIAL CORPORATION, respondents.

G.R. No. 84526, SECOND DIVISION, January 28, 1991, SARMIENTO, J.

Since there is no evidence that the petitioners themselves divulged the information that the private respondent had an account with the petitioner bank and it is undisputed that the said account was properly the object of the notice of garnishment and writ of execution carried out by the deputy sheriff, a duly authorized officer of the court, we can not therefore hold the petitioners liable under R.A. 1405.

FACTS

The instant case originated from an action filed with the National Labor Relations Commission (NLRC) by a group of laborers who obtained therefrom a favorable judgment for the payment of backwages amounting to P205,853.00 against the private respondent.

The Commission issued a writ of execution directing the Deputy Sheriff of Negros Occidental, one Damian Rojas, to enforce the aforementioned judgment.

Accordingly, the aforenamed deputy sheriff went to the mining site of the private respondent and served the writ of execution on the persons concerned, but nothing seemed to have happened thereat.

Thereafter, the Sheriff prepared on his own a Notice of Garnishment addressed to six (6) banks, all located in Bacolod City, one of which being the petitioner herein, directing the bank concerned to immediately issue a check in the name of the Deputy Provincial Sheriff of Negros Occidental in an amount equivalent to the amount of the garnishment and that proper receipt would be issued therefor.

The deputy sheriff presented the Notice of Garnishment and the Writ of Execution attached therewith to the petitioner Henares and demanded from the latter, under pain of contempt, the release of the deposit of the private respondent.

Petitioner Henares, upon knowing from the Acting Provincial Sheriff that there was no restraining order from the National Labor Relations Commission and on the favorable advice of the bank's legal counsel, issued a debit memo for the full balance of the private respondent's account with the petitioner bank. Thereafter, he issued a manager's check in the name of the Deputy Provincial Sheriff of Negros Occidental.

On the following day, the deputy sheriff returned to the bank in order to encash the check but before the actual encashment, the petitioner Henares once again inquired about any existing restraining order from the NLRC and upon being told that there was none, the latter allowed the said encashment.

The private respondent filed a complaint before the Regional Trial Court of Manila against the petitioners and Damian Rojas, the Deputy Provincial Sheriff of Negros Occidental, then defendants, alleging that the former's current deposit with the petitioner bank was levied upon, garnished, and with undue haste unlawfully allowed to be withdrawn, and notwithstanding the alleged unauthorized disclosure of the said current deposit and unlawful release thereof, the latter have failed and refused to restore the amount of P37,466.18 to the former's account despite repeated demands.

The trial court rendered its judgment in favor of the private respondent. On appeal, the respondent court in a decision dated February 26, 1988, first reversed the said judgment of the lower court, but however, on the motion for reconsideration filed by the private respondent, subsequently annulled and set aside its said decision in the resolution dated June 27, 1988. On August 3, 1988, the respondent court denied the petitioner's own motion for reconsideration.

Hence, this petition.

ISSUE

Whether or not petitioners violated Republic Act No. 1405, otherwise known as the Secrecy of Bank Deposits Act, when they allowed the sheriff to garnish the deposit of private respondent.

RULING

NO. Since there is no evidence that the petitioners themselves divulged the information that the private respondent had an account with the petitioner bank and it is undisputed that the said account was properly the object of the notice of garnishment and writ of execution carried out by the deputy sheriff, a duly authorized officer of the court, we can not therefore hold the petitioners liable under R.A. 1405.

While the general rule is that the findings of fact of the appellate court are binding on this Court, the said rule however admits of exceptions, such as when the Court of Appeals clearly misconstrued and misapplied the law, drawn from the incorrect conclusions of fact established by evidence and otherwise at certain conclusions which are based on misapprehension of facts, as in the case at bar. The petitioners are therefore absolved from any liability for the disclosure and release of the private respondent's deposit to the custody of the deputy sheriff in satisfaction of the final judgment for the laborers'backwages.

• Van Twest vs. Court of Appeals, 230 SCRA 42 (1994)

ALEXANDER VAN TWEST and THE HON. SALVADOR P. DE GUZMAN, in his capacity as Presiding Judge of the Regional Trial Court of Makati, Branch 142, petitioners, vs.THE HON. COURT OF APPEALS and GLORIA ANACLETO, respondents.

G.R. No. 106253, THIRD DIVISION, February 10, 1994, FELICIANO, *J.*

Circular No. 960, Series of 1983 was in force at the time the private respondent undertook her questioned transactions; thus, such local transfer from the original joint foreign currency account to another personal foreign currency account, was not an eligible foreign currency deposit within the coverage of RA No. 6426 and not entitled to the benefit of the confidentiality provisions of RA No. 6426.

FACTS

Petitioner alleged in his complaint that in 1989, he and private respondent opened a joint foreign currency savings account with Interbank to hold funds which "belonged entirely and exclusively" to petitioner, to "facilitate the funding of certain business undertakings" of both of them and which funds were to be "temporarily (held) in trust" by private respondent, who "shall turnover the same to plaintiff upon demand."

Petitioner further alleged that withdrawals from the account were always made through their joint signatures; that when his business relationship with private respondent turned sour, the latter unilaterally closed their joint account, withdrew the remaining balance of Deutschmark (DM) 269,777.37 and placed the money in her own personal account with the same bank.

On March 1990, petitioner Alexander Van Twest filed a complaint against private respondent Gloria Anacleto and International Corporate Bank ("Interbank") for recovery of a sum of money with prayer for a writ of preliminary injunction, before Branch 142 of the Regional Trial Court of Makati. After issuing a temporary restraining order upon the filing of the complaint. The hearings culminated in the issuance of an order, enjoining private respondent and Interbank from effecting and allowing withdrawals from the foreign currency deposit account until further orders from the trial court.

The preliminary injunction order of the Regional Trial Court was, however, annulled on petition for *certiorari* filed by private respondent before the Court of Appeals in a Decision. In ruling that petitioner was not entitled to the provisional remedy of preliminary injunction during the pendency of Civil Case No. 90-659, the Court of Appeals said private respondent had failed to show that he has a right to stop petitioner from withdrawing the foreign currency deposit under their joint "and/or" account. And it was error for respondent Judge to have issued the Order of injunction.

Petitioner's principal contention is that the public respondent misappreciated the facts of the case; he did not seek injunction to restrain private respondent from withdrawing the funds from their joint account, since private respondent indeed enjoyed a semblance of right to do so and the withdrawal had already become a fait accompli. Rather, petitioner seeks to restrain private respondent from effecting withdrawals from her personal account, into which she had transferred the foreign currency, in order not to defeat his main action seeking recovery of said fund.

Private respondent contends for the first before the CA that the personal foreign currency deposit account she is maintaining is exempt from processes issued by the courts, pursuant to Section 8 of R.A. 6426 as amended by P. D. 1246, the statute in force on 26 February 1990, the date she withdrew the foreign exchange fund from her joint account with petitioner and transferred the same to her personal account.

ISSUE

Whether or not the account is covered by confidentiality.

RULING

NO. Circular No. 960, Series of 1983 was in force at the time the private respondent undertook her questioned transactions; thus, such local transfer from the original joint foreign currency account to another personal foreign currency account, was not an eligible foreign currency deposit within the coverage of RA No. 6426 and not entitled to the benefit of the confidentiality provisions of RA No. 6426.

Although transfers from one foreign currency deposit account to another foreign currency deposit account in the Philippines are now eligible deposits under the Central Bank's Foreign Currency Deposit System, private respondent is still not entitled to the confidentiality provisions of the relevant circulars. For, as noted earlier, private respondent is *not* the *owner* of such foreign currency funds and her personal deposit account is not protected.

Marquez vs. Desierto, G.R. No. 135882, June 27, 2001;

LOURDES T. MARQUEZ, in her capacity as Branch Manager, Union Bank of the Philippines, *petitioners, vs.* HON. ANIANO A. DESIERTO, (in his capacity as OMBUDSMAN, Evaluation and Preliminary Investigation Bureau, Office of the Ombudsman, ANGEL C. MAYOR-ALGO, JR., MARY ANN CORPUZ-MANALAC and JOSE T. DE JESUS, JR., in their capacities as Chairman and Members of the Panel, respectively, *respondents*. G.R. No. 135882, EN BANC, June 27, 2001, Justice Pardo

Before an in camera inspection may be allowed, there must be a pending case before a court of competent jurisdiction. Further, the account must be clearly identified, the inspection limited to the subject matter of the pending case before the court of competent jurisdiction. The bank personnel and the account holder must be notified to be present during the inspection, and such inspection may cover only the account identified in the pending case.

In the case at bar, there is yet no pending litigation before any court of competent authority. What is existing is an investigation by the office of the Ombudsman.

FACTS

Petitioner Marquez received an Order from the Ombudsman Aniano A. Desierto to produce several bank documents for purposes of inspection *in camera* relative to various accounts maintained at Union Bank of the Philippines, Julia Vargas Branch, where petitioner is the branch manager. The

accounts to be inspected are Account Nos. 011-37270, 240-020718, 245-30317-3 and 245-30318-1. The order further states that the power of the Ombudsman to investigate and to require the production and inspection of records and documents is sanctioned by the 1987 Philippine Constitution, Republic Act No. 6770, otherwise known as the Ombudsman Act of 1989 and under existing jurisprudence on the matter.

The basis of the Ombudsman in ordering an in camera inspection of the accounts is a trail of managers checks purchased by one George Trivinio, a respondent in OMB-0-97-0411, pending with the office of the Ombudsman.

It would appear that Mr. George Trivinio, purchased fifty one (51) Managers Checks (MCs) for a total amount of P272.1 Million at Traders Royal Bank on May 2 and 3, 1995. Out of the 51 MCs, eleven (11) MCs in the amount of P70.6 million, were deposited and credited to an account maintained at the Union Bank, Julia Vargas Branch.

The Fact Finding and Intelligence Bureau (FFIB) panel met in conference with petitioner Lourdes T. Marquez and Atty. Fe B. Macalino at the banks main office for the purpose of allowing petitioner and Atty. Macalino to view the checks furnished by Traders Royal Bank. Atty. Macalino advised Ms. Marquez to comply with the order of the Ombudsman. Petitioner agreed to an *in camera* inspection set on June 3, 1998.

However, on June 4, 1998, petitioner wrote the Ombudsman explaining to him that the accounts in question cannot readily be identified and asked for time to respond to the order. The reason forwarded by petitioner was that despite diligent efforts and from the account numbers presented, they cannot identify these accounts since the checks are issued in cash or bearer and surmised that these accounts have long been dormant, hence are not covered by the new account number generated by the Union Bank system. Therefore, they have to verify from the Interbank records archives for the whereabouts of these accounts.

The Ombudsman, responding to the request of the petitioner for time to comply with the order, stated: firstly, it must be emphasized that Union Bank, Julia Vargas Branch was the depositary bank of the subject Traders Royal Bank Managers Checks (MCs), as shown at its dorsal portion and as cleared by the Philippine Clearing House, not the International Corporate Bank.

Notwithstanding the fact that the checks were payable to cash or bearer, nonetheless, the name of the depositor(s) could easily be identified since the account numbers where said checks were deposited are identified in the order.

Even assuming that the accounts were already classified as dormant accounts, the bank is still required to preserve the records pertaining to the accounts within a certain period of time as required by existing banking rules and regulations.

And finally, the *in camera* inspection was already extended twice from May 13, 1998 to June 3, 1998, thereby giving the bank enough time within which to sufficiently comply with the order.

On June 16, 1998, the Ombudsman issued an order directing petitioner to produce the bank documents relative to the accounts in issue. The order states:

Viewed from the foregoing, your persistent refusal to comply with Ombudsman's order is unjustified, and is merely intended to delay the investigation of the case. Your act constitutes disobedience of or resistance to a lawful order issued by this office and is punishable as Indirect Contempt under Section 3(b) of R.A. 6770. The same may also constitute obstruction in the lawful exercise of the functions of the Ombudsman which is punishable under Section 36 of R.A. 6770.

Petitioner together with Union Bank of the Philippines, filed a petition for declaratory relief, prohibition and injunction with the Regional Trial Court, Makati City, against the Ombudsman.

Petitioner prayed for a temporary restraining order (TRO) because the Ombudsman and other persons acting under his authority were continuously harassing her to produce the bank documents relative to the accounts in question. Moreover, on June 16, 1998, the Ombudsman issued another order stating that unless petitioner appeared before the FFIB with the documents requested, petitioner manager would be charged with indirect contempt and obstruction of justice.

The lower court denied petitioners prayer for a temporary restraining order. The Ombudsman filed a motion to dismiss the petition for declaratory relief on the ground that the Regional Trial Court has no jurisdiction to hear a petition for relief from the findings and orders of the Ombudsman, citing R. A. No. 6770, Sections 14 and 27. On August 7, 1998, the Ombudsman filed an opposition to petitioner's motion for reconsideration dated July 20, 1998.

The lower court denied petitioners motion for reconsideration, and also the Ombudsman's motion to dismiss. Petitioner received a copy of the motion to cite her for contempt, filed with the Office of the Ombudsman by the Fact Finding and Intelligence Bureau (FFIB).

Petitioner filed with the Ombudsman an opposition to the motion to cite her in contempt on the ground that the filing thereof was premature due to the petition pending in the lower court. Petitioner likewise reiterated that she had no intention to disobey the orders of the Ombudsman. However, she wanted to be clarified as to how she would comply with the orders without her breaking any law, particularly R. A. No. 1405.

Respondent Ombudsman panel set the incident for hearing on September 7, 1998. After hearing, the panel issued an order dated September 7, 1998, ordering petitioner and counsel to appear for a continuation of the hearing of the contempt charges against her.

On September 10, 1998, petitioner filed with the Ombudsman a motion for reconsideration of the above order. Her motion was premised on the fact that there was a pending case with the Regional Trial Court, Makati City, which would determine whether obeying the orders of the Ombudsman to produce bank documents would not violate any law.

The FFIB opposed the motion, and the Ombudsman denied the motion.

ISSUE

Whether the order of the Ombudsman to have an *in camera* inspection of the questioned account is allowed as an exception to the law on secrecy of bank deposits (R. A. No. 1405)

RULING

NO. Before an *in camera* inspection may be allowed, there must be a pending case before a court of competent jurisdiction. Further, the account must be clearly identified, the inspection limited to the subject matter of the pending case before the court of competent jurisdiction. The bank personnel and the account holder must be notified to be present during the inspection, and such inspection may cover only the account identified in the pending case.

In the case at bar, there is yet no pending litigation before any court of competent authority. What is existing is an investigation by the office of the Ombudsman. In short, what the Office of the Ombudsman would wish to do is to fish for additional evidence to formally charge Amado Lagdameo, et. al., with the Sandiganbayan. Clearly, there was no pending case in court which would warrant the opening of the bank account for inspection.

Zones of privacy are recognized and protected in our laws. The Civil Code provides that "Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons" and punishes as actionable torts several acts for meddling and prying into the privacy of another. It also holds a public officer or employee or any private individual liable for damages for any violation of the rights and liberties of another person, and recognizes the privacy of letters and other private communications. The Revised Penal Code makes a crime of the violation of secrets by an officer, the revelation of trade and industrial secrets, and trespass to dwelling. Invasion of privacy is an offense in special laws like the Anti-Wiretapping Law, the Secrecy of Bank Deposits Act, and the Intellectual Property Code.

• Office of the Ombudsman vs. Ibay, G. R. No. 137538, September 3, 2001

OFFICE OF THE OMBUDSMAN vs. HON. FRANCISCO B. IBAY, in his capacity as Presiding Judge of the Regional Trial Court, Makati City, Branch 135, UNION BANK OF THE PHILIPPINES, and LOURDES T. MARQUEZ, in her capacity as Branch Manager of UBP Julia Vargas Branch. G. R. No. 137538, SECOND DIVISION, September 3, 2001, QUISUMBING, J

In *Marquez vs. Desierto*, before an *in camera* inspection of bank accounts may be allowed, the following requisites must be present: (1) there must be a pending case before a court of competent jurisdiction, (2) the account must be clearly identified, (3) the inspection limited to the subject matter of the pending case before the court of competent jurisdiction, and (4)the bank personnel and the account holder must be notified to be present during the inspection. In the present case, since there is no pending litigation yet before a court of competent authority, but only an investigation by the Ombudsman on the so-called "scam", any order for the opening of the bank account for inspection is clearly premature and legally unjustified.

FACTS

In 1998, the Ombudsmaninvestigated the alleged "scam" on the Public Estates Authority-Amari (PEA-AMARI) Coastal Bay Development Corporation, revealing that the alleged anomaly was committed through the issuance of checks which were subsequently deposited in several financial institutions. Thus, the Ombudsman issued an Order directing Lourdes Marquez (branch manager) of Union Bank of the Philippines (UBP) to produce several bank documents (i.e. bank account application forms, signature cards, transactions history, bank statements, bank ledgers, debit and credit memos, deposit and withdrawal slips, application for purchase of manager's checks, used manager's checks and check microfilms) for inspection relative to certain accounts maintained there. The purpose of the inspection was to identify the specific bank records prior to the issuance of the required information not in any manner needed in or relevant to the investigation.

The Ombudsman issued an order to the branch manager to produce the requested bank documents for "*in camera*" inspection. "*In camera*" inspection is when the bank records would be examined without bringing the documents outside the bank premises. Because of her failure to comply with the order, the branch manager was ordered to show cause: (1) why she should not be cited for <u>indirect contempt</u> (for acts constituting disobedience or resistance to a lawful order), and (2) why she should not be charged for <u>obstruction</u> (for willful obstruction of the lawful exercise of the functions of the Ombudsman).

On the other hand, the branch manager filed: First, a <u>petition for declaratory relief with an</u> application for temporary restraining order and/or preliminary injunction before the Regional <u>Trial Court</u> (RTC), seeking a definite ruling and/or guidelines as regards (a) her rights under Sections 2 and 3 of R.A. 1405, which states that the legal obligation not to divulge any information relative to all deposits of whatever nature with banks in the Philippines, and (b) the Ombudsman's power to inspect bank deposits under Section 15 (8) of R.A. 6770, which states that the Ombudsman had the power to examine and have access to bank accounts and records. Second, the branch manager filed a petition for certiorari and prohibition with the Supreme Court (SC), assailing the Ombudsman's order to institute indirect contempt proceedings against her.

The Ombudsman filed a <u>motion to dismiss</u> the petition for declaratory relief on the ground that the RTC has no jurisdiction over the subject matter thereof. The RTC denied the motion to dismiss. The Ombudsman then filed an <u>ex-parte motion for extended ruling</u>. The RTC issued an order declaring that it has jurisdiction over the case since it is an action for declaratory relief under Rule 63 of the Rules of Court.

The Ombudsman filed before the SC the <u>petition for certiorari</u> assailing the Orders of the RTC on the ground of grave abuse of discretion and lack of jurisdiction. The Ombudsman sought the nullification of the impugned orders, the immediate dismissal of thepetition for declaratory relief case, and the prohibition of the RTC from exercising jurisdiction on the investigation being conducted by the Ombudsman in the alleged PEA-AMARI land "scam".

ISSUE

Whether or not the RTC acted without jurisdiction and/or with grave abuse of discretion in entertaining the petition for declaratory relief.

RULING

NO.The special civil action of declaratory relief falls under the exclusive jurisdiction of the RTC. It is not among the actions within the original jurisdiction of the Supreme Court even if only questions of law are involved.

The requisites of an action for declaratory relief are: (1) there must be a justiciable controversy must be between persons whose interests are adverse; (3) that the party seeking the relief has a legal interest in the controversy; and (4) that the issue is ripe for judicial determination. In this case, the controversy concerns the extent of the power of the Ombudsman to examine bank accounts under Section 15 (8) of R.A. 6770 *vis-à-vis* the duty of banks under Republic Act 1405 not to divulge any information relative to deposits of whatever nature. The interests of the parties are adverse considering the antagonistic assertion of a legal right on one hand, that is the power of Ombudsman to examine bank deposits, and on the other, the denial thereof apparently by the branch manager who refused to allow the Ombudsman to inspect *in camera* certain bank accounts. The party seeking relief, the branch manager herein, asserts a legal interest in the controversy. The issue invoked is ripe for judicial determination as litigation is inevitable. Note that theOmbudsman has threatened the branch manager with "indirect contempt" and "obstruction" charges should the latter not comply with its order.

In *Marquez vs. Desierto*, before an *in camera* inspection of bank accounts may be allowed, the following requisites must be present: (1) there must be a pending case before a court of competent jurisdiction, (2) the account must be clearly identified, (3) the inspection limited to the subject matter of the pending case before the court of competent jurisdiction, and (4)the bank personnel and the account holder must be notified to be present during the inspection. In the present case, since there is no pending litigation yet before a court of competent authority, but only an investigation by the Ombudsman on the so-called "scam", any order for the opening of the bank account for inspection is clearly premature and legally unjustified.

• China Bank Corporation vs. Court of Appeals 511 SCRA 110 (2006)

CHINA BANKING CORPORATION vs. THE HONORABLE COURT OF APPEALS and JOSE "JOSEPH" GOTIANUY as substituted by ELIZABETH GOTIANUY LO.

G.R. NO. 140687, FIRST DIVISION, December 18, 2006, CHICO-NAZARIO

The law provides that all foreign currency deposits authorized under RA 6426, as amended by Sec. 8, PD 1246, PD No. 1035, as well as foreign currency deposits authorized under PD 1034 are considered absolutely confidential in nature and may not be inquired into. There is only one exception to the secrecy of foreign currency deposits, that is, disclosure is allowed upon the written permission of the depositor.

Since Jose Gotianuy is the named co-payee of Mary Margaret Dee in the Citibank checks, which checks were deposited by Mary Margaret Dee in China Bank, then, Jose Gotianuy is likewise a depositor thereof. As the owner of the funds unlawfully taken and which are undisputably now deposited with China Bank, Jose Gotianuy has the right to inquire into the said deposits. Jose Gotianuy's request for the assailed subpoena is tantamount to an express permission of a depositor for the disclosure of the name of the account holder.On that basis, no written consent from Mary Margaret Dee is necessitated.

FACTS

Jose "Joseph" Gotianuyfiled a <u>complaint for recovery of sums of money and annulment of sales of</u> <u>real properties and shares of stock</u> against his son-in-law, George Dee, and his daughter, Mary Margaret Dee, before the Regional Trial Court (RTC).

Jose Gotianuy accused Mary Margaret Dee of stealingUS dollar deposits with Citibank N.A. amounting to not less than P35,000,000.00 and US\$864,000.00. Mary Margaret Dee received these amounts from Citibank N.A. through checks which she deposited at China Banking Corporation (China Bank). He accused George Deeof transferring his real properties and shares of stock in George Dee's name without any consideration. Jose Gotianuy died during the pendency of the case before the RTC. He was substituted by his daughter,ElizabethGotianuy Lo, who presented the US Dollar checks withdrawn by Mary Margaret Dee from his US dollar placement with Citibank.

Upon motion of Elizabeth Gotianuy Lo, the RTC issued a <u>subpoena</u> to CristotaLabios and Isabel Yap, employees of China Bank, to testify with regards to the Citibank Checks and other matters material and relevant to the issues of the case. China Bank moved for a reconsideration. TheRTC issued an Order<u>partly denying and partly granting the motion for reconsideration</u>, in the sense that Isabel Yap and/or CristutaLabios are directed to testify only for the purpose of disclosing in whose name or names is the foreign currency fund deposited with China Bank and not to other matters material and relevant to the issues of the case. China Bank filed a <u>Petition for *Certiorari*</u> with the Court of Appeals (CA). The CA denied the petition and affirmed the Order of the RTC. The China Bank filed a <u>petition</u> with the Supreme Court (SC).

ISSUE

Whether or not China Bank is correct that the Citibank dollar checks with both Jose Gotianuy and/or Mary Margaret Dee as payees, deposited with China Bank, may not be looked into under the law on secrecy of foreign currency deposits.

RULING

NO. The law protects only the deposits itself but not the name of the depositor. Thus, the coverage of the law extends only to the foreign currency deposit in the China Bank account where Mary Margaret Dee deposited the Citibank checks and nothing more.

The law provides that all foreign currency deposits authorized under RA 6426, as amended by Sec. 8, PD 1246, PD No. 1035, as well as foreign currency deposits authorized under PD 1034 are considered absolutely confidential in nature and may not be inquired into. There is only one

exception to the secrecy of foreign currency deposits, that is, disclosure is allowed upon the written permission of the depositor.

The following facts are established: (1) Jose Gotianuy and Mary Margaret Dee are co-payees of various Citibank checks; (2) Mary Margaret Dee withdrew these checks from Citibank; (3) Mary Margaret Dee admitted in her Answer to the Request for Admissions by the Adverse Party sent to her by Jose Gotianuythat she withdrew the funds from Citibank upon the instruction of her father Jose Gotianuy and that the funds belonged exclusively to the latter; (4) these checks were endorsed by Mary Margaret Dee at the dorsal portion; and (5) Jose Gotianuy discovered that these checks were deposited with China Bank as shown by the stamp of China Bank at the dorsal side of the checks.

Since Jose Gotianuy is the named co-payee of Mary Margaret Dee in the Citibank checks, which checks were deposited by Mary Margaret Dee in China Bank, then, Jose Gotianuy is likewise a depositor thereof. As the owner of the funds unlawfully taken and which are undisputably now deposited with China Bank, Jose Gotianuy has the right to inquire into the said deposits. Jose Gotianuy's request for the assailed *subpoena* is tantamount to an express permission of a depositor for the disclosure of the name of the account holder. On that basis, no written consent from Mary Margaret Dee is necessitated.

All things considered and in view of the distinctive circumstances attendant to the present case, we are constrained to render a limited <u>PRO HAC VICE RULING</u>. Clearly it was not the intent of the legislature when it enacted the law on secrecy on foreign currency deposits to perpetuate injustice. This Court is of the view that the allowance of the inquiry would be in accord with the rudiments of fair play, the upholding of fairness in our judicial system and would be an avoidance of delay and time-wasteful and circuitous way of administering justice.

BSB Group, Inc.,vs. Sally Go, G.R. No. 168644, February 16, 2010

BSB GROUP, INC., represented by its President, Mr. RICARDO BANGAYAN, Petitioner,-versus-SALLY GO a.k.a. SALLY GO-BANGAYAN, Respondent.

G.R. No. 168644, THIRD DIVISION, February 16, 2010, PERALTA, J.

We hold that the testimony of Marasigan on the particulars of respondents supposed bank account with Security Bank and the documentary evidence represented by the checks adduced in support thereof, are not only incompetent for being excluded by operation of R.A. No. 1405. They are likewise irrelevant to the case, inasmuch as they do not appear to have any logical and reasonable connection to the prosecution of respondent for qualified theft.

FACTS

Petitioner, the BSB Group, Inc., is a duly organized domestic corporation presided by its herein representative, Ricardo Bangayan (Bangayan). Respondent Sally Go, alternatively referred to as Sally Sia Go and Sally Go-Bangayan, is Bangayans wife, who was employed in the company as a cashier, and was engaged, among others, to receive and account for the payments made by the various customers of the company.

In 2002, Bangayan filed with the Manila Prosecutors Office a complaint for *estafa* and/or qualified theft against respondent, alleging that several checks representing the aggregate amount of P1,534,135.50 issued by the companys customers in payment of their obligation were, instead of being turned over to the companys coffers, indorsed by respondent who deposited the same to her personal banking account maintained at Security Bank and Trust Company (Security Bank).

Accordingly, respondent was charged before the Regional Trial Court of Manila.

Respondent entered a negative plea when arraigned. The trial ensued. On the premise that respondent had allegedly encashed the subject checks and deposited the corresponding amounts thereof to her personal banking account, the prosecution moved for the issuance of subpoena *ducestecum /ad testificandum* against the respective managers or records custodians of Security Banks Divisoria Branch, as well as of the Asian Savings Bank (now Metropolitan Bank & Trust Co. [Metrobank]). The trial court granted the motion and issued the corresponding subpoena. Respondent filed a motion to quash the subpoena, addressed to Metrobank, noting to the court that in the complaint-affidavit filed with the prosecutor, there was no mention made of the said bank account, to which respondent, in addition to the Security Bank account, allegedly deposited the proceeds of the supposed checks.

Petitioner, opposing respondents move, argued for the relevancy of the Metrobank account on the ground that the complaint-affidavit showed that there were two checks which respondent allegedly deposited in an account with the said bank. To this, respondent filed a supplemental motion to quash, invoking the absolutely confidential nature of the Metrobank account under the provisions of Republic Act (R.A.) No. 1405. The trial court did not sustain respondent; hence, it denied the motion to quash for lack of merit.

Meanwhile, the prosecution was able to present in court the testimony of Elenita Marasigan (Marasigan), the representative of Security Bank. In a nutshell, Marasigans testimony sought to prove that between 1988 and 1989, respondent, while engaged as cashier at the BSB Group, Inc., was able to run away with the checks issued to the company by its customers, endorse the same, and credit the corresponding amounts to her personal deposit account with Security Bank. In the course of the testimony, the subject checks were presented to Marasigan for identification and marking as the same checks received by respondent, endorsed, and then deposited in her personal account with Security Bank.

But before the testimony could be completed, respondent filed a Motion to Suppress, seeking the exclusion of Marasigans testimony and accompanying documents thus far received, bearing on the subject Security Bank account. This time respondent invokes, in addition to irrelevancy, the privilege of confidentiality under R.A. No. 1405.

The Trial court denied said motion as well as the motion for reconsideration filed by the respondent. CA reversed the decision and ordered that the witness' testimony be stricken out from the record.

In this Petition under Rule 45, petitioner averred in the main that the Court of Appeals had seriously erred in reversing the assailed orders of the trial court, and in effect striking out Marasigans testimony dealing with respondents deposit account with Security Bank. It asserted

that apart from the fact that the said evidence had a direct relation to the subject matter of the case for qualified theft and, hence, brings the case under one of the exceptions to the coverage of confidentiality under R.A. 1405.

For her part, respondent claimed that the money represented by the Security Bank account was neither relevant nor material to the case, because nothing in the criminal information suggested that the money therein deposited was the subject matter of the case. Thus, the checks which the prosecution had Marasigan identify, as well as the testimony itself of Marasigan, should be suppressed by the trial court at least for violating respondents right to due process. More in point, respondent opined that admitting the testimony of Marasigan, as well as the evidence pertaining to the Security Bank account, would violate the secrecy rule under R.A. No. 1405.

ISSUES

WON the testimony of Marasigan and the accompanying documents are irrelevant to the case, and whether they are also violative of the absolutely confidential nature of bank deposits and, hence, excluded by operation of R.A. No. 1405.

RULING

YES. The Court, after deliberative estimation, finds the subject evidence to be indeed inadmissible. It is conceded that while the fundamental law has not bothered with the triviality of specifically addressing privacy rights relative to banking accounts, there, nevertheless, exists in our jurisdiction a legitimate expectation of privacy governing such accounts. The source of this right of expectation is statutory, and it is found in R.A. No. 1405, otherwise known as the Bank Secrecy Act of 1955.

R.A. No. 1405 has two allied purposes. It hopes to discourage private hoarding and at the same time encourage the people to deposit their money in banking institutions, so that it may be utilized by way of authorized loans and thereby assist in economic development. Owing to this piece of legislation, the confidentiality of bank deposits remains to be a basic state policy in the Philippines. In taking exclusion from the coverage of the confidentiality rule, petitioner in the instant case posits that the account maintained by respondent with Security Bank contains the proceeds of the checks that she has fraudulently appropriated to herself and, thus, falls under one of the exceptions in Section 2 of R.A. No. 1405 that the money kept in said account is the subject matter in litigation. To highlight this thesis, petitioner avers, citing Mathay v. Consolidated Bank and Trust Col that the subject matter of the action refers to the physical facts; the things real or personal; the money, lands, chattels and the like, in relation to which the suit is prosecuted, which in the instant case should refer to the money deposited in the Security Bank account. On the surface, however, it seems that petitioners theory is valid to a point, yet a deeper treatment tends to show that it has argued quite off-tangentially. This, because, while *Mathay* did explain what the subject matter of an action is, it nevertheless did so only to determine whether the class suit in that case was properly brought to the court.

What indeed constitutes the subject matter in litigation in relation to Section 2 of R.A. No. 1405 has been pointedly and amply addressed in *Union Bank of the Philippines v. Court of Appeals*, in which the Court noted that the inquiry into bank deposits allowable under R.A. No. 1405 must be premised on the fact that the money deposited in the account is itself the subject of the action.

In other words, it can hardly be inferred from the indictment itself that the Security Bank account is the ostensible subject of the prosecutions inquiry. Without needlessly expanding the scope of what is plainly alleged in the Information, the subject matter of the action in this case is the money amounting to P1,534,135.50 alleged to have been stolen by respondent, and not the money equivalent of the checks which are sought to be admitted in evidence. Thus, it is that, which the prosecution is bound to prove with its evidence, and no other.

In sum, we hold that the testimony of Marasigan on the particulars of respondents supposed bank account with Security Bank and the documentary evidence represented by the checks adduced in support thereof, are not only incompetent for being excluded by operation of R.A. No. 1405. They are likewise irrelevant to the case, inasmuch as they do not appear to have any logical and reasonable connection to the prosecution of respondent for qualified theft. We find full merit in and affirm respondents objection to the evidence of the prosecution. The Court of Appeals was, therefore, correct in reversing the assailed orders of the trial court.

• Rizal Commercial Banking Corporation vs. Hi-Tri Development Corporation, 672 SCRA 514 (2012)

RIZAL COMMERCIAL BANKING CORPORATION vs. HI-TRI DEVELOPMENT CORPORATION and LUZ R. BAKUNAWA.

G.R. No. 192413, SECOND DIVISION, June 13, 2012, JUSTICE SERENO

Escheat proceedings refer to the judicial process in which the state, by virtue of its sovereignty, steps in and claims abandoned, left vacant, or unclaimed property, without there being an interested person having a legal claim thereto. It is a proceeding whereby the state compels the surrender to it of unclaimed deposit balances when there is substantial ground for a belief that they have been abandoned, forgotten, or without an owner. In the case of dormant accounts, the stateinquires into the status, custody, and ownership of the unclaimed balance to determine whether the inactivity was brought about by the fact of death or absence of or abandonment by the depositor.

The law sets a detailed system for notifying depositors of unclaimed balances. This notification is meant to inform them that their deposit could be escheated if left unclaimed. Accordingly, before filing a sworn statement, banks and other similar institutions are under obligation to communicate with owners of dormant accounts. The purpose of this initial notice is for a bank to determine whether an inactive account has indeed been unclaimed, abandoned, forgotten, or left without an owner.

FACTS

Luz Bakunawa and her husband Manuel(Spouses Bakunawa) are registered owners of six (6) parcels of land that were sequestered by the Presidential Commission on Good Government (PCGG). In 1990, Teresita Millan (Millan) offered to buy said lots and made a downpayment of ₱1,019,514.29. However, Millan was not able to clear the preliminary obstacles. As a result, the Spouses Bakunawa rescinded the sale and offered to return to Millan her downpayment, but Millan refused to accept it back. Consequently, the Spouses Bakunawa, through their company, the Hi-Tri Development Corporation (Hi-Tri) took out a Manager's Check from RCBC-Ermita in the amount of ₱ 1,019,514.29, payable to Millan's company Rosmil Realty and Development Corporation (Rosmil) and used this as one of their basis for a complaint against Millan filed with the Regional Trial Court

(RTC). The Spouses Bakunawa, upon advice of their counsel, retained custody of RCBC Manager's Check and refrained from canceling or negotiating it. All throughout the proceedings, especially during negotiations for a possible settlement of the case, Millan was informed that the Manager's Check was available for her withdrawal, she, being the payee.

However, during the pendency of the case and without the knowledge of Hi-Tri and Spouses Bakunawa, RCBC reported the ₱ 1,019,514.29-credit existing in favor of Rosmil to the Bureau of Treasury as among its "unclaimed balances". Allegedly, a copy of the Sworn Statement executed by Florentino N. Mendoza, Manager and Head of RCBC's Asset Management, Disbursement and Sundry Department (AMDSD) was posted within the premises of RCBC-Ermita.

Spouses Bakunawa settled amicably their dispute with Rosmil and Millan. Instead of only the amount of "P 1,019,514.29", Spouses Bakunawa agreed to pay Rosmil and Millan the amount of P 3,000,000.00, which is inclusive of the amount of P 1,019,514.29. But during negotiations and evidently prior to said settlement, Manuel Bakunawa, through Hi-Tri inquired from RCBC-Ermita the availability of the P 1,019,514.29 under RCBC Manager's Check No. ER 034469. Hi-Tri and Spouses Bakunawa were however dismayed when they were informed that the amount was already subject of the escheat proceedings before the RTC.

Manuel Bakunawa, through Hi-Tri,sent a letter to RCBC, stating that the deposit that was supposed to be allocated for the payment of the Manager's Check was supposed to remain part of the Hi-Tri's RCBC bank account, which continued to be actively maintained and operated. Additionally,Hi-Tri averred that it never received any statements of account from RCBC, and never received any single letter from RCBC noting the absence of fund movement and advising the Corporation that the deposit would be treated as dormant.

RCBC replied, stating that the inclusion of the Manager's Check in the escheat proceedings and that the funds covered by the Manager's Check does not form part of the Bank's own account. By simple operation of law, the funds covered by the manager's check in issue became a deposit/credit susceptible for inclusion in the escheat case initiated by the OSG and/or Bureau of Treasury.

The Republic filed a Complaint for Escheat pursuant to Act No. 3936, as amended by P.D. 679, against certain deposits, credits, and unclaimed balances held by the branches of various banks in the Philippines. The RTC declared the amounts, subject of the special proceedings, escheated to the Republic and ordered them deposited with the Treasurer of the Philippines (Treasurer) and credited in favor of the Republic. The RTC judgments included an unclaimed balance in the amount of \mathbf{P} 1,019,514.29, maintained by RCBC. Hi-Tri and Spouses Bakunawa filed an Omnibus Motion, seeking the partial reconsideration of the RTC Decision insofar as it escheated the fund allocated for the payment of the Manager's Check and asked that they be included as party-defendants or, in the alternative, allowed to intervene in the case and their motion considered as an answer-in-intervention as they were deprived thereof because of the lack of notice from RCBC. The RTC denied the motion, explaining that the Republic had proven compliance with the requirements of publication and notice, which served as notice to all those who may be affected and prejudiced by the Complaint for Escheat.

The CA, in its Decision and Resolution, reversed and set aside the RTC Decision and Order, stating that RCBC's failure to notify Hi-Tri and Spouses Bakunawadeprived them of an opportunity to

intervene in the escheat proceedings and to present evidence to substantiate their claim which isa violation of their right to due process. The CA ordered the exclusion of the funds allocated for the payment of the Manager's Check in the escheat proceedings. RCBC filed a Rule 45 Petition for Review on Certiorari, contending that Hi-Tri and Spouses Bakunawawere not the owners of the unclaimed balances and were thus not entitled to notice, whichhinges on the theory that the funds represented by the Manager's Check were deemed transferred to the credit of the payee or holder upon its issuance, which, in this case, is Rosmil.

ISSUE

Whether or not the escheat of the account is proper.

RULING

NO. Escheat proceedings refer to the judicial process in which the state, by virtue of its sovereignty, steps in and claims abandoned, left vacant, or unclaimed property, without there being an interested person having a legal claim thereto. It is a proceeding whereby the state compels the surrender to it of unclaimed deposit balances when there is substantial ground for a belief that they have been abandoned, forgotten, or without an owner. In the case of dormant accounts, the stateinquires into the status, custody, and ownership of the unclaimed balance to determine whether the inactivity was brought about by the fact of death or absence of or abandonment by the depositor.

The law sets a detailed system for notifying depositors of unclaimed balances. This notification is meant to inform them that their deposit could be escheated if left unclaimed. Accordingly, before filing a sworn statement, banks and other similar institutions are under obligation to communicate with owners of dormant accounts. The purpose of this initial notice is for a bank to determine whether an inactive account has indeed been unclaimed, abandoned, forgotten, or left without an owner.

As to banks, service of processes is made by delivery of a copy of the complaint and summons upon the president, cashier, or managing officer of the defendant bank. On the other hand, as to depositors or other claimants of the unclaimed balances, service is made by publication of a copy of the summons in a newspaper of general circulation in the locality where the institution is situated. A notice about the forthcoming escheat proceedings must also be issued and published, directing and requiring all persons who may claim any interest in the unclaimed balances to appear before the court and show cause why the dormant accounts should not be deposited with the Treasurer.

In case the bank complies with the provisions of the law and the unclaimed balances are eventually escheated to the Republic, the bank "shall not thereafter be liable to any person for the same and any action which may be brought by any person against in any bank for unclaimed balances so deposited shall be defended by the Solicitor General without cost to such bank." Otherwise, should it fail to comply with the legally outlined procedure to the prejudice of the depositor, the bank may not raise the defense provided under Sec.5 of Act No. 3936, as amended.

An ordinary check refers to a bill of exchange drawn by a depositor (drawer) on a bank (drawee), requesting the latter to pay a person named therein (payee) or to the order of the payee or to the

bearer, a named sum of money. The issuance of the check does not of itself operate as an assignment of any part of the funds in the bank to the credit of the drawer. Here, the bank becomes liable only after it accepts or certifies the check. After the check is accepted for payment, the bank would then debit the amount to be paid to the holder of the check from the account of the depositor-drawer. There are checks of a special type called manager's or cashier's checks. These are bills of exchange drawn by the banks manager or cashier, in the name of the bank, against the bank itself. A manager's or a cashier's check is procured from the bank by allocating an amount of funds to be debited from the depositor's account or by directly paying or depositing to the bank the value of the check to be drawn. Since the bank issues the check in its name, with itself as the drawee, the check is deemed accepted in advance. Ordinarily, the check becomes the primary obligation of the issuing bank and constitutes its written promise to pay upon demand. Nevertheless, the mere issuance of a manager's check does not ipso facto work as an automatic transfer of funds to the account of the payee. In case the procurer of the manager's or cashier's check retains custody of the instrument, does not tender it to the intended payee, or fails to make an effective delivery, the contract on a negotiable instrument is incomplete and revocable.

In this case, RCBC acknowledges that the Manager's Check was procured by Hi-Tri and Spouses Bakunawa, and that the amount to be paid for the check would be sourced from the deposit account of Hi-Tri. When Rosmil did not accept the Manager's Check offered by Hi-Tri and Spouses Bakunawa, Hi-Tri and Spouses Bakunawa remained in custody of the instrument instead of cancelling it. As the Manager's Check neither went to the hands of Rosmil nor was it further negotiated to other persons, the instrument remained undelivered. RCBC does not dispute the fact that Hi-Tri and Spouses Bakunawa retained custody of the instrument. Since there was no delivery, presentment of the check to the bank for payment did not occur. An order to debit the account of Hi-Tri and Spouses Bakunawa was never made. In fact, RCBC confirms that the Manager's Check was never negotiated or presented for payment to its Ermita Branch, and that the allocated fund is still held by the bank. As a result, the assigned fund is deemed to remain part of the account of Hi-Tri, which procured the Manager's Check. The doctrine that the deposit represented by a manager's check automatically passes to the payee is inapplicable, because the instrument – although accepted in advance – remains undelivered. Hence, Hi-Tri and Spouses Bakunawa should have been informed that the deposit had been left inactive for more than 10 years, and that it may be subjected to escheat proceedings if left unclaimed.

After a careful review of the RTC records, it is no longer necessary to remand the case for hearing to determine whether the claim of Hi-Tri and Spouses Bakunawawas valid. There was no contention that they were the procurers of the Manager's Check. It is undisputed that there was no effective delivery of the check, rendering the instrument incomplete. In addition, Hi-Tri and Spouses Bakunawa retained ownership of the funds. As it is obvious from their foregoing actions that they have not abandoned their claim over the fund, the allocated deposit, subject of the Manager's Check, should be excluded from the escheat proceedings. The objective of escheat proceedings is state forfeiture of unclaimed balances. There is nothing in the records that would show that the OSG appealed the assailed CA judgments. Thus, the failure to appeal is an indication of disinterest in pursuing the escheat proceedings in favor of the Republic.

• Dona Adela Export International Inc., vs. Trade and Investment Development Corporation and the Bank of the Philippine Islands, G.R. No. 201931, February 11, 2015

DOÑA ADELA EXPORT INTERNATIONAL, INC. vs. TRADE AND INVESTMENT DEVELOPMENT CORPORATION (TIDCORP), and THE BANK OF THE PHILIPPINE ISLANDS (BPI).

G.R. No. 201931, THIRD DIVISION, February 11, 2015, Villarama, Jr., J.

In this case, the Joint Motion to Approve Agreement was executed by BPI and TIDCORP only. There was no written consent given by petitioner or its representative, Epifanio Ramos, Jr., that petitioner is waiving the confidentiality of its bank deposits. The provision on the waiver of the confidentiality of petitioner's bank deposits was merely inserted in the agreement. It is clear therefore that petitioner is not bound by the said provision since it was without the express consent of petitioner who was not a party and signatory to the said agreement.

FACTS

Petitioner Doña Adela Export International, Inc., filed a Petition for Voluntary Insolvency, and the case was raffled to RTC Mandaluyong. The RTC, after finding the petition sufficient in form and substance, issued an order declaring petitioner as insolvent and staying all civil proceedings against petitioner. Thereafter, Atty. Arlene Gonzales was appointed as receiver. After taking her oath, Atty. Gonzales proceeded to make the necessary report, engaged appraisers and required the creditors to submit proof of their respective claims.

Atty. Gonzales then filed a Motion for Parties to Enter Into Compromise Agreement incorporating therein her proposed terms of compromise. Then, creditors TIDCORP and BPI also filed a Joint Motion to Approve Agreement which contained that Petitioner and the members of its Board of Directors shall waive all rights to confidentiality provided under the provisions of Law on Secrecy of Bank Deposits (R.A. No. 1405), and The General Banking Law of 2000 (R.A. No. 8791). Accordingly, the petitioner and the members of its Board of Directors by these presents grant TIDCORP and BPI access to any deposit or other accounts maintained by them with any bank. The RTC rendered the assailed Decision approving the Joint Motion to Approve Agreement.

Petitioner filed a motion for partial reconsideration and claimed that TIDCORP and BPI's agreement imposes on it several obligations such as payment of expenses and taxes and waiver of confidentiality of its bank deposits but it is not a party and signatory to the said agreement. RTC denied the motion.

Petitioner asserts that express and written waiver from the depositor concerned is required by law before any third person or entity is allowed to examine bank deposits or bank records. According to petitioner, it is not a party to the compromise agreement between BPI and TIDCORP and its silence or acquiescence is not tantamount to an admission that binds it to the compromise agreement of the creditors especially the waiver of confidentiality of bank deposits.

Respondent TIDCORP contends that the waiver of confidentiality under Republic Act (R.A.) Nos. 1405 and 8791 does not require the express or written consent of the depositor. It is TIDCORP's position that upon declaration of insolvency, the insolvency court obtains complete jurisdiction over the insolvent's property which includes the authority to issue orders to look into the insolvent's bank deposits. Since bank deposits are considered debts owed by the banks to the petitioner, the receiver is empowered to recover them even without petitioner's express or written consent.

ISSUE

Whether or not the petitioner is bound by the provision in the BPI-TIDCORP Joint Motion to Approve Agreement that petitioner shall waive its rights to confidentiality of its bank deposits under R.A. No. 1405 and R.A. No. 8791.

RULING

No. R.A. No. 1405 provides for exceptions when records of deposits may be disclosed. These are under any of the following instances:

(a) upon written permission of the depositor

(b) in cases of impeachment

(c) upon order of a competent court in the case of bribery or dereliction of duty of public officials or (d) when the money deposited or invested is the subject matter of the litigation, and

(e) in cases of violation of the Anti-Money Laundering Act, the Anti-Money Laundering Council may inquire into a bank account upon order of any competent court.

In this case, the Joint Motion to Approve Agreement was executed by BPI and TIDCORP only. There was no written consent given by petitioner or its representative, Epifanio Ramos, Jr., that petitioner is waiving the confidentiality of its bank deposits. The provision on the waiver of the confidentiality of petitioner's bank deposits was merely inserted in the agreement. It is clear therefore that petitioner is not bound by the said provision since it was without the express consent of petitioner who was not a party and signatory to the said agreement.

In addition, considering that petitioner was already declared insolvent by the RTC, all its property, assets and belongings were ordered delivered to the appointed receiver or assignee. Thus, in the order of the RTC appointing Atty. Gonzales as receiver, petitioner was directed to assign and convey to Atty. Gonzales all its real and personal property, monies, estate and effects with all the deeds, books and papers relating thereto, pursuant to Section 32 of the Insolvency Law. Such assignment shall operate to vest in the assignee all of the estate of the insolvent debtor not exempt by law from execution. Corollarily, the stipulation in the Joint Motion to Approve Compromise Agreement that petitioner waives its right to confidentiality of its bank deposits requires the approval and conformity of Atty. Gonzales as receiver since all the property, money, estate and effects of petitioner have been assigned and conveyed to her and she has the right to recover all the estate, assets, debts and claims belonging to or due to the insolvent debtor. the waiver of confidentiality of petitioner's bank deposits in the BPI-TIDCORP Joint Motion to Approve Agreement lacks the required written consent of petitioner and conformity of the receiver. The Court holds that petitioner is not bound by the said provision.

10. Garnishment of Deposits, Including Foreign Deposits

• De la Rama vs. Villarosa, 8 SCRA 413 (1963)

LOURDES DE LA RAMA vs. AUGUSTO R. VILLAROSA, ET AL., and LUZON SURETY COMPANY, INC.

G.R. No. L-17927, EN BANC, June 29, 1963, Labrador, J.

The mere garnishment of funds belonging to the party upon order of the court does not have the effect of delivering the money garnished to the sheriff or to the party in whose favor the attachment is issued. The fund is retained by the garnishee or the person holding the money for the defendant.

The garnishee, or one in whose hands property is attached or garnished, is universally regarded as charged with its legal custody pending the outcome of the attachment of garnishment, unless, by local statute and practice, he is permitted to surrender or pay the garnished property or funds into court, to the attaching officer, or to a receiver or trustee appointed to receive them

FACTS

Plaintiff lessor Lourdes de la Rama brought an action against defendant lessee Augusto R. Villarosa and the latter's surety, the Luzon Surety Co., Inc. for judicial confirmation of the cancellation, rescission and annulment of a contract of lease of sugarland. The court rendered a partial summary judgment in favor of the de la Rama and ordering Villarosa to surrender and deliver to plaintiff or her representatives the possession of the leased premises.

The lower court issued an order for the immediate execution of the above judgment; and, upon motion of de la Rama, issued in order for the issuance of a third alias writ of execution directing the sheriff of Manila to satisfy the judgment. Accordingly, the sheriff of Manila garnished the deposit of Villarosa with the Philippine Trust Co. (PTC) to the amount of P71,533.99. and required the latter not to deliver, transfer or otherwise dispose of the said amount belonging to the defendant, to any person except to the sheriff, or suffer the penalties prescribed by law. PTC, complying with such notice, set aside the amount of P71,533.99 out of the deposit of Luzon Surety in its possession for the benefit of the sheriff of Manila and the plaintiff.

The garnishee, the PTC, refused to deliver to the sheriff of Manila, the amount garnished by the latter to satisfy the writ of execution, so the lower court ordered said company to pay the sheriff out of the deposit of the Luzon Surety Co., Inc. the amount stated in the amended garnishment. Before the order could be complied with by the garnishee, the Luzon Surety Co. filed a petition for certiorari with preliminary injunction with the CA. So the garnishee did not deliver to the sheriff of Manila any portion of the amount garnished and de la Rama never received any amount either in full or partial satisfaction of the original judgment of the trial court then under execution. The CA ruled in favor of de la Rama ordering Luzon Surety to pay a sum of money solidarily with Villarosa, to de la Rama.

ISSUE

Whether or not the amount garnished should be awarded to defendant-appellant.

RULING

No. In the first place, the amount garnished was not actually taken possession of by the sheriff, even from the time of the garnishment, because upon the perfection of Luzon Surety's appeal to the CA, this Court issued an injunction prohibiting execution of the judgment. De la Rama was, therefore, able to secure a full satisfaction of the judgment only upon final judgment of the Court. The total sum garnished was not delivered to the sheriff in execution, because the order for the execution of the judgment of the lower court was suspended in time by the appeal and the preliminary injunction issue on appeal.

In the second place, the mere garnishment of funds belonging to the party upon order of the court does not have the effect of delivering the money garnished to the sheriff or to the party in whose favor the attachment is issued. The fund is retained by the garnishee or the person holding the money for the defendant.

The garnishee, or one in whose hands property is attached or garnished, is universally regarded as charged with its legal custody pending the outcome of the attachment of garnishment, unless, by local statute and practice, he is permitted to surrender or pay the garnished property or funds into court, to the attaching officer, or to a receiver or trustee appointed to receive them. (5 Am. Jur. 14)

The effect of the garnishment, therefore, was to require the PTC, to set aside said amount from the funds of the Luzon Surety and keep the same subject to the final orders of the Court. In the case at bar there was never in order to deliver the full amount garnished to de la Rama; all that was ordered to be delivered after the judgment had become final was the amount found by the Court of Appeals to be due. The balance of the amount garnished, therefore, remained all the time in the possession of the bank as part of the funds of the Luzon Surety, although the same could not be disposed of by the owner.

In the third place, the motion by Luzon Surety for the payment of damages or interest was presented when the judgment had already become final. Damages incident to the issuance of an attachment may only be claimed before final judgment. Luzon Surety's own record on appeal shows that the decision of the CA had already become final and executory time of the perfection of the appeal to this Court. A last reason is the absence of any allegation to the effect that the garnishment of appellant's funds in PTC caused actual damages to Luzon Surety.

• PCIB vs. Court of Appeals, G.R. No. 84526, January 28, 1991

PHILIPPINE COMMERCIAL & INDUSTRIAL BANK and JOSE HENARES, petitioners, vs. THE HON. COURT OF APPEALS and MARINDUQUE MINING AND INDUSTRIAL CORPORATION, respondents.

G.R. No. 84526, SECOND DIVISION, January 28, 1991, SARMIENTO, J.

Since there is no evidence that the petitioners themselves divulged the information that the private respondent had an account with the petitioner bank and it is undisputed that the said account was properly the object of the notice of garnishment and writ of execution carried out by the deputy sheriff, a duly authorized officer of the court, we can not therefore hold the petitioners liable under R.A. 1405.

The petitioners are therefore absolved from any liability for the disclosure and release of the private respondent's deposit to the custody of the deputy sheriff in satisfaction of the final judgment for the laborers'backwages.

FACTS

The instant case originated from an action filed with the National Labor Relations Commission (NLRC) by a group of laborers who obtained therefrom a favorable judgment for the payment of backwages amounting to P205,853.00 against the private respondent.

The Commission issued a writ of execution directing the Deputy Sheriff of Negros Occidental, one Damian Rojas, to enforce the aforementioned judgment.

Accordingly, the aforenamed deputy sheriff went to the mining site of the private respondent and served the writ of execution on the persons concerned, but nothing seemed to have happened thereat.

Thereafter, the Sheriff prepared on his own a Notice of Garnishment addressed to six (6) banks, all located in Bacolod City, one of which being the petitioner herein, directing the bank concerned to immediately issue a check in the name of the Deputy Provincial Sheriff of Negros Occidental in an amount equivalent to the amount of the garnishment and that proper receipt would be issued therefor.

The deputy sheriff presented the Notice of Garnishment and the Writ of Execution attached therewith to the petitioner Henares and demanded from the latter, under pain of contempt, the release of the deposit of the private respondent.

Petitioner Henares, upon knowing from the Acting Provincial Sheriff that there was no restraining order from the National Labor Relations Commission and on the favorable advice of the bank's legal counsel, issued a debit memo for the full balance of the private respondent's account with the petitioner bank. Thereafter, he issued a manager's check in the name of the Deputy Provincial Sheriff of Negros Occidental.

On the following day, the deputy sheriff returned to the bank in order to encash the check but before the actual encashment, the petitioner Henares once again inquired about any existing restraining order from the NLRC and upon being told that there was none, the latter allowed the said encashment.

The private respondent filed a complaint before the Regional Trial Court of Manila against the petitioners and Damian Rojas, the Deputy Provincial Sheriff of Negros Occidental, then defendants, alleging that the former's current deposit with the petitioner bank was levied upon, garnished, and with undue haste unlawfully allowed to be withdrawn, and notwithstanding the alleged unauthorized disclosure of the said current deposit and unlawful release thereof, the latter have failed and refused to restore the amount of P37,466.18 to the former's account despite repeated demands.

The trial court rendered its judgment in favor of the private respondent. On appeal, the respondent court in a decision dated February 26, 1988, first reversed the said judgment of the lower court, but however, on the motion for reconsideration filed by the private respondent, subsequently annulled and set aside its said decision in the resolution dated June 27, 1988. On August 3, 1988, the respondent court denied the petitioner's own motion for reconsideration. Hence, this petition.

ISSUE

Whether or not petitioners violated Republic Act No. 1405, otherwise known as the Secrecy of Bank Deposits Act, when they allowed the sheriff to garnish the deposit of private respondent.

RULING

NO. Since there is no evidence that the petitioners themselves divulged the information that the private respondent had an account with the petitioner bank and it is undisputed that the said account was properly the object of the notice of garnishment and writ of execution carried out by the deputy sheriff, a duly authorized officer of the court, we can not therefore hold the petitioners liable under R.A. 1405.

While the general rule is that the findings of fact of the appellate court are binding on this Court, the said rule however admits of exceptions, such as when the Court of Appeals clearly misconstrued and misapplied the law, drawn from the incorrect conclusions of fact established by evidence and otherwise at certain conclusions which are based on misapprehension of facts, as in the case at bar. The petitioners are therefore absolved from any liability for the disclosure and release of the private respondent's deposit to the custody of the deputy sheriff in satisfaction of the final judgment for the laborers'backwages.

• Salvacion vs. Central Bank of the Philippines, G.R. No. 94723, August 21, 1997

KAREN E. SALVACION, minor, thru Federico N. Salvacion, Jr., father and Natural Guardian, and Spouses FEDERICO N. SALVACION, JR., and EVELINA E. SALVACION, *petitioners*, *vs.* CENTRAL BANK OF THE PHILIPPINES, CHINA BANKING CORPORATION and GREG BARTELLI y NORTHCOTT, *respondents*.

G.R. No. 94723, EN BANC, August 21, 1997, Justice Torres, Jr.

Obviously, the foreign currency deposit made by a transient or a tourist is not the kind of deposit encourage by PD Nos. 1034 and 1035 and given incentives and protection by said laws because such depositor stays only for a few days in the country and, therefore, will maintain his deposit in the bank only for a short time.

Respondent Greg Bartelli, as stated, is just a tourist or a transient. He deposited his dollars with respondent China Banking Corporation only for safekeeping during his temporary stay in the Philippines.

For the reasons stated above, the Solicitor General thus submits that the dollar deposit of respondent Greg Bartelli is not entitled to the protection of Section 113 of Central Bank Circular No. 960 and PD No. 1246 against attachment, garnishment or other court processes.

FACTS

Greg Bartelli y Northcott, an American tourist, coaxed and lured petitioner Karen Salvacion, then 12 years old to go with him to his apartment. Therein, Greg Bartelli detained Karen Salvacion for four days, and was able to rape the child once on February 4, and three times each day on February 5, 6, and 7, 1989. On February 7, 1989, after policemen and people living nearby, rescued Karen, Greg Bartelli was arrested and detained at the Makati Municipal Jail. The policemen recovered from Bartelli the following items: 1.) Dollar Check No. 368, Control No. 021000678-1166111303, US 3,903.20; 2.) COCOBANK Bank Book No. 104-108758-8 (Peso Acct.); 3.) Dollar Account China Banking Corp., US \$/A#54105028-2; 4.) ID-122-30-8877; 5.) Philippine Money (P234.00) cash; 6.) Door Keys 6 pieces; 7.) Stuffed Doll (Teddy Bear) used in seducing the complainant.

Makati Investigating Fiscal filed against Greg Bartelli, criminal cases for Serious Illegal Detention and for four (4) counts of Rape. On the same day, petitioners filed with the Regional Trial Court of Makati civil case for damages with preliminary attachment against Greg Bartelli. On February 24, 1989, the day there was a scheduled hearing for Bartellis petition for bail the latter escaped from jail.

The court granted the fiscals Urgent *Ex-Parte* Motion for the Issuance of Warrant of Arrest and Hold Departure Order. Pending the arrest of the accused Greg Bartelli y Northcott, the criminal cases were archived in an Order.

Petitioners aver that Section 113 of Central Bank Circular No. 960 providing that Foreign currency deposits shall be exempt from attachment, garnishment, or any other order or process of any court, legislative body, government agency or any administrative body whatsoever should be unconstitutional on the grounds that:

- 1. It has taken away the right of petitioners to have the bank deposit of defendant Greg Bartelli y Northcott garnished to satisfy the judgment rendered in petitioners favor in violation of substantive due process guaranteed by the Constitution;
- 2. It has given foreign currency depositors an undue favor or a class privilege in violation of the equal protection clause of the Constitution;
- 3. It has provided a safe haven for criminals like the herein respondent Greg Bartelli y Northcott since criminal could escape civil liability for their wrongful acts by merely converting their money to a foreign currency and depositing it in a foreign currency deposit account with an authorized bank; and
- 4. The Monetary Board, in issuing Section 113 of Central Bank Circular No. 960 has exceeded its delegated quasi- legislative power when it took away:

- a.) The plaintiffs substantive right to have the claim sought to be enforced by the civil action secured by way of the writ of preliminary attachment as granted by Rule 57 of the Revised Rules of Court;
- b.) The plaintiffs substantive right to have the judgment credit satisfied by way of the writ of execution out of the bank deposit of the judgment debtor as granted to the judgment creditor by Rule 39 of the Revised Rules of Court, which is beyond its power to do so.

On the other hand, respondent Central Bank alleges that the Monetary Board in issuing Section 113 of CB Circular No. 960 did not exceed its power or authority because the subject Section is copied verbatim from a portion of R.A. No. 6426 as amended by P.D. 1246. Hence, it was not the Monetary Board that grants exemption from attachment or garnishment to foreign currency deposits, but the law (R.A. 6426 as amended) itself; that it does not violate the substantive due process guaranteed by the Constitution because a.) it was based on a law; b.) the law seems to be reasonable; c.) it is enforced according to regular methods of procedure; and d.) it applies to all members of a class.

Expanding, the Central Bank said; that one reason for exempting the foreign currency deposits from attachment, garnishment or any other order process of any court, is to assure the development and speedy growth of the Foreign Currency Deposit System and the Offshore Banking System in the Philippines; that another reason is to encourage the inflow of foreign currency deposits into the banking institutions thereby placing such institutions more in a position to properly channel the same to loans and investments in the Philippines, thus directly contributing to the economic development of the country; that the subject section is being enforced according to the regular methods of procedure; and that it applies to all currency deposits made by any person and therefore does not violate the equal protection clause of the Constitution.

Respondent Central Bank further avers that the questioned provision is needed to promote the public interest and the general welfare; that the State cannot just stand idly by while a considerable segment of the society suffers from economic distress; that the State had to take some measures to encourage economic development; and that in so doing persons and property may be subjected to some kinds of restraints or burdens to secure the general welfare or public interest. Respondent Central Bank also alleges that Rule 39 and Rule 57 of the Revised Rules of Court provide that some properties are exempted from execution/attachment especially provided by law and R.A. No. 6426 as amended is such a law, in that it specifically provides, among others, that foreign currency deposits shall be exempted from attachment, garnishment, or any other order or process of any court, legislative body, government agency or any administrative body whatsoever.

Respondent China Bank is not unmindful of the inhuman sufferings experienced by the minor Karen E. Salvacion from the beastly hands of Greg Bartelli; that it is not only too willing to release the dollar deposit of Bartelli which may perhaps partly mitigate the sufferings petitioner has undergone; but it is restrained from doing so in view of R.A. No. 6426 and Section 113 of Central Bank Circular No. 960; and that despite the harsh effect to these laws on petitioners, CBC has no other alternative but to follow the same.

In the Civil Case, the Judge issued an Order granting the application of herein petitioners, for the issuance of the writ of preliminary attachment. After petitioners gave a bond by FGU Insurance

Corporation in the amount P100,000.00, a Writ of Preliminary Attachment was issued by the trial court on February 28, 1989.

The Deputy Sheriff of Makati served a Notice of Garnishment on China Banking Corporation. In a letter to the Deputy Sheriff of Makati, China Banking Corporation invoked Republic Act No. 1405 as its answer to the notice of garnishment served on it. Deputy Sheriff of Makati Armando de Guzman sent his reply to China Banking Corporation saying that the garnishment did not violate the secrecy of bank deposits since the disclosure is merely incidental to a garnishment properly and legally made by virtue of a court order which has placed the subject deposits in *custodia legis*. In answer to this letter of the Deputy Sheriff of Makati, China Banking Corporation invoked Section 113 of Central Bank Circular No. 960 to the effect that the dollar deposits of defendant Greg Bartelli are exempt from attachment, garnishment, or any other order or process of any court, legislative body, government agency or any administrative body, whatsoever.

This prompted the counsel for petitioners to make an inquiry with the Central Bank on whether Section 113 of CB Circular No. 960 has any exception or whether said section has been repealed or amended since said section has rendered nugatory the substantive right of the plaintiff to have the claim sought to be enforced by the civil action secured by way of the writ of preliminary attachment as granted to the plaintiff under Rule 57 of the Revised Rules of Court. The Central Bank responded:

"The cited provision is absolute in application. It does not admit of any exception, nor has the same been repealed nor amended.

The purpose of the law is to encourage dollar accounts within the countrys banking system which would help in the development of the economy. There is no intention to render futile the basic rights of a person as was suggested in your subject letter. The law may be harsh as some perceive it, but it is still the law. Compliance is, therefore, enjoined."

The trial court granted petitioners motion for leave to serve summons by publication in the Civil Case entitled Karen Salvacion. *et al. vs.* Greg Bartelli y Northcott. Summons with the complaint was published in the Manila Times once a week for three consecutive weeks. Greg Bartelli failed to file his answer to the complaint and was declared in default. After hearing the case *ex-parte*, the court rendered judgment in favor of petitioners.

Pursuant to an Order granting leave to publish notice of decision, said notice was published in the Manila Bulletin once a week for three consecutive weeks. After the lapse of fifteen (15) days from the date of the last publication of the notice of judgment and the decision of the trial court had become final, petitioners tried to execute on Bartellis dollar deposit with China Banking Corporation. Likewise, the bank invoked Section 113 of Central Bank Circular No. 960.

Thus, petitioners decided to seek relief from this Court.

ISSUES

(1) Whether or not the Court may entertain the instant petition despite the fact that original jurisdiction in petitions for declaratory relief rests with the lower court

(2) Whether or not Section 113 of Central Bank Circular No. 960 and Section 8 of R.A. 6426, as amended by P.D. 1246, otherwise known as the Foreign Currency Deposit Act be made applicable to a foreign transient

RULING

1. YES. The Court has no original and exclusive jurisdiction over a petition for declaratory relief. However, exceptions to this rule have been recognized. Thus, where the petition has far-reaching implications and raises questions that should be resolved, it may be treated as one for mandamus.

It is worth mentioning that R.A. No. 6426 was enacted in 1983 or at a time when the country's economy was in a shambles; when foreign investments were minimal and presumably, this was the reason why said statute was enacted. But the realities of the present times show that the country has recovered economically; and even if not, the questioned law still denies those entitled to due process of law for being unreasonable and oppressive. The intention of the questioned law may be good when enacted. The law failed to anticipate the inquitous effects producing outright injustice and inequality such as as the case before us.

The Solicitor General correctly opined, thus: "The present petition has far-reaching implications on the right of a national to obtain redress for a wrong committed by an alien who takes refuge under a law and regulation promulgated for a purpose which does not contemplate the application thereof envisaged by the allien. More specifically, the petition raises the question whether the protection against attachment, garnishment or other court process accorded to foreign currency deposits PD No. 1246 and CB Circular No. 960 applies when the deposit does not come from a lender or investor but from a mere transient who is not expected to maintain the deposit in the bank for long.

2. NO. It is evident that the Offshore Banking System and the Foreign Currency Deposit System were designed to draw deposits from foreign lenders and investors It is these depositors that are induced by the two laws and given protection and incentives by them.

Obviously, the foreign currency deposit made by a transient or a tourist is not the kind of deposit encourage by PD Nos. 1034 and 1035 and given incentives and protection by said laws because such depositor stays only for a few days in the country and, therefore, will maintain his deposit in the bank only for a short time.

Respondent Greg Bartelli, as stated, is just a tourist or a transient. He deposited his dollars with respondent China Banking Corporation only for safekeeping during his temporary stay in the Philippines.

For the reasons stated above, the Solicitor General thus submits that the dollar deposit of respondent Greg Bartelli is not entitled to the protection of Section 113 of Central Bank Circular No. 960 and PD No. 1246 against attachment, garnishment or other court processes.

In fine, the application of the law depends on the extent of its justice. Eventually, if we rule that the questioned Section 113 of Central Bank Circular No. 960 which exempts from attachment, garnishment, or any other order or process of any court. Legislative body, government agency or

any administrative body whatsoever, is applicable to a foreign transient, injustice would result especially to a citizen aggrieved by a foreign guest like accused Greg Bartelli. This would negate Article 10 of the New Civil Code which provides that in case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail. When the statute is silent or ambiguous, this is one of those fundamental solutions that would respond to the vehement urge of conscience. (Padilla vs. Padilla, 74 Phil. 377)

It would be unthinkable, that the questioned Section 113 of Central Bank No. 960 would be used as a device by accused Greg Bartelli for wrongdoing, and in so doing, acquitting the guilty at the expense of the innocent.

> GOVERNMENT SERVICE INSURANCE SYSTEM, vs. THE HONORABLE 15th DIVISION OF THE COURT OF APPEALS and INDUSTRIAL BANK OF KOREA, TONG YANG MERCHANT BANK, HANAREUM BANKING CORP., LAND BANK OF THE PHILIPPINES, WESTMONT BANK and DOMSAT HOLDINGS, INC., G.R. No. 189206, June 8, 2011, PEREZ, J.

GOVERNMENT SERVICE INSURANCE SYSTEM, petitioner, vs. THE HONORABLE 15TH DIVISION OF THE COURT OF APPEALS and INDUSTRIAL BANK OF KOREA, TONG YANG MERCHANT BANK, HANAREUM BANKING CORP., LAND BANK OF THE PHILIPPINES, WESTMONT BANK and DOMSAT HOLDINGS, INC., respondents.

G.R. No. 189206, FIRST DIVISION, June 8, 2011, PEREZ, J

The lone exception to the non-disclosure of foreign currency deposits, under Republic Act No. 6426, is disclosure upon the written permission of the depositor.

Applying Section 8 of Republic Act No. 6426, absent the written permission from Domsat, Westmont Bank cannot be legally compelled to disclose the bank deposits of Domsat, otherwise, it might expose itself to criminal liability under the same act.

FACTS

Domsat Holdings, Inc. (Domsat) obtained a loan from \$11 Million to Domsat for the purpose of financing the lease and/or purchase of a Gorizon Satellite from the International Organization of Space Communications (Intersputnik) from Industrial Bank of Korea, Tong Yang Merchant Bank, First Merchant Banking Corporation, Land Bank of the Philippines, and Westmont Bank (now United Overseas Bank), collectively known as the Banks. In line with this, Domsat obtained a surety bond from GSIS to secure the payment of the loan from the Banks.

When Domsat failed to pay the loan, GSIS refused to comply with its obligation reasoning that Domsat did not use the loan proceeds for the payment of rental for the satellite. GSIS alleged that Domsat, with Westmont Bank as the conduit, transferred the U.S. \$11 Million loan proceeds from the Industrial Bank of Korea to Citibank New York account of Westmont Bank and from there to the Binondo Branch of Westmont Bank. The Banks filed a complaint before the RTC of Makati against Domsat and GSIS.

In the course of the hearing, GSIS requested for the issuance of a *subpoena ducestecum* to the custodian of records of Westmont Bank to produce among others the ledger covering the account of DOMSAT Holdings, Inc. with Westmont Bank and all documents, records, files, books, deeds, papers, notes and other data and materials relating to the account.

The RTC issued a *subpoena decustecum*. The Banks and Domsat filed a motion to quash on three grounds: 1) the *subpoena* is unreasonable, oppressive and does not establish the relevance of the documents sought; 2) request for the documents will violate the Law on Secrecy of Bank Deposits; and 3) GSIS failed to advance the reasonable cost of production of the documents.

RTC issued an Order denying the motion to quash for lack of merit. however, the trial court granted the second motion for reconsideration filed by the banks. The previous *subpoenas* issued were consequently quashed. The trial court invoked the ruling in *Intengan v. Court of Appeals*, where it was ruled that foreign currency deposits are absolutely confidential and may be examined only when there is a written permission from the depositor. The motion for reconsideration filed by GSIS was denied . On appeal, the Court of Appeals declared that Domsats deposit in Westmont Bank is covered by Republic Act No. 6426 or the Bank Secrecy Law.

Before the Supreme Court, GSIS insisted that Domsat's deposit with Westmont Bank can be examined and inquired into. It anchored its argument on Republic Act No. 1405 or the Law on Secrecy of Bank Deposits, which allows the disclosure of bank deposits in cases where the money deposited is the subject matter of the litigation. GSIS asserted that the subject matter of the litigation is the U.S. \$11 Million obtained by Domsat from the Banks to supposedly finance the lease of a Russian satellite from Intersputnik.

Also, GSIS assailed the acceptance by the trial court of the second motion for reconsideration filed by the banks on the grounds that it is *pro forma* and did not conform to the notice requirements of Section 4, Rule 15 of the Rules of Civil Procedure.

Upon the other hand, the Banks maintained that Republic Act No. 1405 is not the applicable law in the instant case because the Domsat deposit is a foreign currency deposit, thus covered by Republic Act No. 6426. Under said law, only the consent of the depositor shall serve as the exception for the disclosure of his/her deposit.

ISSUES

1. WON the acted with grave abuse of discretion when it favorably considered respondent banks (second) Motion for Reconsideration dated July 9, 2003 despite the fact that it did not contain a notice of hearing and was therefore a mere scrap of paper?

2. WON the respondent judge capriciously and arbitrarily ignored Section 2 of the Foreign Currency Deposit Act (RA 6426) in ruling in his Orders dated September 1 and December 30, 2003 that the US\$11,000,000.00 deposit in the account of respondent Domsat in Westmont Bank is covered by the secrecy of bank deposit?

3. WON the disclosure of respondent banks and respondent Domsat of the US\$11,000,000.00 deposit during the trial made the said deposits non-confidential?

RULING

1. No. The judge may, in the exercise of his sound discretion, grant the second motion for reconsideration despite its being *pro forma*. The appellate court correctly relied on precedents where this Court set aside technicality in favor of substantive justice. Furthermore, the appellate court accurately pointed out that petitioner did not assail the defect of lack of notice in its opposition to the second motion of reconsideration. Thus, it can be considered a waiver of the defect.

2. No. Republic Act No. 1405 provides for four (4) exceptions when records of deposits may be disclosed. These are under any of the following instances: a) upon written permission of the depositor, (b) in cases of impeachment, (c) upon order of a competent court in the case of bribery or dereliction of duty of public officials or, (d) when the money deposited or invested is the subject matter of the litigation, and e) in cases of violation of the Anti-Money Laundering Act (AMLA), the Anti-Money Laundering Council (AMLC) may inquire into a bank account upon order of any competent court. On the other hand, the lone exception to the non-disclosure of foreign currency deposits, under Republic Act No. 6426, is disclosure upon the written permission of the depositor.

These two laws both support the confidentiality of bank deposits. There is no conflict between them. Republic Act No. 1405 was enacted for the purpose of giving encouragement to the people to deposit their money in banking institutions and to discourage private hoarding so that the same may be properly utilized by banks in authorized loans to assist in the economic development of the country. It covers all bank deposits in the Philippines and no distinction was made between domestic and foreign deposits. Thus, Republic Act No. 1405 is considered a law of general application.

On the other hand, Republic Act No. 6426 was intended to encourage deposits from foreign lenders and investors. It is a special law designed especially for foreign currency deposits in the Philippines. A general law does not nullify a specific or special law. *Generaliaspecialibus non derogant*. Therefore, it is beyond cavil that Republic Act No. 6426 applies in this case.

Applying Section 8 of Republic Act No. 6426, absent the written permission from Domsat, Westmont Bank cannot be legally compelled to disclose the bank deposits of Domsat, otherwise, it might expose itself to criminal liability under the same act.

3. No. The testimony of the incumbent president of Westmont Bank is not the written consent contemplated by Republic Act No. 6426.

F. General Banking Law of 2000 (R.A. No. 8791)

8. Definition and Classification of Banks

• Republic of the Philippines vs. Security Credit and Acceptance Corporation, G.R. No. L-20583, January 23, 1967

REPUBLIC OF THE PHILIPPINES VS. SECURITY CREDIT AND ACCEPTANCE CORPORATION, ROSENDO T. RESUELLO, PABLO TANJUTCO, ARTURO SORIANO, RUBEN BELTRAN, BIENVENIDO V. ZAPA, PILAR G. RESUELLO, RICARDO D. BALATBAT, JOSE SEBASTIAN AND VITO TANJUTCOJR.

G.R. No. L-20583, EN BANC, January 23, 1967, Justice Concepcion

Although, admittedly, defendant corporation has not secured the requisite authority to engage in banking, defendants deny that its transactions partake of the nature of banking operations. It is conceded, however, that, in consequence of a propaganda campaign therefor, a total of 59,463 savings account deposits have been made by the public with the corporation and its 74 branches, with an aggregate deposit of P1,689,136.74, which has been lent out to such persons as the corporation deemed suitable therefor.

A bank has been defined as a moneyed instit<mark>ute founde</mark>d to facilitate the borrowing, lending and safekeeping of money and to deal, in notes, bills of exchange, and credits.

FACTS

Security Credit And Acceptance Corporation registered its Articles of Incorporation with the Securities and Exchange Commission. Acting upon the request of Superintendent of Banks of the Central Bank of the Philippines, the legal counsel opined that the said corporation is a banking institution within the purview of Republic Act No. 337. Subsequently, pursuant to a search warrant issued by Municipal Court of Manila, the members of intelligence division of the Central Bank and of the Manila Police Department searched the premises of the corporation and seized documents and records thereof relative to its business operations.

The examination disclosed that the said corporation was regularly lending funds obtained from the receipt of deposits from the public and/or the sale of securities. The Corporation therefore is performing banking functions without requisite certificate of authority from the Monetary Board of the Central Bank, in violation of Secs. 2 and 6 of Republic Act 337.

The Solicitor General commenced a quo warranto proceedings for the dissolution of the corporation, with a prayer that, meanwhile, a writ of preliminary injunction be issued ex parte, enjoining the corporation and its branches, as well as its officers and agents, from performing the banking operations complained of, and that a receiver be appointed pendente lite.

ISSUE

Whether or not said corporation is engaged in banking operation

RULING

Yes. Although, admittedly, defendant corporation has not secured the requisite authority to engage in banking, defendants deny that its transactions partake of the nature of banking operations. It is conceded, however, that, in consequence of a propaganda campaign therefor, a total of 59,463 savings account deposits have been made by the public with the corporation and its 74 branches, with an aggregate deposit of P1,689,136.74, which has been lent out to such persons as the corporation deemed suitable therefor.

It is clear that these transactions partake of the nature of banking, as the term is used in Section 2 of the General Banking Act. Indeed, a bank has been defined as a moneyed institute founded to facilitate the borrowing, lending and safe-keeping of money and to deal, in notes, bills of exchange, and credits

Further, an investment company which loans out the money of its customers, collects the interest and charges a commission to both lender and borrower, is a bank.

9. Distinction of Banks from Quasi-Banks and Trust Entities

• Teodoro Bañas vs. Asia Pacific Finance Corporation, G.R. No. 128703, October 18, 2000

TEODORO BAÑAS C. DIZON CONSTRUCTION, INC., AND CENEN DIZON VS. ASIA PACIFIC FINANCE CORPORATION, SUBSTITUTED BY INTERNATIONAL CORPORATE BANK NOW KNOWN AS UNION BANK OF THE PHILIPPINES.

G.R. No. 128703, SECOND DIVISION, October 18, 2000, Justice Bellosillo

Accordingly, an investm<mark>ent company refers to any issue</mark>r, which is or holds itself out as being engaged or proposes to engage primarily in the business of investing, reinvesting or trading in securities.

Clearly, in this case, the transaction between petitioners and respondent was one involving not a loan but purchase of receivables at a discount, well within the purview of "investing, reinvesting or trading in securities" which an investment company, like ASIA PACIFIC, is authorized to perform and does not constitute a violation of the General Banking Act.

Moreover, according to Sec. 2 of the General Banking Act what is prohibited by law is for investment companies to lend funds obtained from the public through receipts of deposit, which is a function of banking institutions. However, here, the funds supposedly "lent" to petitioners have not been shown to have been obtained from the public by way of deposits, hence, the inapplicability of banking laws.

FACTS

Bañas executed a Promissory Note in favor of C. G. Dizon Construction. Thereafter, C. G. Dizon Construction endorsed with recourse the Promissory Note to ASIA PACIFIC, and as a security thereof, the former, through its corporate officers, executed a Deed of Chattel Mortgage covering

three (3) heavy equipment units of Caterpillar Bulldozer Crawler Tractors. Petitioner, however, failed to pay. Thus, ASIA PACIFIC demanded payment, but the demand remained unheeded.

Consequently, ASIA PACIFIC filed a complaint for a sum of money with prayer for a writ of replevin against Teodoro Baas, C. G. Dizon Construction and its president.

For its defense, petitioner contended that ASIA PACIFIC was organized as an investment house, which could not engage in the lending of funds obtained from the public through receipt of deposits. Thus, the disputed Promissory Note, Deed of Chattel Mortgage and Continuing Undertaking were not intended to be valid and binding on the parties as they were merely devices to conceal their real intention, which was to enter into a contract of loan in violation of banking laws.

Moreover, Petitioner averred that there was an agreement between them and respondent that if the former would deliver their 2 bulldozer crawler tractors to the latter, its obligation would fully be extinguished.

During the pendency of the case, the trial court issued a writ of replevin against defendant C. G. Dizon Construction for the surrender of the bulldozer crawler tractors subject of the Deed of Chattel Mortgage.

After trial, the Regional Trial Court ruled in favor of ASIA PACIFIC holding the defendants jointly and severally liable for the unpaid balance of the obligation under the Promissory Note.

On appeal, the Court of Appeals affirmed in toto the decision of the trial court holding them liable to Asia Pacific Finance Corporation in the amount of P87,637.50 at 14% interest per annum in addition toattorney's fees and costs of suit. Subsequently, petitioner filed a petition for review with the Supreme Court.

ISSUES

1. Whether or not the disputed transaction between petitioners and ASIA PACIFIC violated banking laws?

2. Whether or not the surrender of the bulldozer crawler tractors to respondent resulted in the extinguishment of petitioners' obligation?

RULING

1. No, there is no violation.

Accordingly, an investment company refers to any issuer, which is or holds itself out as being engaged or proposes to engage primarily in the business of investing, reinvesting or trading in securities.

Section 2, par. (a), of the Revised Securities Ac tprovides that securities shall include commercial papers evidencing indebtedness of any person, financial or non-financial entity, irrespective of

maturity, issued, endorsed, sold, transferred or in any manner conveyed to another with or without recourse, such as promissory notes .

Clearly, in this case, the transaction between petitioners and respondent was one involving not a loan but purchase of receivables at a discount, well within the purview of "investing, reinvesting or trading in securities" which an investment company, like ASIA PACIFIC, is authorized to perform and does not constitute a violation of the General Banking Act.

Moreover, according to Sec. 2 of the General Banking Act what is prohibited by law is for investment companies to lend funds obtained from the public through receipts of deposit, which is a function of banking institutions. However, here, the funds supposedly "lent" to petitioners have not been shown to have been obtained from the public by way of deposits, hence, the inapplicability of banking laws.

2. No, the obligation is not extinguished.

There was no binding and perfected contract between petitioners and respondent regarding the settlement of the obligation, but only a conditional one, a mere conjecture in fact, depending on whether the value of the tractors to be surrendered would equal the balance of the loan plus interests. And since the bulldozer crawler tractors were sold at the foreclosure sale for only P180,000.00 which was not enough to cover the unpaid balance of P267,637.50, petitioners are still liable for the deficiency.

First Planters Pawnshop, Inc.,vs. Commissioner of Internal Revenue, G.R. No. 174134, July 30, 2008

FIRST PLANTERS PAWNSHOP INC., petitioner, v. COMMISSIONER OF INTERNAL REVENUE, respondent.

G.R. No. 174134, THIRD DIVISION, July 30, 2008, AUSTRIA-MARTINEZ, J.

Financial intermediaries as persons or entities whose principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others.

Since petitioner is a non-bank financial intermediary, it is subject to 10% VAT for the tax years 1996 to 2002; however, with the levy, assessment and collection of VAT from non-bank financial intermediaries being specifically deferred by law, then petitioner is not liable for VAT during these tax years. But with the full implementation of the VAT system on non-bank financial intermediaries starting January 1, 2003, petitioner is liable for 10% VAT for said tax year. And beginning 2004 up to the present, by virtue of R.A. No. 9238, petitioner is no longer liable for VAT but it is subject to percentage tax on gross receipts from 0% to 5 %, as the case may be.

Moreover, for purposes of taxation, the same pawn ticket is proof of an exercise of a taxable privilege of concluding a contract of pledge. At any rate, it is not said ticket that creates the pawnshop's obligation to pay DST but the exercise of the privilege to enter into a contract of pledge. There is therefore no basis in petitioner's assertion that a DST is literally a tax on a document and that no tax may be imposed on a pawn ticket.

FACTS

First Planter's Pawnshop was informed by the BIR that it has an existing tax deficiency on its VAT and Documentary Stamp Tax (DST) liabilities for the year 2000.

The core of petitioner's argument is that it is not a lending investor within the purview of Section 108(A) of the NIRC, as amended, and therefore not subject to VAT. Petitioner also contends that a pawn ticket is not subject to DST because it is not proof of the pledge transaction, and even assuming that it is so, still, it is not subject to tax since a DST is levied on the document issued and not on the transaction.

Petitioner protested the assessment for lack of legal and factual bases which was denied by the Acting Regional Director.

First Planter's Pawnshop then filed a petition for review with the Court of Tax Appeals (CTA). In a Decision dated May 9, 2005, the 2nd Division of the CTA upheld the deficiency assessment. Petitioner filed a motion for reconsideration which was denied in a Resolution dated October 7, 2005. Petitioner appealed to the CTA En Banc which also denied for lack of merit.

Petitioner sought reconsideration but this was denied by the CTA En Banc per Resolution dated August 14, 2006. Hence, the present petition for review under Rule 45 of the Rules of Court.

ISSUES

- 1. Whether or not First Planter's Pawnshop is liable for Value Added Tax.
- 2. Whether or not First Planter's Pawnshop is liable for Documentary Stamp Tax.

RULING

1. NO

The determination of petitioner's tax liability depends on the tax treatment of a pawnshop business. The Court found that pawnshops should have been treated as non-bank financial intermediaries from the very beginning, subject to the appropriate taxes provided by law.

Financial intermediaries as persons or entities whose principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others.

It need not be elaborated that pawnshops are non-banks/banking institutions. Moreover, the nature of their business activities partakes that of a financial intermediary in that its principal function is lending.

A pawnshop's business and operations are governed by Presidential Decree (P.D.) No. 114 or the Pawnshop Regulation Act and Central Bank Circular No. 374 (Rules and Regulations for Pawnshops). Section 3 of P.D. No. 114 defines pawnshop as a person or entity engaged in the business of lending money on personal property delivered as security for loans and shall be synonymous, and may be used interchangeably, with pawnbroker or pawn brokerage.

That pawnshops are to be treated as non-bank financial intermediaries is further bolstered by the fact that pawnshops are under the regulatory supervision of the Bangko Sentral ng Pilipinas and covered by its Manual of Regulations for Non-Bank Financial Institutions.

Since petitioner is a non-bank financial intermediary, it is subject to 10% VAT for the tax years 1996 to 2002; however, with the levy, assessment and collection of VAT from non-bank financial intermediaries being specifically deferred by law, then petitioner is not liable for VAT during these tax years. But with the full implementation of the VAT system on non-bank financial intermediaries starting January 1, 2003, petitioner is liable for 10% VAT for said tax year. And beginning 2004 up to the present, by virtue of R.A. No. 9238, petitioner is no longer liable for VAT but it is subject to percentage tax on gross receipts from 0% to 5 %, as the case may be.

2.YES

Applying jurisprudence, it was ruled that the subject of DST is not limited to the document alone. A DST is an excise tax on the exercise of a right or privilege to transfer obligations, rights or properties incident thereto.

Pledge is among the privileges, the exercise of which is subject to DST. A pledge may be defined as an accessory, real and unilateral contract by virtue of which the debtor or a third person delivers to the creditor or to a third person movable property as security for the performance of the principal obligation, upon the fulfillment of which the thing pledged, with all its accessions and accessories, shall be returned to the debtor or to the third person

True, the law does not consider said ticket as an evidence of security or indebtedness. However, for purposes of taxation, the same pawn ticket is proof of an exercise of a taxable privilege of concluding a contract of pledge. At any rate, it is not said ticket that creates the pawnshop's obligation to pay DST but the exercise of the privilege to enter into a contract of pledge. There is therefore no basis in petitioner's assertion that a DST is literally a tax on a document and that no tax may be imposed on a pawn ticket.

10. Bank Powers and Liabilities

c. Corporate Powers

• Register of Deeds of Manila vs. China Banking Corporation, 4 SCRA 1145 (1962)

REGISTER of DEEDS OF MANILA, petitioner-appellee, vs. CHINA BANKING CORPORATION, respondent-appellant.

G.R. No. L-11964 . EN BANC, April 28, 1962, DIZON, J.

Paragraph (c), Section 25 of Republic Act 337 allows a commercial bank to purchase and hold such real estate as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings, We deem it quite clear and free from doubt that the "debts" referred to in this provision are only those resulting from previous loans and other similar transactions made or entered into by a commercial bank in the ordinary course of its business as such. Obviously, whatever "civil liability" — arising from the criminal offense of qualified theft — was admitted in favor of appellant bank by its former employee, Alfonso Pangilinan, was not a debt resulting from a loan or a similar transaction had between the two parties in the ordinary course of banking business.

FACTS

Alfonso Pangilinan, together with one Guillermo Chua, was charged with qualified theft. The crime was committed against their employer, China Banking Corporation. Pangilinan admitted his civil liability towards the bank and executed a deed of transfer over a parcel of land that he owns to satisfy such liability.

The deed was presented for registration in the Register of Deeds of Manila but because the transferee — the China Banking Corporation — was alien-owned and, as such, barred from acquiring lands in the Philippines, in accordance with the provisions of Section 5, Article XIII of the Constitution of the Philippines, said officer submitted the matter of its registration to the Land Registration Commission for resolution. The Land Registration Commission ruled that "that the deed of transfer in favor of an alien bank, subject of the present Consulta, is unregistrable for being in contravention of the Constitution of the Philippines". Hence, this petition before the SC. One of the appellants (China Bank) main contentions is that under the provisions of Section 25 of Republic Act No. 337 (General Banking Act) an alien or an alien-owned commercial bank may acquire land in the Philippines subject to the obligation of disposing of it within 5 years from the date of its acquisition.

ISSUE

Whether or not China Bank (an alien-owned bank) is allowed to acquire the ownership of the residential lot and register the same under the pertinent provision of General Banking Act?

RULING

NO. China Bank's contention that it is allowed to acquire real property under Section 25, particularly Section 25 (c) (d) of the GBA is untenable. Assuming, arguendo, that under the provisions of the aforesaid Act any commercial bank, whether alien-owned or controlled or not, may purchase and hold real estate for the specific purposes and in the particular cases enumerated in Section 25 thereof, this case does not fall under anyone of them. Paragraph (c), Section 25 of Republic Act 337 allows a commercial bank to purchase and hold such real estate as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings, We deem it quite clear and free from doubt that the "debts" referred to in this provision are only those resulting

from previous loans and other similar transactions made or entered into by a commercial bank in the ordinary course of its business as such. Obviously, whatever "civil liability" — arising from the criminal offense of qualified theft — was admitted in favor of appellant bank by its former employee, Alfonso Pangilinan, was not a debt resulting from a loan or a similar transaction had between the two parties in the ordinary course of banking business. Neither do the provisions of paragraph (d) of the same section apply to the present case because the deed of transfer in question can in no sense be considered as a sale made by virtue of a judgment, decree, mortgage, or trust deed held by appellant bank. In the same manner it cannot be said that the real property in question was purchased by appellant "to secure debts due to it", considering that, as stated heretofore, the term debt employed in the pertinent legal provision can logically refer only to such debts as may become payable to appellant bank as a result of a banking transaction.

• Banco de Oro-EPCI, Inc. vs. JAPRL Development Corporation, G.R. No. 179901, April 14, 2008

BANCO DE ORO-EPCI, INC., vs. JAPRL DEVELOPMENT CORPORATION, RAPID FORMING CORPORATION and JOSE U. AROLLADO

G.R. No. 179901, FIRST DIVISION, April 14, 2008, Corona, J

Banks have the right to annul any credit accommodation or loan, and demand the immediate payment thereof, from borrowers proven to be guilty of fraud. Petitioner would then be entitled to the immediate payment of P194,493,388.98 and other appropriate damages.

FACTS

After evaluating the financial statements of respondent JAPRL Development Corporation (JAPRL) for fiscal years 1998, 1999 and 2000, petitioner Banco de Oro-EPCI, Inc. extended credit Rfacilities to it amounting to P230,000,000. Respondents Rapid Forming Corporation (RFC), and Jose U. Arollado acted as JAPRL's sureties.

Despite its seemingly strong financial position, JAPRL defaulted in the payment of four trust receipts soon after the approval of its loan. Petitioner later learned from MRM Management, JAPRL's financial adviser, that JAPRL had altered and falsified its financial statements. It allegedly bloated its sales revenues to post a big income from operations for the concerned fiscal years to project itself as a viable investment. The information alarmed petitioner. Citing relevant provisions of the Trust Receipt Agreement, it demanded immediate payment of JAPRL's outstanding obligations amounting to P194,493,388.98.

Civil Case No. 03-991

Because JAPRL ignored its demand for payment, petitioner filed a complaint for sum of money with an application for the issuance of a writ of preliminary attachment against respondents in the RTC of Makati City on the ground of fraud because JAPRL altered and falsified its financial statements.

The Makati RTC subsequently denied the application (for the issuance of a writ of preliminary attachment) for lack of merit as petitioner was unable to substantiate its allegations. Nevertheless, it ordered the service of summons on respondents.

Respondents moved to dismiss the complaint due to an allegedly invalid service of summons because the officer's return stated that an "administrative assistant" had received the summons.

The Makati RTC denied the motion for lack of merit. It noted that because corporate officers are often busy, summonses to corporations are usually received only by administrative assistants or secretaries of corporate officers in the regular course of business.

Respondents moved for reconsideration but withdrew it before the Makati RTC could resolve the matter.

RTC SEC Case No. 68-2008-C

JAPRL (and its subsidiary, RFC) filed a petition for rehabilitation in Calamba RTC. Finding JAPRL's petition sufficient in form and in substance, the Calamba RTC issued a stay order.

In view of the said order, respondents hastily moved to suspend the proceedings in Civil Case No. 03-991 pending in the Makati RTC.

Makati RTC granted the motion with regard to JAPRL and RFC but ordered Arollado to file an answer. It ruled that, because he was jointly and solidarily liable with JAPRL and RFC, the proceedings against him should continue.

Respondents moved for reconsideration but it was denied.

Respondents filed a petition for certiorari in the CA. They asserted that the court did not acquire jurisdiction over their persons due to defective service of summons. Thus, the Makati RTC could not hear the complaint for sum of money.

CA granted the petition sustaining the position of respondents.

Petitioner moved for reconsideration but it was denied. Hence, this petition.

Petitioner asserts that respondents maliciously evaded the service of summonses to prevent the Makati RTC from acquiring jurisdiction over their persons. Furthermore, they employed bad faith to delay proceedings by cunningly exploiting procedural technicalities to avoid the payment of their obligations

ISSUES

I. Whether or not the Court acquired jurisdiction over the person of the respondents.

II. Whether or not the Makati RTC shall proceed to hear Civil Case No. 03-991.

RULING

I. Yes.

When respondents moved for the suspension of proceedings in Civil Case No. 03-991 before the Makati RTC (on the basis of order of the Calamba RTC), they waived whatever defect there was in the service of summons and were deemed to have submitted themselves voluntarily to the jurisdiction of the Makati RTC.

Respondents abused procedural technicalities (albeit unsuccessfully) for the sole purpose of preventing, or at least delaying, the collection of their legitimate obligations. Their reprehensible scheme impeded the speedy dispensation of justice. More importantly, however, considering the amount involved, respondents utterly disregarded the significance of a stable and efficient banking system to the national economy.

Banks are entities engaged in the lending of funds obtained through deposits from the public. They borrow the public's excess money (i.e., deposits) and lend out the same. Banks therefore redistribute wealth in the economy by channeling idle savings to profitable investments.

Banks operate (and earn income) by extending credit facilities financed primarily by deposits from the public. They plough back the bulk of said deposits into the economy in the form of loans. Since banks deal with the public's money, their viability depends largely on their ability to return those deposits on demand. For this reason, banking is undeniably imbued with public interest. Consequently, much importance is given to sound lending practices and good corporate governance.

Protecting the integrity of the banking system has become, by large, the responsibility of banks. The role of the public, particularly individual borrowers, has not been emphasized. Nevertheless, the Court is not unaware of the rampant and unscrupulous practice of obtaining loans without intending to pay the same.

II. Yes.

In this case, petitioner alleged that JAPRL fraudulently altered and falsified its financial statements in order to obtain its credit facilities. Considering the amount of petitioner's exposure in JAPRL, justice and fairness dictate that the Makati RTC hear whether or not respondents indeed committed fraud in securing the credit accomodation.

Petitioner can use the finding of fraud to move for the dismissal of the rehabilitation case in the Calamba RTC.

The protective remedy of rehabilitation was never intended to be a refuge of a debtor guilty of fraud.

Makati RTC should proceed to hear Civil Case No. 03-991 against the three respondents guided by Section 40 of the General Banking Law which states:

Section 40. Requirement for Grant of Loans or Other Credit Accommodations. Before granting a loan or other credit accommodation, a bank must ascertain that the debtor is capable of fulfilling his commitments to the bank.

Towards this end, a bank may demand from its credit applicants a statement of their assets and liabilities and of their income and expenditures and such information as may be prescribed by law or by rules and regulations of the Monetary Board to enable the bank to properly evaluate the credit application which includes the corresponding financial statements submitted for taxation purposes to the Bureau of Internal Revenue. <u>Should such statements prove to be false or incorrect in any material detail, the bank may terminate any loan or credit accommodation granted on the basis of said statements and shall have the right to demand immediate repayment or liquidation of the obligation.</u>

Under this provision, banks have the right to annul any credit accommodation or loan, and demand the immediate payment thereof, from borrowers proven to be guilty of fraud. Petitioner would then be entitled to the immediate payment of P194,493,388.98 and other appropriate damages.

d. Banking and Incidental Powers

Spouses Raul and Amalia Panlilio vs. Citibank, N.A., G.R. No. 156335, November 28, 2007

SPOUSES RAUL and AMALIA PANLILIO, *Petitioners, v. CITIBANK, N.A., Respondent.* G.R. No. 156335, THIRD DIVISION, November 28, 2007, MARTINEZ, *J.*

Investment management activities may be exercised by a banking institution, pursuant to Republic Act No. 337 or the General Banking Act of 1948, as amended, which was the law then in effect. Section 72 of said Act provides:

Sec. 72. In addition to the operations specifically authorized elsewhere in this Act, banking institutions other than building and loan associations may perform the following services:

(a) Receive in custody funds, documents, and valuable objects, and rent safety deposit boxes for the safeguarding of such effects;

(b) Act as financial agent and buy and sell, by order of and for the account of their customers, shares, evidences of indebtedness and all types of securities;

(c) Make collections and payments for the account of others and perform such other services for their customers as are not incompatible with banking business.

(d) Upon prior approval of the Monetary Board, act as managing agent, adviser, consultant or administrator of investment management/advisory/consultancy accounts.

The banks shall perform the services permitted under subsections (a), (b) and (c) of this section as depositories or as agents. Accordingly, they shall keep the funds, securities and other effects which they thus receive duly separated and apart from the bank's own assets and liabilities.

FACTS

Petitioner Amalia Panlilio (Amalia) visited Citibank's (respondent) Makati City office and deposited one million pesos in the bank's "Citihi" account, a fixed-term savings account with a higher-thanaverage interest. On the same day, Amalia also opened a current or checking account with Citibank, to which interest earnings of the Citihi account were to be credited. Citibank assigned one of its employees, JinkySuzara Lee (Lee), to personally transact with Amalia and to handle the accounts.

Amalia opened the accounts as ITF or "in trust for" accounts, as they were intended to benefit her minor children, in case she would meet an untimely death. To open these accounts, Amalia signed two documents namely a Relationship Opening Form (ROF) and an Investor Profiling and Suitability Questionnaire.

Amalia phoned Citibank saying she wanted to place an investment, this time in the amount of three million pesos (PhP3 million). Again, she spoke with Lee. After the phone conversation, Amalia went to Citibank bringing a PCIBank check in the amount of three million pesos (PhP3 million). During the visit, Amalia instructed Lee on what to do with the PhP3 million. Later, she learned that out of the said amount, PhP2,134,635.87 was placed by Citibank in a Long-Term Commercial Paper (LTCP), a debt instrument that paid a high interest, issued by the corporation Camella and Palmera Homes (C&P Homes). The rest of the money was placed in two PRPN accounts, in trust for each of Amalia's two children.

LTCPs' attraction is that they usually have higher yields than most investment instruments. In the case of the LTCP issued by C&P Homes, the gross interest rate was 16.25% per annum at the time Amalia made her investment.

The day she made the PhP3million investment, Amalia signed a Directional Investment Management Agreement (DIMA), Term Investment Application (TIA), and Directional Letter/Specific Instructions. Key features of the DIMA and the Directional Letter are provisions that essentially clear Citibank of any obligation to guarantee the principal and interest of the investment, absent fraud or negligence on the latter's part. The provisions likewise state that all risks are to be assumed by the investor (petitioner).

Following this investment, respondent claims to have regularly sent confirmations of investment (COIs) to petitioners. A COI is a one-page, computer generated document informing the customer of the investment earlier made with the bank. The first of these COIs was received by petitioners on or about December 9, 1997, as admitted by Amalia. Respondent claims that other succeeding COIs were sent to and received by petitioners.

Amalia claims to have called Lee as soon as she received the first COI and demanded that the investment in LTCP be withdrawn and placed in a PRPN. Respondent, however, denies this, claiming that Amalia merely called to clarify provisions in the COI and did not demand a withdrawal.

Petitioners met with respondent's other employee, Lizza Colet, to preterminate the LTCP and their other investments. Petitioners were told that as to the LTCP, liquidation could be made only if there

is a willing buyer, a prospect which could be difficult at that time because of the economic crisis. Still, petitioners signed three sets of Sales Order Slip to sell the LTCP and left these with Colet.

Amalia, through counsel, sent her first formal, written demand to respondent "for a withdrawal of her investment as soon as possible." The same was followed by another letter, which reiterated the same demands. In answer to the letters, respondent noted that the investment had a 2003 maturity, was not a deposit, and thus, its return to the investor was not guaranteed by respondent; however, it added that the LTCP may be sold prior to maturity and had in fact been put up for sale, but such sale was "subject to the availability of buyers in the secondary market." At that time, respondent was not able to find a buyer for the LTCP.

This is Petition for Review on Certiorari under Rule 45 of the Rules of Court, seeking to reverse the Decision of the Court of Appeals (CA) which reversed and set aside the Decision of the Regional Trial Court (RTC) of Makati City.

The case originated as a Complaint for a sum of money and damages, filed with the RTC, by the spouses Raul and Amalia Panlilio (petitioners) against Citibank N.A. (respondent).

ISSUE

Whether or not petitioners are bound by the terms and conditions of the Directional Investment Management Agreement (DIMA), Term Investment Application (TIA), Directional Letter/Specific Instructions, and Confirmations of Investment (COIs).

RULING

The DIMA, Directional Letter, TIA and COIs, read together, establish the agreement between the parties as an investment management agreement, which created a principal-agent relationship between petitioners as principals and respondent as agent for investment purposes. The agreement is not a trust or an ordinary bank deposit; hence, no trustor-trustee-beneficiary or even borrower-lender relationship existed between petitioners and respondent with respect to the DIMA account. Respondent purchased the LTCPs only as agent of petitioners; thus, the latter assumed all obligations or inherent risks entailed by the transaction under Article 1910 of the Civil Code, which provides:

Article 1910. The principal must comply with all the obligations which the agent may have contracted within the scope of his authority.

As for any obligation wherein the agent has exceeded his power, the principal is not bound except when he ratifies it expressly or tacitly.

The transaction is perfectly legal, as investment management activities may be exercised by a banking institution, pursuant to Republic Act No. 337 or the General Banking Act of 1948, as amended, which was the law then in effect. Section 72 of said Act provides:

Sec. 72. In addition to the operations specifically authorized elsewhere in this Act, banking institutions other than building and loan associations may perform the following services:

(a) Receive in custody funds, documents, and valuable objects, and rent safety deposit boxes for the safeguarding of such effects;

(b) Act as financial agent and buy and sell, by order of and for the account of their customers, shares, evidences of indebtedness and all types of securities;

(c) Make collections and payments for the account of others and perform such other services for their customers as are not incompatible with banking business.

(d) Upon prior approval of the Monetary Board, act as managing agent, adviser, consultant or administrator of investment management/ advisory/consultancy accounts.

The banks shall perform the services permitted under subsections (a), (b) and (c) of this section as depositories or as agents. Accordingly, they shall keep the funds, securities and other effects which they thus receive duly separated and apart from the bank's own assets and liabilities.

The Monetary Board may regulate the operations authorized by this section in order to insure that said operations do not endanger the interests of the depositors and other creditors of the banks while Section 74 prohibits banks from guaranteeing obligations of any person, thus:

Sec. 74. No bank or banking institution shall enter, directly, or indirectly into any contract of guaranty or suretyship, or shall guarantee the interest or principal of any obligation of any person, co-partnership, association, corporation or other entity. The provisions of this section shall, however, not apply to the following: (a) borrowing of money by banking institution through the rediscounting of receivables; (b) acceptance of drafts or bills of exchange (c) certification of checks; (d) transactions involving the release of documents attached to items received for collection; (e) letters of credit transaction, including stand-by arrangements; (f) repurchase agreements; (g) shipside bonds; (h) ordinary guarantees or indorsements in favor of foreign creditors where the principal obligation involves loans and credits extended directly by foreign investment purposes; and (i) other transactions which the Monetary Board may, by regulation, define or specify as not covered by the prohibition.

• WHITE MARKETING DEVELOPMENT CORPORATION, Petitioner, - versus -GRANDWOOD FURNITURE & WOODWORK, INC., Respondent. (G.R. No. 222407, SECOND DIVISION, November 23, 2016, MENDOZA, J.)

WHITE MARKETING DEVELOPMENT CORPORATION, Petitioner, - versus - GRANDWOOD FURNITURE & WOODWORK, INC., Respondent.

G.R. No. 222407, SECOND DIVISION, November 23, 2016, MENDOZA, J.

Jurisprudence states that when a person assigns his credit to another person, the latter is deemed subrogated to the rights as well as to the obligations of the former.

Consequently, ARC acquired all the rights, benefits and obligations of Metrobank under its mortgage contract with Grandwood. The same could be said for subsequent assignees or successors-in-interest after ARC like White Marketing. And due to the subrogation of White Marketing to the rights of

Metrobank, White Marketing is entitled to the shorter redemption period under Section 47 of the General Banking Law.

FACTS

Grandwood Furniture & Woodwork (Grandwood) obtained a loan from Metropolitan Bank and Trust Company (Metrobank) in the amount of 40,000,000. The loan was secured by a real estate mortgage.

Metrobank later sold its rights and interests over the loan and mortgage contract to Asia Recovery Corporation (ARC). The loan was subsequently assigned to Cameron Granville 3 Asset Management (CGAM3). CGAM3 extrajudicially foreclosed the real estate mortgage with White Marketing Development (White Marketing) as the highest bidder. White Marketing was informed that Grandwood wanted to redeem the property. White Marketing, however, argued that Grandwood no longer had the right to redeem. Grandwood then wrote a letter to the clerk of court that the clerk has the ministerial duty to recognize the right of redemption, accept the tender of payment and issue a certificate of redemption. The clerk of court of the trial court refused to accept the tender of payment because of the conflicting applicable laws on the matter of redemption period.

Grandwood then filed a petition for consignation, mandamus, and damages before the RTC claiming its right to redeem the property. The trial court dismissed the petition and ruled that White Marketing acquired all the rights of Metrobank in the mortgage contract assigned to CGAM3. The CA reversed the RTC and remanded the case to the latter for the determination of the redemption price. The CA ruled that the clerk of court should have accepted the consigned amount for the redemption of the property.

ISSUE

Whether White Marketing was subrogated to Metrobank and therefore entitled to a shorter redemption period under the General Banking Law

RULING

Yes. White Marketing stepped into the shoes of Metrobank by virtue of the assignment of credit. A contracting party's assignees, although seemingly a third party to the transaction, remain bound by the original party's transaction under the relativity principle because of the concept of subrogation, which inheres in assignment. Jurisprudence states that when a person assigns his credit to another person, the latter is deemed subrogated to the rights as well as to the obligations of the former. By virtue of the Deed of Assignment, the assignee is bound by exactly the same conditions as those which bound the assignor.

Accordingly, an assignee cannot acquire greater rights than those pertaining to the assignor and simply stands into the shoes of the latter. In an assignment of credit, the assignee acquires the power to enforce it to the same extent as the assignor could have enforced it against the debtor. Through the assignment of credit, the new creditor is entitled to the rights and remedies available to the previous creditor and includes accessory rights such as mortgage and pledge. Consequently, ARC acquired all the rights, benefits and obligations of Metrobank under its mortgage contract with

Grandwood. The same could be said for subsequent assignees or successors-in-interest after ARC like White Marketing. And due to the subrogation of White Marketing to the rights of Metrobank, White Marketing is entitled to the shorter redemption period under Section 47 of the General Banking Law.

11. Diligence Required of Banks—Relevant Jurisprudence

• Pacific Bank vs. Hart, 173 SCRA 102 (1989)

PACIFIC BANKING CORPORATION and CHESTER G. BABST, petitioners, vs. THE COURT OF APPEALS, JOSEPH C. HART and ELEANOR HART, respondents.

G.R. No. L-45656, THIRD DIVISION, May 5, 1989, GUTIERREZ, JR., J

A bank may be made liable for damages arising from a quasi-delict when a notary public's foreclosure on the pledged stocks was premature and done in bad faith. As between the bank and the notary, the law merely gives the employer a right to reimbursement from the employee for what is paid to the private respondent.

FACTS

On July 15, 1956, Joseph Hart and Clarkin signed a Memorandum of Agreement pursuant to which: a) of 1,000 shares out-standing, Clarkin was issued 500 shares in his and his wife's name, one share to J. Lapid, Clarkin's secretary, and nine shares in the name of the Harts were indorsed in blank and held by Clarkin so that he had 510 shares as against the Harts' 490; b) Hart was appointed President and General Manager as a result of which he resigned as Acting Manager as a result of which he resigned as Acting Manager of the First National City Bank at the Port Area, giving up salary of 1,125.00 a month and related fringe benefits.

Due to financial difficulties, Insular Farms Inc. borrowed 250,000.00 from Pacific Banking Corporation sometime in July of 1956. On July 31, 1956 Insular Farms Inc executed a Promissory Note of 250,000.00 to the bank payable in five equal annual installments, the first installment payable on or before July 1957. Said note provided that upon default in the payment of any installment when due, all other installments shall become due and payable.

This loan was effected and the money released without any security except for the Continuing Guaranty executed on July 18, 1956, of John Clarkin, who owned seven and half percent of the capital stock of the bank, and his wife Helen. Unfortunately, the business floundered and while attempts were made to take in other partners, these proved unsuccessful. Nevertheless, petitioner Pacific Banking Corporation and its then Executive Vice President, petitioner Chester Babst, did not demand payment for the initial July 1957 installment nor of the entire obligation, but instead opted for more collateral in addition to the guaranty of Clarkin.

As the business further deteriorated and the situation became desperate, Hart agreed to Clarkin's proposal that all Insular Farms shares of stocks be pledged to petitioner bank in lieu of additional collateral and to insure an extension of the period to pay the July 1957 installment. Said less than a month later, Pacific Farms Inc, was organized to engage in the same business as Insular Farms Inc.

The next day, or on March 4, 1958, Pacific Banking Corporation, through petitioner Chester Babst wrote Insular Farms Inc giving the latter 48 hours to pay its entire obligation. Hart received notice that the pledged shares of stocks of Insular Farms Inc would be sold at public auction on March 19, 1958 at 8:00 A.M. to satisfy Insular Farms' obligation.

On the same date the Court granted the prayer for a writ or preliminary injunction. PBC through its lawyer notary public sold the 1,000 shares of stocks of Insular Farms to Pacific Farms for 285,126.99. The latter then sold its shares of stocks to its own stockholders, who constituted themselves as stockholders of Insular Farms and then resold back to Pacific Farms Inc all of Insular Farms assets except for a certificate of public convenience to operate an iceplant. Chester Babst claimed that he is not personally liable to private respondents under Articles 2180 and 2181 of the Civil Code. Petitioners also contend that it was error to order Chester Babst to reimburse Pacific Banking whatever the latter may be required to pay the private respondents, inasmuch as Pacific Banking has not filed a cross claim against Chester Babst.

ISSUE

Whether the Bank is liable with Chester Babst (the notary public) for the premature foreclosure of the shares of stock

RULING

Yes. The foreclosure sale was premature and done in bad faith, petitioners are liable for damages arising from a quasi-delict. It was established that there was an agreement to extend indefinitely the payment of the installment. Consequently, Pacific Banking Corporation was precluded from enforcing the payment of the said installment. As found by the Court of Appeals, there was really no investigation of Insular Farms' ability to pay the loan after the pledge was executed but before the demand for payment, considering that the latter was made barely two weeks after the execution of the pledge.

As between Pacific Banking and Babst, the law merely gives the employer a right to reimbursement from the employee for what is paid to the private respondent. Article 2181 does not make recovery from the employee a mandatory requirement. A right to relief shall be recognized only when the party concerned asserts it through a proper pleading filed in court. In this case, the employer, Pacific Banking Corporation did not manifest any claim against Babst by filing a crossclaim before the trial court; thus it cannot make its light automatically enforceable. Babst was made a party to the case upon the complaint of the private respondents in his official capacity as Executive Vice President of the bank. In the absence of a crossclaim against Babst, the court has no basis for enforcing a right against him to which his co-defendant may be entitled. We leave the matter to the two petitioners' own internal arrangements or actions should the bank decide to charge its own officer.

The Court of Appeals applied Article 2180 of the Civil Code, under which, "employers shall be liable for the damages caused by their employees...acting within the scope of their assigned tasks." Chester Babst, as admitted, was Executive Vice President of Pacific Banking Corporation and "acted only upon direction by the Board of Directors of the Pacific Banking Corporation." The appellate court also applied Article 2181 of the same code which provides that "whoever pays for the damages caused by his dependents or employees may recover from the latter what he has paid or delivered in satisfaction of the claim."

• Simex International (Manila) Inc. vs. Court of Appeals, 183 SCRA 360 (1990)

SIMEX INTERNATIONAL (MANILA), INCORPORATED, petitioner, vs. THE HONORABLE COURT OF APPEALS and TRADERS ROYAL BANK, respondents.

G.R. No. 88013, FIRST DIVISION, March 19, 1990, J. Cruz

In every case, the depositor expects the bank to treat his account with the utmost fidelity, whether such account consists only of a few hundred pesos or of millions. The bank must record every single transaction accurately, down to the last centavo, and as promptly as possible.

The point is that as a business affected with public interest and because of the nature of its functions, the bank is under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship. In the case at bar, it is obvious that the respondent bank was remiss in that duty and violated that relationship

FACTS

The petitioner is a private corporation engaged in the exportation of food products. The petitioner was a depositor of the respondent bank and maintained a checking account in its branch at Romulo Avenue, Cubao, Quezon City. On May 25, 1981, the petitioner deposited to its account in the said bank the amount of P100,000.00, thus increasing its balance as of that date to P190,380.74. Subsequently, the petitioner issued several checks against its deposit but was suprised to learn later that they had been dishonored for insufficient funds.

As a consequence, the California Manufacturing Corporation sent on June 9, 1981, a letter of demand to the petitioner, threatening prosecution if the dishonored check issued to it was not made good. It also withheld delivery of the order made by the petitioner. Similar letters were sent to the petitioner by the Malabon Long Life Trading, on June 15, 1981, and by the G. and U. Enterprises, on June 10, 1981. Malabon also canceled the petitioner's credit line and demanded that future payments be made by it in cash or certified check. Meantime, action on the pending orders of the petitioner with the other suppliers whose checks were dishonored was also deferred.

The petitioner complained to the respondent bank on June 10, 1981. Investigation disclosed that the sum of P100,000.00 deposited by the petitioner on May 25, 1981, had not been credited to it. The error was rectified on June 17, 1981, and the dishonored checks were paid after they were redeposited. The petitioner demanded reparation from the respondent bank for its "gross and wanton negligence." However, this demand was not met.

Petitioner filed a complaint in the then Court of First Instance of Rizal claiming from the private respondent moral damages and exemplary damages. However, the trial court held that moral and exemplary damages were not called for under the circumstances; but ordered the payment of nominal damages and attorney's fees. Such ruling was affirmed by the Court of Appeals.

ISSUE

Whether or not the petitioner is entitled to moral and exemplary damages

RULING

Yes, the petitioner is entitled to claim moral and exemplary damages.

As the Court sees it, the initial carelessness of the respondent bank, aggravated by the lack of promptitude in repairing its error, justifies the grant of moral damages.

The banking system is an indispensable institution in the modern world and plays a vital role in the economic life of every civilized nation. Whether as mere passive entities for the safekeeping and saving of money or as active instruments of business and commerce, banks have become an ubiquitous presence among the people, who have come to regard them with respect and even gratitude and, most of all, confidence. Thus, even the humble wage-earner has not hesitated to entrust his life's savings to the bank of his choice, knowing that they will be safe in its custody and will even earn some interest for him. The ordinary person, with equal faith, usually maintains a modest checking account for security and convenience in the settling of his monthly bills and the payment of ordinary expenses. As for business entities like the petitioner, the bank is a trusted and active associate that can help in the running of their affairs, not only in the form of loans when needed but more often in the conduct of their day-to-day transactions like the issuance or encashment of checks.

In every case, the depositor expects the bank to treat his account with the utmost fidelity, whether such account consists only of a few hundred pesos or of millions. The bank must record every single transaction accurately, down to the last centavo, and as promptly as possible. This has to be done if the account is to reflect at any given time the amount of money the depositor can dispose of as he sees fit, confident that the bank will deliver it as and to whomever he directs. A blunder on the part of the bank, such as the dishonor of a check without good reason, can cause the depositor not a little embarrassment if not also financial loss and perhaps even civil and criminal litigation.

The point is that as a business affected with public interest and because of the nature of its functions, the bank is under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship. In the case at bar, it is obvious that the respondent bank was remiss in that duty and violated that relationship

• Luzan Sia vs. Court of Appeals, G.R. No. 102970, May 13, 1993

LUZAN SIA VS. COURT OF APPEALS AND SECURITY BANK AND TRUST COMPANY. G.R. No. 102970, THIRD DIVISION, May 13, 1993, Justice Davide, Jr

The prevailing rule in American jurisprudence — that the relation between a bank renting out safe deposit boxes and its customer with respect to the contents of the box is that of a bailor and bailee, the bailment for hire and mutual benefit has been adopted in this jurisdiction.

FACTS

Sia rented a safety deposit bank of Security Bank and Trust Company where he placed his collection of stamps. The said safety deposit box was at the bottom or at the lowest level of the safety deposit boxes. However, the said collection was destroyed because of a flood that entered into the bank's premises.

Now, the bank argued that it is not liable as per paragraphs 9 and 13 of Rules and Regulations Governing the Lease of Safe Deposit Boxes. Accordingly, it was agreed that the liability of the bank because of the lease, is limited only to the exercise of the diligence to prevent the opening of the safe by any person other than the Renter, his authorized agent or legal representative. Further, the said rules provide that the bank is not a depository of the contents of the safe and it has neither the possession nor the control of the same.

Sia filed an action for damages with Regional Trial Court (RTC). The trial court ruled that the bank failed to exercise the required diligence expected of a bank in maintaining the safety deposit box. On appeal, the decision, however, was reversed and set aside. Dissatisfied, petitioner brought the case before Supreme Court via petition for review on *certiorari* under Rule 45 of the Rules Court.

ISSUE

Whether or not the agreement between the parties is acontract of lease

RULING

No, it is not a contract of lease.

In the recent case *CA Agro-Industrial Development Corp. vs. Court of Appeals*, the Court explicitly rejected the contention that a contract for the use of a safety deposit box is a contract of lease. Nor did We fully subscribe to the view that it is a contract of deposit to be strictly governed by the Civil Code provision on deposit; it is, as We declared, a special kind of deposit.

The prevailing rule in American jurisprudence — that the relation between a bank renting out safe deposit boxes and its customer with respect to the contents of the box is that of a bailor and bailee, the bailment for hire and mutual benefit has been adopted in this jurisdiction.

Note that the primary function is still found within the parameters of a contract of *deposit*, *i.e.*, the receiving in custody of funds, documents and other valuable objects for safekeeping. The renting out of the safety deposit boxes is not independent from, but related to or in conjunction with, this principal function.

Accordingly, the depositary would be liable if, in performing its obligation, it is found guilty of fraud, negligence, delay or contravention of the tenor of the agreement [Art. 1170, *id*.]. In the absence of any stipulation prescribing the degree of diligence required, that of a good father of a family is to be observed [Art. 1173, *id*.]. Hence, any stipulation exempting the depositary from any liability arising from the loss of the thing deposited on account of fraud, negligence or delay would be void for being contrary to law and public policy.

Therefore, both conditions No. 9 and No. 13 of the "Lease Agreement" covering the safety deposit box in question must be stricken down for being contrary to law and public policy as they are meant to exempt SBTC from any liability for damage, loss or destruction of the contents of the safety deposit box which may arise from its own or its agents' fraud, negligence or delay. Accordingly, SBTC cannot take refuge under the said conditions.

Moreover, since the relationship between the petitioner and SBTC is based on a contract, either of them may be held liable for moral damages for breach thereof only if said party had acted fraudulently or in bad faith. In this case, no proof of fraud or bad faith on the part of SBTC.

• Gregorio Reyes vs. Court of Appeals, G.R. No. 118492, August 15, 2001

GREGORIO H. REYES and CONSUELO PUYAT-REYES, petitioners, vs. THE HON. COURT OF APPEALS and FAR EAST BANK AND TRUST COMPANY, respondents.

G.R. No. 118492, SECOND DIVISION, August 15, 2001, De leon, Jr., J

The degree of diligence required of banks, is more than that of a good father of a family where the fiduciary nature of their relationship with their depositors is concerned. In other words banks are duty bound to treat the deposit accounts of their depositors with the highest degree of care. But the said ruling applies only to cases where banks act under their fiduciary capacity, that is, as depositary of the deposits of their depositors. But the same higher degree of diligence is not expected to be exerted by banks in commercial transactions that do not involve their fiduciary relationship with their depositors. The respondent bank was not required to exert more than the diligence of a good father of a family in regard to the sale and issuance of the subject foreign exchange demand draft. The case at bar does not involve the handling of petitioners' deposit, if any, with the respondent bank as the seller of the subject foreign exchange demand draft. Instead, the relationship involved was that of a buyer and seller, that is, between the respondent bank as the seller of the subject foreign exchange demand draft, and PRCI as the buyer of the same, with the 20th Asian Racing conference Secretariat in Sydney, Australia as the payee thereof. As earlier mentioned, the said foreign exchange demand draft was intended for the payment of the registration fees of the petitioners as delegates of the PRCI to the 20th Asian Racing Conference in Sydney.

FACTS

In view of the 20th Asian Racing Conference then scheduled to be held in September, 1988 in Sydney, Australia, the Philippine Racing Club, Inc. (PRCI, for brevity) sent four (4) delegates to the said conference. Petitioner Gregorio H. Reyes, as vice-president for finance, racing manager, treasurer, and director of PRCI, sent Godofredo Reyes, the club's chief cashier, to the respondent bank to apply for a foreign exchange demand draft in Australian dollars.

Godofredo went to respondent bank's Buendia Branch in Makati City to apply for a demand draft in the amount One Thousand Six Hundred Ten Australian Dollars (AU\$1,610.00) payable to the order of the 20th Asian Racing Conference Secretariat of Sydney, Australia. He was attended to by respondent bank's assistant cashier, Mr. Yasis, who at first denied the application for the reason that respondent bank did not have an Australian dollar account in any bank in Sydney. Godofredo asked if there could be a way for respondent bank to accommodate PRCI's urgent need to remit Australian dollars to Sydney. Yasis of respondent bank then informed Godofredo of a roundabout way of effecting the requested remittance to Sydney thus: the respondent bank would draw a demand draft against Westpac Bank in Sydney, Australia (Westpac-Sydney for brevity) and have the latter reimburse itself from the U.S. dollar account of the respondent in Westpac Bank in New York, U.S.A. (Westpac-New York for brevity). This arrangement has been customarily resorted to since the 1960's and the procedure has proven to be problem-free. PRCI and the petitioner Gregorio H. Reyes, acting through Godofredo, agreed to this arrangement or approach in order to effect the urgent transfer of Australian dollars payable to the Secretariat of the 20th Asian Racing Conference.

On August 10, 1988, upon due presentment of the foreign exchange demand draft, denominated as FXDD No. 209968, the same was dishonored, with the notice of dishonor stating the following: "xxx No account held with Westpac." Meanwhile, on August 16, 1988, Wespac- New York sent a cable to respondent bank informing the latter that its dollar account in the sum of One Thousand Six Hundred Ten Australian Dollars (AU\$ 1,610.00) was debited. On August 19, 1988, in response to PRCI's complaint about the dishonor of the said foreign exchange demand draft, respondent bank informed Westpac-Sydney of the issuance of the said demand draft FXDD No. 209968, drawn against the Wespac- Sydney and informing the latter to be reimbursed from the respondent bank's dollar account in Westpac-New York. The respondent bank on the same day likewise informed Wespac-New York requesting the latter to honor the reimbursement claim of Wespac-Sydney. On September 14, 1988, upon its second presentment for payment, FXDD No. 209968 was again dishonored by Westpac-Sydney for the same reason, that is, that the respondent bank has no deposit dollar account with the drawee Wespac- Sydney.

On September 17, 1988 and September 18, 1988, respectively, petitioners spouses Gregorio H. Reyes and Consuelo Puyat-Reyes left for Australia to attend the said racing conference. When petitioner Gregorio H. Reyes arrived in Sydney in the morning of September 18, 1988, he went directly to the lobby of Hotel Regent Sydney to register as a conference delegate. At the registration desk, in the presence of other delegates from various member of the conference secretariat that he could not register because the foreign exchange demand draft for his registration fee had been dishonored for the second time. A discussion ensued in the presence and within the hearing of many delegates who were also registering. Feeling terribly embarrassed and humiliated, petitioner Gregorio H. Reyes asked the lady member of the conference secretariat that he be shown the subject foreign exchange demand draft that had been dishonored as well as the covering letter after which he promised that he would pay the registration fees in cash. In the meantime he demanded that he be given his name plate and conference kit. It was only two (2) days later, or on September 20, 1988, that he was given the dishonored demand draft and a covering letter. It was then that he actually paid in cash the registration fees as he had earlier promised.

The petitioners filed in the Regional Trial Court of Makati, Metro Manila, a complaint for damages, docketed as Civil Case No. 88-2468, against the respondent bank due to the dishonor of the said foreign exchange demand draft issued by the respondent bank. The petitioners claim that as a result of the dishonor of the said demand draft, they were exposed to unnecessary shock, social humiliation, and deep mental anguish in a foreign country, and in the presence of an international audience.

The trial court rendered judgment in favor of the defendant (respondent bank) and against the plaintiffs (herein petitioners). Complaint was dismissed.

The CA dismissed the complaint ruling that there is no basis to hold the respondent bank liable for damages for the reason that it exerted every effort for the subject foreign exchange demand draft to be honored

ISSUE

Whether the bank exercised degree of diligence it required to exercise

RULING

Yes. The degree of diligence required of banks, is more than that of a good father of a family where the fiduciary nature of their relationship with their depositors is concerned. In other words banks are duty bound to treat the deposit accounts of their depositors with the highest degree of care. But the said ruling applies only to cases where banks act under their fiduciary capacity, that is, as depositary of the deposits of their depositors. But the same higher degree of diligence is not expected to be exerted by banks in commercial transactions that do not involve their fiduciary relationship with their depositors.

The respondent bank was not required to exert more than the diligence of a good father of a family in regard to the sale and issuance of the subject foreign exchange demand draft. The case at bar does not involve the handling of petitioners' deposit, if any, with the respondent bank. Instead, the relationship involved was that of a buyer and seller, that is, between the respondent bank as the seller of the subject foreign exchange demand draft, and PRCI as the buyer of the same, with the 20th Asian Racing conference Secretariat in Sydney, Australia as the payee thereof. As earlier mentioned, the said foreign exchange demand draft was intended for the payment of the registration fees of the petitioners as delegates of the PRCI to the 20th Asian Racing Conference in Sydney.

The evidence shows that the respondent bank did everything within its power to prevent the dishonor of the subject foreign exchange demand draft. The erroneous reading of its cable message to Westpac-Sydney by an employee of the latter could not have been foreseen by the respondent bank. Being unaware that its employee erroneously read the said cable message, Westpac-Sydney merely stated that the respondent bank has no deposit account with it to cover for the amount of One Thousand Six Hundred Ten Australian Dollar (AU \$1610.00) indicated in the foreign exchange demand draft. Thus, the respondent bank had the impression that Westpac-New York had not yet made available the amount for reimbursement to Westpac-Sydney despite the fact that respondent bank has a sufficient deposit dollar account with Westpac-New York. That was the reason why the respondent bank had to re-confirm and repeatedly notify Westpac-New York to debit its (respondent bank's) deposit dollar account with it and to transfer or credit the corresponding amount to Westpac-Sydney to cover the amount of the said demand draft.

The courts a quo found that respondent bank did not misrepresent that it was maintaining a deposit account with Westpac-Sydney. Respondent bank's assistant cashier explained to Godofredo Reyes, representing PRCI and petitioner Gregorio H. Reyes, how the transfer of Australian dollars

would be effected through Westpac-New York where the respondent bank has a dollar account to Westpac-Sydney where the subject foreign exchange demand draft (FXDD No. 209968) could be encashed by the payee, the 20th Asian Racing Conference Secretariat. PRCI and its Vice- President for finance, petitioner Gregorio H. Reyes, through their said representative, agreed to that arrangement or procedure. In other words, the petitioners are estopped from denying the said arrangement or procedure. Similar arrangements have been a long standing practice in banking to facilitate international commercial transactions. In fact, the SWIFT cable message sent by respondent bank to the drawee bank, Westpac-Sydney, stated that it may claim reimbursement from its New York branch, Westpac-New York, where respondent bank has a deposit dollar account. The facts as found by the courts a quo show that respondent bank did not cause an erroneous transmittal of its SWIFT cable message to Westpac-Sydney. It was the erroneous decoding of the cable message on the part of Westpac-Sydney that caused the dishonor of the subject foreign exchange demand draft. An employee of Westpac- Sydney in Sydney, Australia mistakenly read the printed figures in the SWIFT cable message of respondent bank as "MT799" instead of as "MT199". As a result, Westpac-Sydney construed the said cable message as a format for a letter of credit, and not for a demand draft. The appellate court correct found that "the figure before '99' can still be distinctly seen as a number '1' and not number '7'." Indeed, the line of a "7" is in a slanting position while the line of a "1" is in a horizontal position. Thus, the number "1" in "MT199" cannot be construed as "7".

> Consolidated Bank and Trust Corporation vs. Court of Appeals, G.R. No. 138569, September 11, 2003

THE CONSOLIDATED BANK and TRUST CORPORATION, petitioner, vs. COURT OF APPEALS and L.C. DIAZ and COMPANY, CPA's, respondents.

G.R. No. 138569, FIRST DIVISION, September 11, 200, Justice Carpio

The contract between the bank and its depositor is governed by the provisions of the Civil Code on simple loan. There is a debtor-creditor relationship between the bank and its depositor. The law imposes on banks high standards in view of the fiduciary nature of banking. Section 2 of Republic Act No. 8791 declares that the State recognizes the fiduciary nature of banking that requires high standards of integrity and performance. The fiduciary nature of banking does not convert a simple loan into a trust agreement because banks do not accept deposits to enrich depositors but to earn money for themselves.

Bank tellers must exercise a high degree of diligence in insuring that they return the passbook only to the depositor or to his authorized representative. For failing to return the passbook to Calapre, the authorized representative of L.C. Diaz, Solidbank and Teller No. 6 presumptively failed to observe such high degree of diligence in safeguarding the passbook, and in insuring its return to the party authorized to receive the same.

FACTS

Solibank is a domestic banking corporation. While L.C. Diaz is a professional partnership, engaged in the practice of accounting. L.C. Diaz maintained a savings account with petitioner, Consolidated Bank and Trust Corporation, now known as Solidbank Coroporation. On August 14, 1991, L.C. Diaz's cashier, Mercedes Macaraya, instructed the messenger of the former, Ismael Calapre, to deposit

money with Solidbank. Macaraya gave Calapre the Solidbank passbook together with savings deposit slips (both for cash and check) she had previously filled up for the private respondent.

Calapre went to Solidbank and presented to Teller No. 6 the two deposit slips and the passbook. The teller acknowledged receipt of the deposit by returning to Calapre the duplicate copies of the two deposit slips. Since the transaction took time and Calapre had to make another deposit for L.C. Diaz with Allied Bank, he left the passbook with Solidbank. Upon his return, Calapre retrieved the passbook from Solidbank, but Teller No. 6 informed him that "somebody got the passbook". Calapre went back to L.C. Diaz and reported the incident to Macaraya.

Macaraya immediately prepared a deposit slip in duplicate copies with a check of P200,000. Macaraya, together with Calapre, went to Solidbank and presented to Teller No. 6 the deposit slip and check. When Macaraya asked for the passbook, Teller No. 6 told Macaraya that someone got the passbook but she could not remember to whom she gave the passbook. When Macaraya asked Teller No. 6 if Calapre got the passbook, Teller No. 6 answered that someone shorter than Calapre got the passbook. Calapre was then standing beside Macaraya.

The following day, 15 August 1991, L.C. Diaz through its Chief Executive Officer, Luis C. Diaz, called up Solidbank to stop any transaction using the same passbook until L.C. Diaz could open a new account. On the same day, Diaz formally wrote Solidbank to make the same request. It was also on the same day that L.C. Diaz learned of the unauthorized withdrawal the day before, 14 August 1991, of P300,000 from its savings account. The withdrawal slip for the P300,000 bore the signatures of the authorized signatories of L.C. Diaz, namely Diaz and Rustico L. Murillo. The signatories, however, denied signing the withdrawal slip. A certain Noel Tamayo received the P300,000. L.C. Diaz demanded from Solidbank, return of its money. However, Solidbank refused.

L.C. Diaz filed a Complaint for Recovery of a Sum of Money against Solidbank with the Regional Trial Court of Manila, Branch 8. After trial, the trial court rendered a decision absolving Solidbank and dismissing the complaint. L.C. Diaz then appealed to the Court of Appeals. The same court reversed the decision of the trial court.

On 11 May 1999, the Court of Appeals issued its Resolution denying the motion for reconsideration of Solidbank. The appellate court, however, modified its decision by deleting the award of exemplary damages and attorney's fees.

ISSUES

1. Whether or not Solidbank should suffer the loss sustained by the private respondent.

2. Whether or not L.C. Diaz is guilty of contributory negligence.

RULING

1. YES. Solidbank is liable for breach of contract due to negligence, or culpa contractual.

The contract between the bank and its depositor is governed by the provisions of the Civil Code on simple loan. There is a debtor-creditor relationship between the bank and its depositor.

The law imposes on banks high standards in view of the fiduciary nature of banking. Section 2 of Republic Act No. 8791 declares that the State recognizes the fiduciary nature of banking that requires high standards of integrity and performance. The fiduciary nature of banking does not convert a simple loan into a trust agreement because banks do not accept deposits to enrich depositors but to earn money for themselves.

Bank tellers must exercise a high degree of diligence in insuring that they return the passbook only to the depositor or to his authorized representative. For failing to return the passbook to Calapre, the authorized representative of L.C. Diaz, Solidbank and Teller No. 6 presumptively failed to observe such high degree of diligence in safeguarding the passbook, and in insuring its return to the party authorized to receive the same.

2. YES. In a case of culpa contractual, the contributory negligence or last clear chance by the plaintiff merely serves to reduce the recovery of damages by the plaintiff but does not exculpate the defendant from his breach of contract. Under Article 1172, liability (for culpa contractual) may be regulated by the courts, according to the circumstances. This means that if the defendant exercised the proper diligence in the selection and supervision of its employee, or if the plaintiff was guilty of contributory negligence, then the courts may reduce the award of damages. In this case, L.C. Diaz was guilty of contributory negligence in allowing a withdrawal slip signed by its authorized signatories to fall into the hands of an impostor. Thus, the liability of Solidbank should be reduced.

• Citibank, N.A. vs. Spouses Luis & Carmelita Cabamongan, G.R. No. 146918, May 2, 2006

CITIBANK, N.A., vs. SPS. LUIS and CARMELITA CABAMONGAN and their sons LUISCABAMONGAN, JR. and LITO CABAMONGAN G.R. No. 146918, FIRST DIVISION, May 2, 2006, Justice Austria-Martinez

The Court has repeatedly emphasized that, since the banking business is impressed with public interest, of paramount importance thereto is the trust and confidence of the public in general. Consequently, the highest degree of diligence is expected, and high standards of integrity and performance are even required, of it.By the nature of its functions, a bank is "under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship."

In this case, it has been sufficiently shown that the signatures of Carmelita in the forms for pretermination of deposits are forgeries. Citibank, with its signature verification procedure, failed to detect the forgery. Its negligence consisted in the omission of that degree of diligence required of banks. The Court has held that a bank is "bound to know the signatures of its customers; and if it pays a forged check, it must be considered as making the payment out of its own funds, and cannot ordinarily charge the amount so paid to the account of the depositor whose name was forged." Such principle equally applies here.

FACTS

Spouses Luis and Carmelita Cabamongan opened a joint "and/or" foreign currency time deposit in trust for their two sons at the Citibank, N.A., Makati branch.

Prior to maturity, a person claiming to be Carmelita went to the Makati branch and pre-terminated the said foreign currency time deposit by presenting a passport, a Bank of America Versatele Card, an ATM card and a Mabuhay Credit Card. She filled up the necessary forms for pre-termination of deposits with the assistance of Account Officer.

However, the said person failed to surrender the original Certificate of Deposit. Hence, before the money was released to her she had to execute a notarized release and waiver document in favor of Citibank, pursuant to Citibank's internal procedure. The release and waiver document was not notarized on that same day, but the money was nonetheless given to the person withdrawing.

However, upon inquiry, it was found out that Cabamongan spouses work and reside in California. Through various overseas calls, the Cabamongan spouses informed Citibank, thru San Pedro, that Carmelita was in the United States and did not preterminate their deposit and that the person who did so was an impostor who could have also been involved in the break-in of their California residence.

Subsequently, the Cabamongan spouses, through counsel, made a formal demand upon Citibank for payment of their preterminated deposit. Citibank, however, refused the Cabamongan spouses' demand for payment. The bank insisted that Carmelita was the one who pre-terminated the deposit despite claims to the contrary. Its basis for saying so is the fact that the person who made the transaction on the incident mentioned presented a valid passport and three (3) other identification cards.

Cabamongan spouses filed a complaint against Citibank before the Regional Trial Court of Makati for Specific Performance with Damages. After trial, RTC rendered a decision in favor of the Cabamongan spouses and against Citibank. The RTC ruled that Citibank, N.A. was negligent because the forgery of the signatures of plaintiff Carmelita Cabamongan on the questioned documents has been categorically established by the handwriting expert.

Dissatisfied, Citibank filed an appeal with the CA. Said court sustained the finding of the RTC. The CA, however, disagreed with the damages awarded by the RTC. It held that, insofar as the date from which legal interest of 12% is to run, it should be counted from September 16, 1994 when extrajudicial demand was made. As to moral damages, the CA reduced it to P100,000.00 and deleted the awards of exemplary damages and litigation expenses.

Subsequently, the Cabamongan spouses filed a motion for partial reconsideration on the matter of the award of damages in the decision. The CA granted in part said motion and modified its decision. Dissatisfied, both parties filed separate petitions for review on certiorari with this Court

ISSUES

1. Whether or not the bank is negligent in preterminating the deposit?

2. Whether or not the amount of us\$55,216.69 should earn interest at the rate of 12% per annum from 16 september 1994 until full payment?

- 3. Whether or not the spouses are entitled to moral damages?
- 4. Whether or not the spouses are entitled toattorney's fees?

RULING

1. Yes, the bank was negligent.

The Court has repeatedly emphasized that, since the banking business is impressed with public interest, of paramount importance thereto is the trust and confidence of the public in general. Consequently, the highest degree of diligence is expected, and high standards of integrity and performance are even required, of it.By the nature of its functions, a bank is "under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship."

In this case, it has been sufficiently shown that the signatures of Carmelita in the forms for pretermination of deposits are forgeries. Citibank, with its signature verification procedure, failed to detect the forgery. Its negligence consisted in the omission of that degree of diligence required of banks. The Court has held that a bank is "bound to know the signatures of its customers; and if it pays a forged check, it must be considered as making the payment out of its own funds, and cannot ordinarily charge the amount so paid to the account of the depositor whose name was forged." Such principle equally applies here.

2. No, the stipulated interest should apply.

In a loan or forbearance of money, the interest due should be that stipulated in writing, and in the absence thereof, the rate shall be 12% per annum counted from the time of demand. Accordingly, the stipulated interest rate of 2.562% per annum shall apply for the 182-day contract period from August 16, 1993 to February 14, 1994.

For the period from the date of extra-judicial demand, September 16, 1994, until full payment, the rate of 12% shall apply.

As for the intervening period between February 15, 1994 to September 15, 1994, the rate of interest then prevailing granted by Citibank shall apply since the time deposit provided for roll over upon maturity of the principal and interest.

3. Yes, they are entitled to moral damages.

As to moral damages, in culpa contractual or breach of contract, as in the case before the Court, moral damages are recoverable only if the defendant has acted fraudulently or in bad faith, or is found guilty of gross negligence amounting to bad faith, or in wanton disregard of his contractual obligations. The act of Citibank's employee in allowing the pretermination of Cabamongan spouses' account despite the noted discrepancies in Carmelita's signature and photograph, the absence of the original certificate of time deposit and the lack of notarized waiver dormant, constitutes gross negligence amounting to bad faith under Article 2220 of the Civil Code.

4. No, the award of attorney's fees is not proper.

The award of attorney's fees is the exception rather than the general rule. As such, it is necessary for the court to make findings of facts and law that would bring the case within the exception and justify the grant of such award. The matter of attorney's fees cannot be mentioned only in the dispositive portion of the decision. They must be clearly explained and justified by the trial court in the body of its decision. Consequently, the award of attorney's fees should be deleted.

• Philippine Savings Bank vs. Chowking Food Corporation, G.R. No. 177526, July 4, 2008

PHILIPPINE SAVINGS BANK, Petitioner v. CHOWKING FOOD CORPORATION, Respondent G.R. No. 177526, THIRD DIVISION, July 4, 2008, J. Reyes

It cannot be overemphasized that the banking business is impressed with public interest. Of paramount importance is the trust and confidence of the public in general in the banking industry. Consequently, the diligence required if banks is more than that of Roman pater familias or a good father of a family. The highest degree of diligence is expected. In its declaration of policy, the General Banking Law of 2000 requires of banks the highest standards of integrity and performance. Needless to say, a bank is under the obligation to treat the accounts of its depositors with meticulous care. The fiduciary nature of the relationship between the bank and the depositors must always be of paramount concern.

Petitioner, through Santos, was clearly negligent when it honored respondents' checks with the lone endorsement of Manzano

FACTS

Between March 15, 1989 and August 10, 1989, Joe Kuan Food Corporation issued in favor of Chowking five (5) PSBank checks, totaling, P 556,981.86. On the respective due dates of each check, Chowkings acting accounting manager, Rino T. Manzano, endorsed and encashed said checks with the Bustos branch of respondent PSBank. All the five checks were honored by defendant Santos, even with only the endorsement of Manzano approving them. The signatures of the other authorized officers of respondent corporation were absent in the five (5) checks, contrary to usual banking practice. Unexpectedly, Manzano absconded with and misappropriated the check proceeds. When Chowking found out Manzanos scheme, it demanded reimbursement from PSBank and the latter refused to pay.

Chowking filed a complaint for a sum of money with damages before the RTC. Both PSBank and Santos filed cross claims and third party complaints against Manzano. Manzano was declared in default for failure to file a responsive pleading. Respondent filed a motion for summary judgment, opposed by the petitioner and denied by the trial court.

The RTC rendered judgment in favor of respondent, ordering PSBank and Santos to pay the plaintiff jointly and severally. With respect to the cross claim, both Santos and Manzano was ordered to jointly and severally reimburse petitioner PSBank.

Petitioner filed a motion for reconsideration. The RTC reversed its earlier ruling and held that it was respondents own negligence that was the proximate cause of the loss.

Respondent appealed to the CA which reinstated the earlier ruling of the RTC which held that both PSBank and Santos should bear the loss. Hence, this petition.

ISSUE

1. Whether or not CA erred in not ruling that respondent was estopped from asserting its claim against the petitioner

2. Whether or not CA erred when it did not rule that respondent's negligence was the proximate cause of its own loss

RULING

1. No, the doctrine of equitable estoppel or estoppel in pais finds no application in the present case.

The Court agrees with the CA that Chowking did not make any false representation or concealment of material facts in relation to the encashments of the previous checks. As adverted to earlier, respondent may have allowed Manzano to previously encash its checks, but it has always been accompanied with the endorsements of the other authorized signatories. Respondent did not allow petitioner to have its checks encashed without the signature of all of its authorized signatories.

2. No, petitioner failed to prove that it has observed the due diligence required of banks under the law. Contrary to petitioners view, its negligence is the proximate cause of respondents loss. It cannot be overemphasized that the banking business is impressed with public interest. Of paramount importance is the trust and confidence of the public in general in the banking industry. Consequently, the diligence required if banks is more than that of Roman pater familias or a good father of a family. The highest degree of diligence is expected. In its declaration of policy, the General Banking Law of 2000 requires of banks the highest standards of integrity and performance. Needless to say, a bank is under the obligation to treat the accounts of its depositors with meticulous care. The fiduciary nature of the relationship between the bank and the depositors must always be of paramount concern. Petitioner, through Santos, was clearly negligent when it honored respondents checks with the lone endorsement of Manzano.

• Philippine National Bank vs. Erlando T. Rodriguez, et. al., G.R. No. 170325, September 26, 2008

PHILIPPINE NATIONAL BANK, Petitioner, v. ERLANDO T. RODRIGUEZ and NORMA RODRIGUEZ, Respondents.

G.R. NO. 170325, THIRD DIVISION, September 26, 2008, REYES, R.T., J.

In a checking transaction, the drawee bank has the duty to verify the genuineness of the signature of the drawer and to pay the check strictly in accordance with the drawer's instructions, i.e., to the named payee in the check. It should charge to the drawer's accounts only

the payables authorized by the latter. Otherwise, the drawee will be violating the instructions of the drawer and it shall be liable for the amount charged to the drawer's account.

In the case at bar, respondents-spouses were the bank's depositors. The checks were drawn against respondents-spouses' accounts. PNB, as the drawee bank, had the responsibility to ascertain the regularity of the indorsements, and the genuineness of the signatures on the checks before accepting them for deposit. Lastly, PNB was obligated to pay the checks in strict accordance with the instructions of the drawers. Petitioner miserably failed to discharge this burden.

Banks handle daily transactions involving millions of pesos. By the very nature of their work the degree of responsibility, care and trustworthiness expected of their employees and officials is far greater than those of ordinary clerks and employees. For obvious reasons, the banks are expected to exercise the highest degree of diligence in the selection and supervision of their employees.

FACTS

Respondents Spouses Rodriguez maintained an account with petitioner PNB. The Spouses Rodriguez are also engaged in the informal lending business of discounting arrangement with Philnabank Employees Savings and Loan Association (PEMSLA), an association of PNB employees. PEMSLA regularly granted loans to its member and Spouses would rediscount the apostate checks issued to members whenever the association was short of funds. At the same time, the spouses would replace the postdated checks with their own checks issued in the same name. PEMSLA's policy would not approve applications with outstanding debts and in order to subvert this they created a scheme to obtain additional loans in the names of unknowing members without their knowledge and consent. PEMSLA checks were then given to spouses for rediscounting and were carried out by forging the endorsement of the named payees in the checks. Rodriguez checks were deposited directly to PEMSLA without any endorsement from the named payees. Petitioner found out about the fraudulent acts, and took measures by closing the current account of PEMSLA. Since PEMSLA checks were dishonored and returned the respondents incurred losses from the rediscounting transactions.

Rodriguez filed a civil complaint for damages against PEMSLA, the Multi-Purpose Cooperative of Philnabankers and petitioner PNB. The trial court rendered its decision in favor of the spouses Rodriguez. On appeal, the Court of Appeals reversed the decision of the RTC in claiming that the checks were payable to bearer. However, the CA reversed itself via amended decision. Hence, this appeal.

ISSUE

1. Whether PNB was negligent. (YES)

RULING

Because of a failure to show that the payees were "fictitious" in its broader sense, the fictitiouspayee rule does not apply. Thus, the checks are to be deemed payable to order. Consequently, the drawee bank bears the loss. PNB was remiss in its duty as the drawee bank. It does not dispute the fact that its teller or tellers accepted the 69 checks for deposit to the PEMSLA account even without any indorsement from the named payees. It bears stressing that order instruments can only be negotiated with a valid indorsement.

A bank that regularly processes checks that are neither payable to the customer nor duly indorsed by the payee is apparently grossly negligent in its operations. This Court has recognized the unique public interest possessed by the banking industry and the need for the people to have full trust and confidence in their banks. For this reason, **banks are minded to treat their customer's accounts with utmost care, confidence, and honesty**.

In a checking transaction, the drawee bank has the duty to verify the genuineness of the signature of the drawer and to pay the check strictly in accordance with the drawer's instructions, i.e., to the named payee in the check. It should charge to the drawer's accounts only the payables authorized by the latter. Otherwise, the drawee will be violating the instructions of the drawer and it shall be liable for the amount charged to the drawer's account.

In the case at bar, respondents-spouses were the bank's depositors. The checks were drawn against respondents-spouses' accounts. PNB, as the drawee bank, had the responsibility to ascertain the regularity of the indorsements, and the genuineness of the signatures on the checks before accepting them for deposit. Lastly, PNB was obligated to pay the checks in strict accordance with the instructions of the drawers. Petitioner miserably failed to discharge this burden.

The checks were presented to PNB for deposit by a representative of PEMSLA absent any type of indorsement, forged or otherwise. The facts clearly show that the bank did not pay the checks in strict accordance with the instructions of the drawers, respondents-spouses. Instead, it paid the values of the checks not to the named payees or their order, but to PEMSLA, a third party to the transaction between the drawers and the payees.

Moreover, PNB was negligent in the selection and supervision of its employees. The trustworthiness of bank employees is indispensable to maintain the stability of the banking industry. Thus, banks are enjoined to be extra vigilant in the management and supervision of their employees. In Bank of the Philippine Islands v. Court of Appeals, this Court cautioned thus:

Banks handle daily transactions involving millions of pesos. By the very nature of their work the degree of responsibility, care and trustworthiness expected of their employees and officials is far greater than those of ordinary clerks and employees. For obvious reasons, the **banks are expected** to exercise the highest degree of diligence in the selection and supervision of their employees.

PNB's tellers and officers, in violation of banking rules of procedure, permitted the invalid deposits of checks to the PEMSLA account. Indeed, when it is the gross negligence of the bank employees that caused the loss, the bank should be held liable.

PNB's argument that there is no loss to compensate since no demand for payment has been made by the payees must also fail. Damage was caused to respondents-spouses when the PEMSLA checks they deposited were returned for the reason "Account Closed." These PEMSLA checks were the corresponding payments to the Rodriguez checks. Since they could not encash the PEMSLA checks, respondents-spouses were unable to collect payments for the amounts they had advanced.

A bank that has been remiss in its duty must suffer the consequences of its negligence. Being issued to named payees, PNB was duty-bound by law and by banking rules and procedure to require that the checks be properly indorsed before accepting them for deposit and payment. In fine, PNB should be held liable for the amounts of the checks.

• Central Bank of the Philippines vs. Citytrust Banking Corporation, G.R. No. 141835, February 4, 2009

CENTRAL BANK OF THE PHILIPPINES, Petitioner, v. CITYTRUST BANKING CORPORATION, Respondent.

G.R. NO. 141835, SECOND DIVISION, February 4, 2009, CARPIO MORALES, J.

This fiduciary relationship means that the banks obligation to observe high standards of integrity and performance is deemed written into every deposit agreement between a bank and its depositor. The fiduciary nature of banking requires banks to assume a degree of diligence higher than that of a good father of a family. Article 1172 of the Civil Code states that the degree of diligence required of an obligor is that prescribed by law or contract, and absent such stipulation then the diligence of a good father of a family. Section 2 of RA 8791 prescribes the statutory diligence required from banks - that banks must observe high standards of integrity and performance in servicing their depositors.

Petitioner's teller Iluminada did not verify Flores' signature on the flimsy excuse that Flores had had previous transactions with it for a number of years. That circumstance did not excuse the teller from focusing attention to or at least glancing at Flores as he was signing, and to satisfy herself that the signature he had just affixed matched that of his specimen signature. Had she done that, she would have readily been put on notice that Flores was affixing, not his but a fictitious signature.

FACTS

Pursuant to Republic Act No. 625, the old Central Bank Law, respondent Citytrust Banking Corporation (Citytrust), formerly Feati Bank, maintained a demand deposit account with petitioner Central Bank of the Philippines, now Bangko Sentral ng Pilipinas. As required, Citytrust furnished petitioner with the names and corresponding signatures of five of its officers authorized to sign checks and serve as drawers and indorsers for its account. And it provided petitioner with the list and corresponding signatures of its roving tellers authorized to withdraw, sign receipts and perform other transactions on its behalf. Petitioner later issued security identification cards to the roving tellers one of whom was Rounceval Flores.

On July 15, 1977, Flores presented for payment to petitioners Senior Teller Iluminada dela Cruz (Iluminada) two Citytrust checks of even date, payable to Citytrust, one in the amount of P850,000 and the other in the amount of P900,000, both of which were signed and indorsed by Citytrusts authorized signatory-drawers. After the checks were certified by petitioners Accounting Department, Iluminada verified them, prepared the cash transfer slip on which she affixed her

signature, stamped the checks with the notation Received Payment and asked Flores to, as he did, sign on the space above such notation. Instead of signing his name, however, Flores signed as Rosauro C. Cayabyab a fact Iluminada failed to notice. The Cash Department approved the cash transfer slip and paid the corresponding amounts to Flores. Petitioner then debited the amount of the checks totaling P1,750,000 from Citytrusts demand deposit account.

More than a year and nine months later, Citytrust, by letter dated April 23, 1979, alleging that the checks were already cancelled because they were stolen, demanded petitioner to restore the amounts covered thereby to its demand deposit account. Petitioner did not heed the demand, however.

ISSUE

1. Whether the Central Bank was negligent. (YES)

RULING

The law imposes on banks high standards in view of the fiduciary nature of banking. Section 2 of Republic Act No. 8791 (RA 8791) declares that the State recognizes the fiduciary nature of banking that requires high standards of integrity and performance.

This fiduciary relationship means that the banks obligation to observe high standards of integrity and performance is deemed written into every deposit agreement between a bank and its depositor. The fiduciary nature of banking requires banks to assume a degree of diligence higher than that of a good father of a family. Article 1172 of the Civil Code states that the degree of diligence required of an obligor is that prescribed by law or contract, and absent such stipulation then the diligence of a good father of a family. Section 2 of RA 8791 prescribes the statutory diligence required from banks that banks must observe high standards of integrity and performance in servicing their depositors.

Citytrusts failure to timely examine its account, cancel the checks and notify petitioner of their alleged loss/theft should mitigate petitioners liability, in accordance with Article 2179 of the Civil Code which provides that if the plaintiffs negligence was only contributory, the immediate and proximate cause of the injury being the defendants lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded. For had Citytrust timely discovered the loss/theft and/or subsequent encashment, their proceeds or part thereof could have been recovered. The Court deems it proper to allocate the loss between petitioner and Citytrust on a 60-40 ratio.

• Bank of America, NT and SA vs. Associated Citizens Bank, G.R. No. 141018, May 21, 2009

BANK OF AMERICA, NT & SA, Petitioner, v. ASSOCIATED CITIZENS BANK, BA-FINANCE CORPORATION, MILLER OFFSET PRESS, INC., UY KIAT CHUNG, CHING UY SENG, UY CHUNG GUAN SENG, and COURT OF APPEALS, Respondents. G.R. NO. 141001, FIRST DIVISION, May 21, 2009, CARPIO, J.

ASSOCIATED CITIZENS BANK (now UNITED OVERSEAS BANK PHILS.), Petitioner, v. BA-FINANCE CORPORATION, MILLER OFFSET PRESS, INC., UY KIAT CHUNG, CHING UY SENG, UY CHUNG GUAN SENG, and BANK OF AMERICA, NT & SA, Respondents. G.R. NO. 141018, FIRST DIVISION, May 21, 2009, CARPIO, J.

When Associated Bank stamped the back of the four checks with the phrase "all prior endorsements and/or lack of endorsement guaranteed," that bank had for all intents and purposes treated the checks as negotiable instruments and, accordingly, assumed the warranty of an endorser. Being so, Associated Bank cannot deny liability on the checks. In Banco de Oro Savings and Mortgage Bank v. Equitable Banking Corporation, we held that:

x x x the law imposes a duty of diligence on the collecting bank to scrutinize checks deposited with it for the purpose of determining their genuineness and regularity. **The collecting bank being primarily engaged in banking holds itself out to the public as the expert and the law holds it to a high standard of conduct**. x x x In presenting the checks for clearing and for payment, the defendant [collecting bank] made an express guarantee on the validity of "all prior endorsements." Thus, stamped at the back of the checks are the defendant's clear warranty: ALL PRIOR ENDORSEMENTS AND/OR LACK OF ENDORSEMENTS GUARANTEED. Without such warranty, plaintiff [drawee] would not have paid on the checks. No amount of legal jargon can reverse the clear meaning of defendant's warranty. As the warranty has proven to be false and inaccurate, the defendant is liable for any damage arising out of the falsity of its representation.

FACTS

BA-Finance Corporation (BA Finance) and Miller Offset Press, Inc. (Miller) entered into a credit line facility agreement whereby Miller can discount and assign its trade receivables with the BA Finance. At the same time, UyKiat Chung, ChingUySeng, and Uy Chung Guan Seng, acting for Miller, executed a Continuing Suretyship Agreement with BA-Finance. Under the agreement, they jointly and severally guaranteed the full and prompt payment of any and all indebtedness which Miller may incur with BA-Finance.

Miller discounted and assigned several trade receivables to BA-Finance by executing Deeds of Assignment in favor of the latter. In consideration thereof, BA-Finance issued four checks payable to the order of Miller with the notation "For Payee's Account Only." These checks were drawn against Bank of America. The four checks were deposited by ChingUySeng in Associated Citizens Bank with his joint account with Uy Chung Seng. Associated Bank stamped the checks and guaranteed all prior endorsements and/or lack of endorsements and sent them through clearing. Later, Bank of America as drawee bank honored the checks and paid the proceeds to Associated Bank as the collecting bank. When Miller failed to deliver to BA-Finance the proceeds of the assigned trade receivables, BA-Finance filed a collection suit against Miller and impleaded the three representatives of the latter.

Bank of America filed a third-party complaint against Associated Bank. In its answer to the thirdparty complaint, Associated Bank admitted having received the four checks for deposit in the joint account of ChingUySeng and Uy Chung Guan Seng, but alleged that ChingUySeng, being one of the corporate officers of Miller, was duly authorized to act for and on behalf of Miller. The Regional Trial Court ruled rendered against defendant Bank of America to pay plaintiff BA Finance Corporation the sum of P741,277.78, the value of the four (4) checks subject matter of this case, with legal interest thereon from the time of the filing of this complaint until payment is made and attorney's fees corresponding to 15% of the amount due and to pay the costs of the suit. Judgment is likewise rendered ordering the third-party defendant Associated Citizens Bank to reimburse Bank of America. The Court of Appeals affirmed the decision of the RTC.

ISSUE

Whether Associated Bank is liable. (YES)

RULING

When Associated Bank stamped the back of the four checks with the phrase "all prior endorsements and/or lack of endorsement guaranteed," that bank had for all intents and purposes treated the checks as negotiable instruments and, accordingly, assumed the warranty of an endorser. Being so, Associated Bank cannot deny liability on the checks. In Banco de Oro Savings and Mortgage Bank v. Equitable Banking Corporation, we held that:

x x x the law imposes a duty of diligence on the collecting bank to scrutinize checks deposited with it for the purpose of determining their genuineness and regularity. The collecting bank being primarily engaged in banking holds itself out to the public as the expert and the law holds it to a high standard of conduct. x x x In presenting the checks for clearing and for payment, the defendant [collecting bank] made an express guarantee on the validity of "all prior endorsements." Thus, stamped at the back of the checks are the defendant's clear warranty: ALL PRIOR ENDORSEMENTS AND/OR LACK OF ENDORSEMENTS GUARANTEED. Without such warranty, plaintiff [drawee] would not have paid on the checks. No amount of legal jargon can reverse the clear meaning of defendant's warranty. As the warranty has proven to be false and inaccurate, the defendant is liable for any damage arising out of the falsity of its representation.

Associated Bank was also clearly negligent in disregarding established banking rules and regulations by allowing the four checks to be presented by, and deposited in the personal bank account of, a person who was not the payee named in the checks. The checks were issued to the "Order of Miller Offset Press, Inc.," but were deposited, and paid by Associated Bank, to the personal joint account of Ching Uy Seng (a.k.a. Robert Ching) and Uy Chung Guan Seng. It could not have escaped Associated Bank's attention that the payee of the checks is a corporation while the person who deposited the checks in his own account is an individual. Verily, when the bank allowed its client to collect on crossed checks issued in the name of another, the bank is guilty of negligence. As ruled by this Court in Jai-Alai Corporation of the Philippines v. Bank of the Philippine Islands, one who accepts and encashes a check from an individual knowing that the payee is a corporation does so at his peril. Accordingly, we hold that Associated Bank is liable for the amount of the four checks and should reimburse the amount of the checks to Bank of America.

• Equitable PCI Bank vs. Arcelito B. Tan, G.R. No. 165339, August 23, 2010

EQUITABLE PCI BANK, Petitioner, VS. ARCELITO B. TAN, Respondent. G.R. No. 165339, SECOND DIVISION, August 23, 2010, PERALTA, J.

On the first issue, we agree with appellant that appellee Bank apparently erred in misappreciating the date of Check No. 275100. We have carefully examined the check in question (Exh. DDDD) and we are convinced that it was indeed postdated to May 30, 1992 and not May 3, 1992 as urged by appellee. The date written on the check clearly appears as "5/30/1992" (Exh. DDDD-4). The first bar (/) which separates the numbers "5" and "30" and the second bar (/) which further separates the number "30" from the year 1992 appear to have been done in heavy, well-defined and bold strokes, clearly indicating the date of the check as "5/30/1992" which obviously means May 30, 1992.

Although R.A. 8791 took effect only in the year 2000, the Court had already imposed on banks the same high standard of diligence required under R.A. 8791 at the time of the untimely debiting of respondent's account by petitioner in May 1992. In Simex International (Manila), Inc. v. Court of Appeals, which was decided in 1990, the Court held that as a business affected with public interest and because of the nature of its functions, the bank is under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship.

The diligence required of banks, therefore, is more than that of a good father of a family. In every case, the depositor expects the bank to treat his account with the utmost fidelity, whether such account consists only of a few hundred pesos or of millions. The bank must record every single transaction accurately, down to the last centavo, and as promptly as possible. This has to be done if the account is to reflect at any given time the amount of money the depositor can dispose of as he sees fit, confident that the bank will deliver it as and to whomever he directs. From the foregoing, it is clear that petitioner bank did not exercise the degree of diligence that it ought to have exercised in dealing with its client.

FACTS

Respondent ArcelitoB.Tan maintained a current and savings account with Philippine Commercial International Bank (PCIB), now petitioner Equitable PCI Bank. On May 13, 1992, respondent issued PCIB Check No. 275100 in favor of Sulpicio Lines, Inc. As of May 14, 1992, respondent's balance with petitioner was P35,147.59. On May 14, 1992, Sulpicio Lines, Inc. deposited the aforesaid check to its account with Solid Bank. After clearing, the amount of the check was immediately debited by petitioner from respondent's account thereby leaving him with a balance of only P558.87.

Meanwhile, respondent issued three checks specifically, PCIB Check No. 275080 payable to Agusan del Sur Electric Cooperative Inc. (ASELCO) for the amount of P6,427.68; PCIB Check No. 275097 to Agusan del Norte Electric Cooperative Inc., (ANECO) for the amount of P6,472.01; and PCIB Check No. 314104 payable in cash for the amount of P10,000.00. When presented for payment, PCIB Check Nos. 275080, 275097 and 314014 were dishonored for being drawn against insufficient funds.

As a result of the dishonor of Check Nos. 275080 and 275097 which were payable to ASELCO and ANECO, respectively, the electric power supply for the two mini-sawmills owned and operated by

respondent, located in Talacogon, Agusan del Sur; and in Golden Ribbon, Butuan City, was cut off, and it was restored only on July 20 and August 24, 1992, respectively.

Due to the foregoing, respondent filed with the Regional Trial Court (RTC) of Cebu City a complaint against petitioner, praying for payment of losses consisting of unrealized income in the amount of P1,864,500.00. He also prayed for payment of moral damages, exemplary damages, attorney's fees and litigation expenses.

Respondent claimed that Check No. 275100 was a postdated check in payment of Bills of Lading Nos. 15, 16 and 17, and that his account with petitioner would have had sufficient funds to cover payment of the three other checks were it not for the negligence of petitioner in immediately debiting from his account Check No. 275100, in the amount of P34,588.72, even as the said check was postdated to May 30, 1992. As a consequence of petitioner's error, which brought about the dishonor of the two checks paid to ASELCO and ANECO, the electric supply to his two mini-sawmills was cut off, the business operations thereof were stopped, and purchase orders were not duly served causing tremendous losses to him.

In its defense, petitioner denied that the questioned check was postdated May 30, 1992 and claimed that it was a current check dated May 3, 1992. It alleged further that the disconnection of the electric supply to respondent's sawmills was not due to the dishonor of the checks, but for other reasons not attributable to the bank.

ISSUE

Whether petitioner is liable for damages. (YES)

RULING

On the first issue, we agree with appellant that appellee Bank apparently erred in misappreciating the date of Check No. 275100. We have carefully examined the check in question (Exh. DDDD) and we are convinced that it was indeed postdated to May 30, 1992 and not May 3, 1992 as urged by appellee. The date written on the check clearly appears as "5/30/1992" (Exh. DDDD-4). The first bar (/) which separates the numbers "5" and "30" and the second bar (/) which further separates the number "30" from the year 1992 appear to have been done in heavy, well-defined and bold strokes, clearly indicating the date of the check as "5/30/1992" which obviously means May 30. 1992. On the other hand, the alleged bar (/) which appellee points out as allegedly separating the numbers "3" and "0," thereby leading it to read the date as May 3, 1992, is not actually a bar or a slant but appears to be more of an unintentional marking or line done with a very light stroke. The presence of the figure "0" after the number "3" is quite significant. In fact, a close examination thereof would unerringly show that the said number zero or "0" is connected to the preceeding number "3." In other words, the drawer of the check wrote the figures "30" in one continuous stroke, thereby contradicting appellee's theory that the number "3" is separated from the figure "0" by a bar. Besides, appellee's theory that the date of the check is May 3, 1992 is clearly untenable considering the presence of the figure "0" after "3" and another bar before the year 1992. And if we were to accept appellee's theory that what we find to be an unintentional mark or line between the figures "3" and "0" is a bar separating the two numbers, the date of the check would then appear as "5/3/0/1992, which is simply absurd. Hence, we cannot go along with appellee's theory which will

lead us to an absurd result. It is therefore our conclusion that the check was postdated to May 30, 1992 and appellee Bank or its personnel erred in debiting the amount of the check from appellant's account even before the check's due date. Undoubtedly, had not appellee bank prematurely debited the amount of the check from appellant's account before its due date, the two other checks (Exhs. LLLL and GGGG) successively dated May 9, 1992 and May 16, 1992 which were paid by appellant to ASELCO and ANECO, respectively, would not have been dishonored and the said payees would not have disconnected their supply of electric power to appellant's sawmills, and the latter would not have suffered losses.

The law imposes on banks high standards in view of the fiduciary nature of banking. Section 2 of R.A. 8791 decrees:

Declaration of Policy. - The State recognizes the vital role of banks in providing an environment conducive to the sustained development of the national economy and the fiduciary nature of banking that requires high standards of integrity and performance. In furtherance thereof, the State shall promote and maintain a stable and efficient banking and financial system that is globally competitive, dynamic and responsive to the demands of a developing economy.

Although R.A. 8791 took effect only in the year 2000, the Court had already imposed on banks the same high standard of diligence required under R.A. 8791 at the time of the untimely debiting of respondent's account by petitioner in May 1992. In Simex International (Manila), Inc. v. Court of Appeals, which was decided in 1990, the Court held that as a business affected with public interest and because of the nature of its functions, the bank is under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship.

The diligence required of banks, therefore, is more than that of a good father of a family. In every case, the depositor expects the bank to treat his account with the utmost fidelity, whether such account consists only of a few hundred pesos or of millions. The bank must record every single transaction accurately, down to the last centavo, and as promptly as possible. This has to be done if the account is to reflect at any given time the amount of money the depositor can dispose of as he sees fit, confident that the bank will deliver it as and to whomever he directs. From the foregoing, it is clear that petitioner bank did not exercise the degree of diligence that it ought to have exercised in dealing with its client.

• Comsavings Bank vs. Spouses Danilo and Estrella Capistrano, G.R. No. 170942, August 28, 2013

COMSAVINGS BANK (NOW GSIS FAMILY BANK), Petitioner, v. SPOUSES DANILO AND ESTRELLA CAPISTRANO, Respondents.

G.R. No. 170942, FIRST DIVISION, August 28, 2013, BERSAMIN, J.

Based on the provision, a banking institution like Comsavings Bank is obliged to exercise the highest degree of diligence as well as high standards of integrity and performance in all its transactions because its business is imbued with public interest. Gross negligence connotes want of care in the performance of one's duties; it is a negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is duty to act, not inadvertently but willfully

and intentionally, with a conscious indifference to consequences insofar as other persons may be affected. A banking institution served as an originator and, being the maker of the certificate of acceptance/completion, should be fully aware that the purpose of the signed certificate was to affirm that the house had been completely constructed according to the approved plans and specifications, and that there was acceptance of delivery of the complete house; worse would be for the bank to have pre-signed the certificate even before the completion of the house.

Comsavings Bank, a banking institution serving as an originator under the UHLP and being the maker of the certificate of acceptance/completion, was fully aware that the purpose of the signed certificate was to affirm that the house had been completely constructed according to the approved plans and specifications, and that respondents had thereby accepted the delivery of the complete house. Given the purpose of the certificate, it should have desisted from presenting the certificate to respondents for their signature without such conditions having been fulfilled. Yet, it made respondents sign the certificate (through Estrella Capistrano, both in her personal capacity and as the attorney-in-fact of her husband Danilo Capistrano) despite the construction of the house not yet even starting. Its act was irregular per se because it contravened the purpose of the certificate. On the other hand, respondents were prejudiced, considering that the construction of the house was then still incomplete and was ultimately defective. Compounding their plight was that NHMFC demanded payment of their monthly amortizations despite the non-completion of the house. Had Comsavings Bank been fair towards them as its clients, it should not have made them pre-sign the certificate until it had confirmed that the construction of the house had been completed.

FACTS

Respondents were the owner of a lot located somewhere in Cavite. Desirous of building their own house on the lot, they availed themselves of the Unified Home Lending Program (UHLP) implemented by the National Home Mortgage Finance Corporation (NHMFC). They also engaged the services of Carmencita Cruz-Bay, proprietor of GCB Builders, to construct their house thereon for a total contract price of 265,000 pesos with the latter undertaking to complete the construction within 75 days.

To finance the construction, they apply for a loan with the petitioner bank, an NHFMC-accredited originator. Upon complying with the preliminary requirements of UHLP and signing various documents such as "certificate of house completion and acceptance" as required by Comsavings Bank, they availed of the amount of 303, 450 pesos payable within 25 years at 16% per annum, subject to the following terms and conditions, namely: (a) the signing of mortgage documents, (b) 100% completion of the construction of the housing unit, (c) original certificate of occupancy permit and certification of completion, and (d) submission of house pictures signed by the borrower at the back.

On August 10, 1992, the petitioner released the amount of 265,000 pesos to GCB Builders as construction cost in four releases which shall be paid out of the loan granted to them by NHMFC.

However, GCB Builders defaulted in their obligation after more than 1 year has passed but the construction was not yet finished.

Thereafter, the respondents received a letter from NHMFC advising that they should already start paying their monthly amortization. The petitioner protested the demand for amortization payments considering that they had not signed any certification of completion and acceptance, and that even if there was such certification, it is forged.

ISSUE

Whether Comsavings Bank is guilty of negligence in dealing with the Capistrano spouses. (YES)

RULING

Petitioner is solidarily liable not because of the breach of warranties under its purchase of loan agreement with NHMFC but on the strength of article 20 ("Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same") and article 1170 ("Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages") of the Civil Code.

Based on the provision, a banking institution like Comsavings Bank is obliged to exercise the highest degree of diligence as well as high standards of integrity and performance in all its transactions because its business is imbued with public interest. Gross negligence connotes want of care in the performance of one's duties; it is a negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences insofar as other persons may be affected. A banking institution served as an originator and, being the maker of the certificate of acceptance/completion, should be fully aware that the purpose of the signed certificate was to affirm that the house had been completely constructed according to the approved plans and specifications, and that there was acceptance of delivery of the complete house; worse would be for the bank to have pre-signed the certificate even before the completion of the house.

Comsavings Bank, a banking institution serving as an originator under the UHLP and being the maker of the certificate of acceptance/completion, was fully aware that the purpose of the signed certificate was to affirm that the house had been completely constructed according to the approved plans and specifications, and that respondents had thereby accepted the delivery of the complete house. Given the purpose of the certificate, it should have desisted from presenting the certificate to respondents for their signature without such conditions having been fulfilled. Yet, it made respondents sign the certificate (through Estrella Capistrano, both in her personal capacity and as the attorney-in-fact of her husband Danilo Capistrano) despite the construction of the house not yet even starting. Its act was irregular per se because it contravened the purpose of the certificate. On the other hand, respondents were prejudiced, considering that the construction of the house was then still incomplete and was ultimately defective. Compounding their plight was that NHMFC demanded payment of their monthly amortizations despite the non-completion of the house. Had Comsavings Bank been fair towards them as its clients, it should not have made them pre-sign the certificate until it had confirmed that the construction of the house had been completed.

• Land Bank of the Philippines vs. Emmanuel Oñate, G.R. No. 192371, January 15, 2014

LAND BANK OF THE PHILIPPINES, Petitioner, v. EMMANUEL OÑATE, Respondent. G.R. No. 192371, SECOND DIVISION, January 15, 2014, DEL CASTILLO, J.

In every case, the depositor expects the bank to treat his account with the utmost fidelity, whether such account consists only of a few hundred pesos or of millions. **The bank must record every single transaction accurately, down to the last centavo and as promptly as possible.** This has to be done if the account is to reflect at any given time the amount of money the depositor can dispose of as he sees fit, confident that the bank will deliver it as and to whomever he directs.

The point is that as a business affected with public interest and because of the nature of its functions, the bank is under obligations to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship.

Unfortunately, Land Bank failed in its contractual duties to maintain accurate records of all investments and to regularly furnish Oñate with financial statements relating to his accounts. Had Land Bank kept an accurate record there would have been no need for the creation of a Board of Commissioners or at least the latter's work would have been a lot easier and more accurate. But because of Land Bank's inefficient record keeping, the Board performed the tedious task of trying to reconcile messy and incomplete records.

FACTS

Land Bank of the Philippines is a government financial institution created under RA 3844.3844. From 1978 to 1980, Oñate opened and maintained seven trust accounts with Land Bank. Each trust account was covered by an Investment Management Account (IMA) with Full Discretion and has a corresponding passbook where deposits and withdrawals were recorded.

On October 8, 1981, LBP claims a miscredit of P4M to 5M of Onate's Trust Account, for as claimed by LBP the checks deposited to these accounts were issued to LBP by their 4 corporate borrowers, who preterminated their loans. Such checks were deposited allegedly by Polonio (Onate's Representative) to Onate's Trust Account, and were later withdrawn by him.

Onate refused to return such funds after LBP has demanded it from him. A meeting was held to settle such matter, but has failed to reach an agreement. The issue of miscrediting remained unsettles, and on June 21, 1991, LBP unilaterally set-off the outstanding balance in all of Onate's Accounts, debiting only P1, 528, 538.48.

LBP files a complaint for sum of money seeking to recover P8, 222,687.89 plus legal interest per annum. Onate in his answer, asserted that the set-off was without legal and factual basis. Onate further asserted presence of undocumented withdrawals and such are unauthorized transactions from his accounts and must be credited back to him. Upon Onate's motion, the RTC ordered to create a Board to examine the records of Onate's 7 Trust Accounts. The Board submitted reports of withdrawal slips from Onate's account. LBP did not file any comment or objection to the Board's consolidated report.

ISSUE

Whether Land Bank is liable for damages. (YES)

RULING

The contractual relation between Land Bank and Oñate in this case is primarily governed by the IMAs. Paragraph 4 thereof expressly imposed on Land Bank the duty to maintain accurate records of all his investments, receipts, disbursements and other transactions relating to his accounts. It also obliged Land Bank to provide Oñate with quarterly balance sheets, statements of income and expenses, summary of investments, etc. These are the obligations of Land Bank which it should have faithfully complied with in good faith. Unfortunately, Land Bank failed in its contractual duties to maintain accurate records of all investments and to regularly furnish Oñate with financial statements relating to his accounts. Had Land Bank kept an accurate record there would have been no need for the creation of a Board of Commissioners or at least the latter's work would have been a lot easier and more accurate. But because of Land Bank's inefficient record keeping, the Board performed the tedious task of trying to reconcile messy and incomplete records. The lackadaisical attitude of Land Bank in keeping an updated record of Oñate's accounts is aggravated by its reluctance to accord the Board full and unrestricted access to the records when it was conducting a review of the accounts upon the orders of the trial court.

The banking system is an indispensable institution in the modern world and plays a vital role in the economic life of every civilized nation. Whether as mere passive entities for the safekeeping and saving of money or as active instruments of business and commerce, banks have become an ubiquitous presence among the people, who have come to regard them with respect and even gratitude and, most of all, confidence. Thus, even the humble wage-earner has not hesitated to entrust his life's savings to the bank of his choice, knowing that they will be safe in its custody and will even earn some interest for him. The ordinary person, with equal faith, usually maintains a modest checking account for security and convenience in the settling of his monthly bills and the payment of ordinary expenses. As for business entities like the petitioner, the bank is a trusted and active associate that can help in the running of their affairs, not only in the form of loans when needed but more often in the conduct of their day-to-day transactions like the issuance or encashment of checks.

In every case, the depositor expects the bank to treat his account with the utmost fidelity, whether such account consists only of a few hundred pesos or of millions. **The bank must record every single transaction accurately, down to the last centavo and as promptly as possible.** This has to be done if the account is to reflect at any given time the amount of money the depositor can dispose of as he sees fit, confident that the bank will deliver it as and to whomever he directs.

The point is that as a business affected with public interest and because of the nature of its functions, the bank is under obligations to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship.

• Development Bank of the Philippines vs. Guariña Agricultural and Realty Development Corporation, G.R. No. 160758, January 15, 2014

DEVELOPMENT BANK OF THE PHILIPPINES, Petitioner, v. GUARIÑA AGRICULTURAL AND REALTY DEVELOPMENT CORPORATION, Respondent. G.R. No. 160758, FIRST DIVISION, January 15, 2014, BERSAMIN, J.

Being a banking institution, DBP owed it to Guariña Corporation to exercise the highest degree of diligence, as well as to observe the high standards of integrity and performance in all its transactions because its business was imbued with public interest. The high standards were also necessary to ensure public confidence in the banking system, for, according to Philippine National Bank v. Pike: "The stability of banks largely depends on the confidence of the people in the honesty and efficiency of banks." Thus, DBP had to act with great care in applying the stipulations of its agreement with Guariña Corporation, lest it erodes such public confidence. Yet, DBP failed in its duty to exercise the highest degree of diligence by prematurely foreclosing the mortgages and unwarrantedly causing the foreclosure sale of the mortgaged properties despite Guariña Corporation not being yet in default. DBP wrongly relied on Stipulation No. 26 as its basis to accelerate the obligation of Guariña Corporation, for the stipulation was relevant to an Omnibus Agricultural Loan, to Guariña Corporation's loan which was intended for a project other than agricultural in nature.

FACTS

In July 1976, Guariña Corporation applied for a loan from DBP to finance the development of its resort complex. The loan, in the amount of P3,387,000.00, was approved on August 5, 1976. Guariña Corporation executed a promissory note that would be due on November 3, 1988. On October 5, 1976, Guariña Corporation executed a real estate mortgage over several real properties in favor of DBP as security for the repayment of the loan. On May 17, 1977, Guariña Corporation executed a chattelmortgage over the personal properties existing at the resort complex and those yet to be acquired out of the proceeds of the loan, also to secure the performance of the obligation. Prior to the release of the loan, DBP required Guariña Corporation to put up a cash equity of P1,470,951.00 for the construction of the buildings and other improvements on the resort complex.

The loan was released in several installments, and Guariña Corporation used the proceeds to defray the cost of additional improvements in the resort complex. In all, the amount released totaled P3,003,617.49, from which DBP withheld P148,102.98 as interest.

Guariña Corporation demanded the release of the balance of the loan, but DBP refused. Instead, DBP directly paid some suppliers of Guariña Corporation over the latter's objection. DBP found upon inspection of the resort project, its developments and improvements that Guariña Corporation had not completed the construction works. In a letter dated February 27, 1978, and a telegram dated June 9, 1978, DBP thus demanded that Guariña Corporation expedite the completion of the project, and warned that it would initiate foreclosure proceedings should Guariña Corporation not do so.10

Unsatisfied with the non-action and objection of Guariña Corporation, DBP initiated extrajudicial foreclosure proceedings.

ISSUE

Whether DBP was negligent. (YES)

RULING

DBP's actuations were legally unfounded. It is true that loans are often secured by a mortgage constituted on real or personal property to protect the creditor's interest in case of the default of the debtor. By its nature, however, a mortgage remains an accessory contract dependent on the principal obligation, such that enforcement of the mortgage contract will depend on whether or not there has been a violation of the principal obligation. While a creditor and a debtor could regulate the order in which they should comply with their reciprocal obligations, it is presupposed that in a loan the lender should perform its obligation - the release of the full loan amount - before it could demand that the borrower repay the loaned amount. In other words, Guariña Corporation would not incur in delay before DBP fully performed its reciprocal obligation.

Considering that it had yet to release the entire proceeds of the loan, DBP could not yet make an effective demand for payment upon Guariña Corporation to perform its obligation under the loan. According to Development Bank of the Philippines v. Licuanan, it would only be when a demand to pay had been made and was subsequently refused that a borrower could be considered in default, and the lender could obtain the right to collect the debt or to foreclose the mortgage. Hence, Guariña Corporation would not be in default without the demand.

Assuming that DBP could already exact from the latter its compliance with the loan agreement, the letter dated February 27, 1978 that DBP sent would still not be regarded as a demand to render Guariña Corporation in default under the principal contract because DBP was only thereby requesting the latter "to put up the deficiency in the value of improvements."

Under the circumstances, DBP's foreclosure of the mortgage and the sale of the mortgaged properties at its instance were premature, and, therefore, void and ineffectual.

Being a banking institution, DBP owed it to Guariña Corporation to exercise the highest degree of diligence, as well as to observe the high standards of integrity and performance in all its transactions because its business was imbued with public interest. The high standards were also necessary to ensure public confidence in the banking system, for, according to Philippine National Bank v. Pike: "The stability of banks largely depends on the confidence of the people in the honesty and efficiency of banks." Thus, DBP had to act with great care in applying the stipulations of its agreement with Guariña Corporation, lest it erodes such public confidence. Yet, DBP failed in its duty to exercise the highest degree of diligence by prematurely foreclosing the mortgages and unwarrantedly causing the foreclosure sale of the mortgaged properties despite Guariña Corporation not being yet in default. DBP wrongly relied on Stipulation No. 26 as its basis to accelerate the obligation of Guariña Corporation, for the stipulation was relevant to an Omnibus Agricultural Loan, to Guariña Corporation's loan which was intended for a project other than agricultural in nature.

• DRA. MERCEDES OLIVER, Petitioner, v. PHILIPPINE SAVINGS BANK AND LILIA CASTRO, Respondents. (G.R. No. 214567, April 04, 2016, MENDOZA, J.)

DRA. MERCEDES OLIVER, Petitioner, v. PHILIPPINE SAVINGS BANK AND LILIA CASTRO, Respondents.

G.R. No. 214567, SECOND DIVISION, April 04, 2016, MENDOZA, J.

Aside from Castro, PSBank must also be held liable because it failed to exercise utmost diligence in the improper withdrawal of the P7 million from Oliver's bank account.

In the case of banks, the degree of diligence required is more than that of a good father of a family. Considering the fiduciary nature of their relationship with their depositors, banks are duty bound to treat the accounts of their clients with the highest degree of care. The point is that as a business affected with public interest and because of the nature of its functions, the bank is under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship.

FACTS

In her Complaint, dated October 5, 1999, Oliver alleged that sometime in 1997, she made an initial deposit of P12 million into her PSBank account. During that time, Castro convinced her to loan out her deposit as interim or bridge financing for the approved loans of bank borrowers who were waiting for the actual release of their loan proceeds.

Under this arrangement, Castro would first show the approved loan documents to Oliver. Thereafter, Castro would withdraw the amount needed from Oliver's account. Upon the actual release of the loan by PSBank to the borrower, Castro would then charge the rate of 4% a month from the loan proceeds as interim or bridge financing interest. Together with the interest income, the principal amount previously withdrawn from Oliver's bank account would be. deposited back to her account. Meanwhile, Castro would earn a commission of 10% from the interest.

Their arrangement went on smoothly for months. Due to the frequency of bank transactions, Oliver even entrusted her passbook to Castro. Because Oliver earned substantial profit, she was further convinced by Castro to avail of an additional credit line in the amount of P10 million. The said credit line was secured by a real estate mortgage on her house and lot in Ayala Alabang covered by Transfer Certificate of Title (TCT) No. 137796.

Oliver instructed Castro to pay P2 million monthly to PSBank starting on September 3, 1998 so that her credit line for P10 million would be fully, paid by January 3, 1999.

Beginning September 1998, Castro stopped rendering an accounting for Oliver. The latter then demanded the return of her passbook. When Castro showed her the passbook sometime in late January or early February 1999, she noticed several erasures and superimpositions therein. She became very suspicious of the many erasures pertaining to the December 1998 entries so she requested a copy of her transaction history register from PSBank.

When her transaction history register was shown to her, Oliver was surprised to discover that the amount of P4,491,250.00 (estimated at P4.5 million) was entered into her account on December 21, 1998. While a total of P7 million was withdrawn from her account on the same day, Oliver asserted

that she neither applied for an additional loan of P4.5 million nor authorized the withdrawal of P7 million. She also discovered another loan for P1,396,310.45, acquired on January 5, 1999 and allegedly issued in connection with the P10 million credit line.

In Oliver's passbook, there were no entries from December 17, 1998 to December 27, 1998. The transaction history register, however, showed several transactions on these very same dates including the crediting of P4.5 million and the debiting of P7 million on December 21, 1998. Oliver then learned that the additional P4.5 million and P1,396,310.45 loans were also secured by the real estate mortgage, dated January 8, 1998, covering the same property in Ayala Alabang.

Oliver received two collection letters, dated May 13, 1999 and June 18, 1999, from PSBank referring to the non-payment of unpaid loans, to wit: (1) P4,491,250.00 from the additional loan and (2) P1,396,310.45 from the P10 million credit line. In response, Oliver protested that she neither availed of the said loans nor authorized the withdrawal of P7 million from her account. She also claimed that the P10 million loan from her credit line was already paid in full.

On July 14, 1999, a final demand letter was sent to Oliver by PSBank, requiring her to pay the unpaid loans. Oliver, however, still refused to pay. Subsequently, Oliver received a notice of sale involving the property in Ayala Alabang, issued by Notary Public Jose Celestino Torres on September 15, 1999. The said notice informed her of the impending extra-judicial foreclosure and sale of her house and lot to be held on October 21, 1999.

ISSUE

Whether PSBank should be held liable. (YES)

RULING

Aside from Castro, PSBank must also be held liable because it failed to exercise utmost diligence in the improper withdrawal of the P7 million from Oliver's bank account.

In the case of banks, the degree of diligence required is more than that of a good father of a family. Considering the fiduciary nature of their relationship with their depositors, banks are duty bound to treat the accounts of their clients with the highest degree of care. The point is that as a business affected with public interest and because of the nature of its functions, the bank is under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship.

In Simex International v. Court of Appeals, the Court held that the depositor expected the bank to treat his account with the utmost fidelity, whether such account consisted only of a few hundred pesos or of millions. The bank must record every single transaction accurately, down to the last centavo, and as promptly as possible. This has to be done if the account is to reflect at any given time the amount of money the depositor can dispose of as he sees fit, confident that the bank will deliver it as and to whomever he directs. A blunder on the part of the bank, such as the dishonor of a check without good reason, can cause the depositor not a little embarrassment if not also financial loss and perhaps even civil and criminal litigation.

Time and again, the Court has emphasized that the bank is expected to ensure that the depositor's funds shall only be given to him or his authorized representative. In Producers Bank of the Phil. v. Court of Appeals, the Court held that the usual banking procedure was that withdrawals of savings deposits could only be made by persons whose authorized signatures were in the signature cards on file with the bank. In the said case, the bank therein allowed an unauthorized person to withdraw from its depositor's savings account, thus, it failed to exercise the required diligence of banks and must be held liable.

With respect to withdrawal slips, the Court declared in Philippine National Bank v. Pike that "[o]rdinarily, banks allow withdrawal by someone who is not the account holder so long as the account holder authorizes his representative to withdraw and receive from his account by signing on the space provided particularly for such transactions, usually found at the back of withdrawal slips." There, the bank violated its fiduciary duty because it allowed a withdrawal by a representative even though the authorization portion of the withdrawal slip was not signed by the depositor.

LAND BANK OF THE PHILIPPINES vs. NARCISO L. KHO (G.R. No. 205839)



LAND BANK OF THE PHILIPPINES, Petitioner, v. NARCISO L. KHO, Respondent. G.R. No. 205839, SECOND DIVISION, July 07, 2016, BRION, J.

MA. LORENA FLORES AND ALEXANDER CRUZ, Petitioners, v. NARCISO L. KHO, Respondent. G.R. No. 205840, SECOND DIVISION, July 07, 2016, BRION, J.

The business of banking is imbued with public interest; it is an industry where the general public's trust and confidence in the system is of paramount importance. **Consequently, banks are expected to exert the highest degree of, if not the utmost, diligence**. They are obligated to treat their depositors' accounts with meticulous care, always keeping in mind the fiduciary nature of their relationship.

Banks hold themselves out to the public as experts in determining the genuineness of checks and corresponding signatures thereon. Stemming from their primordial duty of diligence, one of a bank's prime duties is to ascertain the genuineness of the drawer's signature on check being encashed. This holds especially true for manager's checks.

The genuine check No. 07410 remained in Kho's possession the entire time and Land Bank admits that the check it cleared was a fake. When Land Bank's CCD forwarded the deposited check to its Araneta branch for inspection, its officers had every opportunity to recognize the forgery of their signatures or the falsity of the check. Whether by error or neglect, the bank failed to do so, which led to the withdrawal and eventual loss of the P25,000,000.00

FACTS

The respondent Narciso Kho is the sole proprietor of United Oil Petroleum, a business engaged in trading diesel fuel. Sometime in December 2006, he entered into a verbal agreement to purchase

lubricants from Red Orange International Trading (Red Orange). Red Orange insisted that it would only accept a Land Bank manager's check as payment.

On December 28, 2005, Kho, accompanied by Rudy Medel, opened Savings Account No. 0681-0681-80 at the Araneta Branch of petitioner Land Bank of the Philippines (Land Bank). His initial P25,993,537.37 deposit consisted of manager's checks:

Kho also purchased Land Bank Manager's Check No. 07410 leveraged by his newly opened savings account. Recem Macarandan, the Acting Operations Supervisor of the Araneta branch, and Leida Benitez, the Document Examiner, prepared and signed the check.

The check was postdated to January 2, 2006, and scheduled for actual delivery on the same date after the three checks were expected to have been cleared. It was valued at P25,000,000.00 and made payable to Red Orange.

Kho requested a photocopy of the manager's check to provide Red Orange with proof that he had available funds for the transaction. The branch manager, petitioner Ma. Lorena Flores, accommodated his request. Kho gave the photocopy of the check to Rudy Medel.

On January 2, 2006, Kho returned to the bank and picked up check No. 07410. Accordingly, P25,000,000.00 was debited from his savings account.

Unfortunately, his deal with Red Orange did not push through.

On January 3, 2006, an employee of the Bank of the Philippine Islands (BPI) called Land Bank, Araneta Branch, to inform them that Red Orange had deposited check No. 07410 for payment. Flores confirmed with BPI that Land Bank had issued the check to Kho.

On January 4, 2006, the Central Clearing Department (CCD) of the Land Bank Head Office faxed a copy of the deposited check to the Araneta branch for payment. The officers of the Araneta branch examined the fax copy and thought that the details matched the check purchased by Kho. Thus, Land Bank confirmed the deposited check.

On January 5, 2006, Flores informed Kho by phone that Check No. 07410 was cleared and paid by the BPI, Kamuning branch.

Shocked, Kho informed Flores that he never negotiated the check because the deal did not materialize. More importantly, the actual check was still in his possession.

Kho immediately went to Land Bank with the check No. 07410. They discovered that what was deposited and encashed with BPI was a spurious manager's check. Kho demanded the cancellation of his manager's check and the release of the remaining money in his account (then P995,207.27).13 However, Flores refused his request because she had no authority to do so at the time.

Kho returned to the Land Bank, Araneta branch on January 12, 2006, with the same demands. He was received by petitioner Alexander Cruz who was on his second day as the Officer in Charge (OIC)

of the Araneta branch. Cruz informed him that there was a standing freeze order on his account because of the (then) ongoing investigation on the fraudulent withdrawal of the manager's check.

On January 16, 2006, Kho sent Land Bank a final demand letter for the return of his P25,000,000.00 and the release of the P995,207.27 from his account but the bank did not comply.

Hence, on January 23, 2006, Kho filed a Complaint for Specific Performance and Damages against Land Bank, represented by its Araneta Avenue Branch Manager Flores and its OIC Cruz. He also impleaded Flores and Cruz in their personal capacities. The complaint was docketed as Civil Case No. Q-06-57154.

Kho asserted that the manager's check No. 07410 was still in his possession and that he had no obligation to inform Land Bank whether or not he had already negotiated the check.

On the other hand, Land Bank argued that Kho was negligent because he handed Medel a photocopy of the manager's check and that this was the proximate cause of his loss.

ISSUE

Whether Land Bank was negligent. (YES)

RULING

We cannot understand how both the RTC and the CA overlooked the fact that Land Bank's officers cleared the counterfeit check. We stress that the signatories of the genuine check No. 07410 were Land Bank's officers themselves.

The business of banking is imbued with public interest; it is an industry where the general public's trust and confidence in the system is of paramount importance. **Consequently, banks are expected to exert the highest degree of, if not the utmost, diligence**. They are obligated to treat their depositors' accounts with meticulous care, always keeping in mind the fiduciary nature of their relationship.

Banks hold themselves out to the public as experts in determining the genuineness of checks and corresponding signatures thereon. Stemming from their primordial duty of diligence, one of a bank's prime duties is to ascertain the genuineness of the drawer's signature on check being encashed. This holds especially true for manager's checks.

A manager's check is a bill of exchange drawn by a bank upon itself, and is accepted by its issuance. It is an order of the bank to pay, drawn upon itself, committing in effect its total resources, integrity, and honor behind its issuance. The check is signed by the manager (or some other authorized officer) for the bank. In this case, the signatories were Macarandan and Benitez.

The genuine check No. 07410 remained in Kho's possession the entire time and Land Bank admits that the check it cleared was a fake. When Land Bank's CCD forwarded the deposited check to its Araneta branch for inspection, its officers had every opportunity to recognize the forgery of their

signatures or the falsity of the check. Whether by error or neglect, the bank failed to do so, which led to the withdrawal and eventual loss of the P25,000,000.00.

This is the proximate cause of the loss. Land Bank breached its duty of diligence and assumed the risk of incurring a loss on account of a forged or counterfeit check. Hence, it should suffer the resulting damage.

• ANNA MARIE L. GUMABON vs. PHILIPPINE NATIONAL BANK (G.R. No. 202514, July 25, 2016, BRION, J.)

ANNA MARIE L. GUMABON, Petitioner, v. PHILIPPINE NATIONAL BANK, Respondent. G.R. No. 202514, SECOND DIVISION, July 25, 2016, BRION, J.

The PNB cannot simply substitute the mere photocopies of the subject documents for the original copies without showing the court that any of the exceptions under Section 3 of Rule 130 of the Rules of Court applies. The PNB's failure to give a justifiable reason for the absence of the original documents and to maintain a record of Anna Marie's transactions only shows the PNB's dismal failure to fulfill its fiduciary duty to Anna Marie. The Court expects the PNB to "treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship." The Court explained in Philippine Banking Corporation v. CA, the fiduciary nature of the bank's relationship with its depositors, to wit:

The business of banking is imbued with public interest. The stability of banks largely depends on the confidence of the people in the honesty and efficiency of banks. In Simex International (Manila) Inc. v. Court of Appeals we pointed out the depositor's reasonable expectations from a bank and the bank's corresponding duty to its depositor, as follows:

In every case, the depositor expects the bank to treat his account with the utmost fidelity, whether such account consists only of a few hundred pesos or of millions. **The bank must record every single transaction accurately, down to the last centavo, and as promptly as possible**. This has to be done if the account is to reflect at any given time the amount of money the depositor can dispose of as he sees fit, confident that the bank will deliver it as and to whomever he directs.

FACTS

On August 12, 2004, Anna Marie filed a complaint for recovery of sum of money and damages before the RTC against the Philippine National Bank (PNB) and the PNB Delta branch manager Silverio Fernandez (Fernandez). The case stemmed from the PNB's refusal to release Anna Marie's money in a consolidated savings account and in two foreign exchange time deposits, evidenced by Foreign Exchange Certificates of Time Deposit (FXCTD).

In 2001, Anna Marie, together with her mother Angeles and her siblings Anna Elena and Santiago, (the Gumabons) deposited with the PNB Delta Branch \$10,945.28 and \$16,830.91, for which they were issued FXCTD Nos. A-993902 and A-993992, respectively.

The Gumabons also maintained eight (8) savings accounts in the same bank. Anna Marie decided to consolidate the eight (8) savings accounts and to withdraw P-2,727,235.85 from the consolidated savings account to help her sister's financial needs.

Anna Marie called the PNB employee handling her accounts, Reino Antonio Salvoro (Salvoro), to facilitate the consolidation of the savings accounts and the withdrawal. When she went to the bank on April 14, 2003, she was informed that she could not withdraw from the savings accounts since her bank records were missing and Salvoro could not be contacted.

On April 15, 2003, Anna Marie presented her two FXCTDs, but was also unable to withdraw against them. Fernandez informed her that the bank would still verify and investigate before allowing the withdrawal since Salvoro had not reported for work.

Thus, Anna Marie sent two demand letters dated April 23 and April 25, 2003 to the PNB.

After a month, the PNB finally consolidated the savings accounts and issued a passbook for Savings Account (SA) No. 6121200. The PNB also confirmed that the total deposits amounted to P-2,734,207.36. Anna Marie, her mother, and the PNB executed a Deed of Waiver and Quitclaim dated May 23, 2003 to settle all questions regarding the consolidation of the savings accounts. After withdrawals, the balance of her consolidated savings account was P250,741.82.

On July 30, 2003, the PNB sent letters to Anna Marie to inform her that the PNB refused to honor its obligation under FXCTD Nos. 993902 and 993992, and that the PNB withheld the release of the balance of P-250,741.82 in the consolidated savings account. According to the PNB, Anna Marie preterminated, withdrew and/or debited sums against her deposits.

Thus, Anna Marie filed before the RTC a complaint for sum of money and damages against the PNB and Fernandez.

As to the two FXCTDs, Anna Marie contended that the PNB's refusal to pay her time deposits is contrary to law. The PNB cannot claim that the bank deposits have been paid since the certificates of the time deposits are still with Anna Marie.

As to the consolidated savings account, Anna Marie stated that the PNB had already acknowledged the account's balance in the Deed of Waiver and Quitclaim amounting to P2,734,207.36. As of January 26, 2004, the remaining balance was P250,741.82. PNB presented no concrete proof that this amount had been withdrawn.

On the other hand, PNB contended that Anna Marie is not entitled to the alleged balance of P250,741.82. The PNB's investigation showed that Anna Marie withdrew a total of P251,246.8116 from two of the eight savings accounts and she used this amount to purchase manager's check no. 0000760633. Hence, P251,246.81 should be deducted from the sum agreed upon in the Deed of Waiver and Quitclaim. **The PNB offered photocopies of the PNB's miscellaneous ticket and the manager's check as evidence to prove the withdrawals**. The PNB argued that unjust enrichment would result if Anna Marie would be allowed to collect P-250,741.82 from the consolidated savings account without deducting her previous withdrawal of P251,246.81.

ISSUE

Whether PNB was negligent. (YES)

RULING

The PNB cannot simply substitute the mere photocopies of the subject documents for the original copies without showing the court that any of the exceptions under Section 3 of Rule 130 of the Rules of Court applies. The PNB's failure to give a justifiable reason for the absence of the original documents and to maintain a record of Anna Marie's transactions only shows the PNB's dismal failure to fulfill its fiduciary duty to Anna Marie. The Court expects the PNB to "treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship." The Court explained in Philippine Banking Corporation v. CA, the fiduciary nature of the bank's relationship with its depositors, to wit:

The business of banking is imbued with public interest. The stability of banks largely depends on the confidence of the people in the honesty and efficiency of banks. In Simex International (Manila) Inc. v. Court of Appeals we pointed out the depositor's reasonable expectations from a bank and the bank's corresponding duty to its depositor, as follows:

In every case, the depositor expects the bank to treat his account with the utmost fidelity, whether such account consists only of a few hundred pesos or of millions. **The bank must record every single transaction accurately, down to the last centavo, and as promptly as possible.** This has to be done if the account is to reflect at any given time the amount of money the depositor can dispose of as he sees fit, confident that the bank will deliver it as and to whomever he directs.

Consequently, the CA should not have admitted the subject documents even if the PNB tendered the excluded evidence.

Notably, the PNB clearly admitted in the executed Deed of Waiver and Quitclaim that it owed Anna Marie P2,734,207.36 under the consolidated savings account. After a number of uncontested transactions, the remaining balance of Anna Marie's deposit became P250,741.82. The inevitable conclusion is that PNB's obligation to pay P250,741.82 under SA No. 6121200 subsists.

• PHILIPPINE NATIONAL BANK vs. JUAN F. VILA (G.R. No. 213241, August 1, 2016, PEREZ,J)

PHILIPPINE NATIONAL BANK, Petitioner, v. JUAN F. VILA, Respondent. G.R. No. 213241, THIRD DIVISION, August 01, 2016, PEREZ, J.

Thus, before approving a loan application, it is a standard operating practice for these institutions to conduct an ocular inspection of the property offered for mortgage and to verify the genuineness of the title to determine the real owner thereof. The apparent purpose of an ocular inspection is to protect the "true owner" of the property as well as innocent third parties with a right, interest or claim thereon from a usurper who may have acquired a fraudulent certificate of title

thereto. Here, [the] PNB has failed to exercise the requisite due diligence in ascertaining the status and condition of the property being offered to it as security for the loan before it approved the same.

We never fail to stress the remarkable significance of a banking institution to commercial transactions, in particular, and to the country's economy in general. The banking system is an indispensable institution in the modern world and plays a vital role in the economic life of every civilized nation. Whether as mere passive entities for the safekeeping and saving of money or as active instruments of business and commerce, banks have become an ubiquitous presence among the people, who have come to regard them with respect and even gratitude and, most of all, confidence. Consequently, the highest degree of diligence is expected, and high standards of integrity and performance are even required, of it.

PNB clearly failed to observe the required degree of caution in readily approving the loan and accepting the collateral offered by the Spouses Cornista without first ascertaining the real ownership of the property. It should not have simply relied on the face of title but went further to physically ascertain the actual condition of the property. That the property offered as security was in the possession of the person other than the lone applying for the loan and the taxes were declared not in their names could have raised a suspicion. A person who deliberately ignores a significant fact that could create suspicion in an otherwise reasonable person is not an innocent purchaser for value.

FACTS

Sometime in 1986, Spouses Reynaldo Cormsta and Erlinda Gamboa Cornista (Spouses Cornista) obtained a loan from Traders Royal Bank (Traders Bank).5To secure the said obligation, the Spouses Cornista mortgaged to the bank a parcel of land.

For failure of the Spouses Cornista to make good of their loan obligation after it has become due, Traders Bank foreclosed the mortgage constituted on the security of the loan. After the notice and publication requirements were complied with, the subject property was sold at the public auction on 23 December 1987. During the public sale, respondent Juan F. Vila (Vila) was declared as the highest bidder after he offered to buy the subject property for P50,000.00. The Certificate of Sale dated 13 January 1988 was duly recorded in TCT No. 131498 under Entry No. 623599.

Despite the lapse of the redemption period and the fact of issuance of a Certificate of Final Sale to Vila, the Spouses Cormsta were nonetheless allowed to buy back the subject property by tendering the amount of P50,000.00.

Claiming that the Spouses Cornista already lost their right to redeem the subject property, Vila filed an action for nullification of redemption, transfer of title and damages against the Spouses Cornista and Alfredo Vega in his capacity as the Register of Deeds of Pangasinan.

On 3 February 1995, the RTC rendered a Decision in in favor of Vila thereby ordering the Register of Deeds to cancel the registration of the certificate of redemption and the annotation thereof on TCT No. 131498.

In order to enforce the favorable decision, Vila filed before the RTC a Motion for the Issuance of Writ of Execution which was granted by the court. Accordingly, a Writ of Execution was issued by the RTC on 14 December 1997.

By unfortunate turn of events, the Sheriff could not successfully enforce the decision because the certificate of title covering the subject property was no longer registered under the names of the Spouses Cornista. Hence, the judgment was returned unsatisfied as shown in Sheriffs Return dated 13 July 1999.

Upon investigation it was found out that during the interregnum the Spouses Cornista were able to secure a loan from the PNB in the amount of P532,000.00 using the same property subject of litigation as security. The Real Estate Mortgage (REM) was recorded on 28 September 1992 under Entry No. 75817113 or month before the Notice of Lis Pendens was annotated.

Eventually, the Spouses Cornista defaulted in the payment of their loan obligation with the PNB prompting the latter to foreclose the property offered as security. The bank emerged as the highest bidder during the public sale as shown at the Certificate of Sale issued by the Sheriff. As with the prior mortgage, the Spouses Cornista once again failed to exercise their right of redemption within the required period allowing PNB to consolidate its ownership over the subject property. Accordingly, TCT No. 131498 in the name of the Spouses Cornista was cancelled and a new one under TCT No. 216771 under the name of the PNB was issued.

The foregoing turn of events left Vila with no other choice but to commence another round of litigation against the Spouses Cornista and PNB before the RTC of Viliasis, Pangasinan, Branch 50. In his Complaint docketed as Civil Case No. V-0567, Vila sought for the nullification of TCT No. 216771 issued under the name of PNB and for the payment of damages.

To refute the allegations of Vila, PNB pounded that it was a mortgagee in good faith pointing the fact that at the time the subject property was mortgaged to it, the same was still free from any liens and encumbrances and the Notice of Lis Pendens was registered only a month after the REM was annotated on the title. PNB meant to say that at the time of the transaction, the Spouses Cornista were still the absolute owners of the property possessing all the rights to mortgage the same to third persons. PNB also harped on the fact that a close examination of title was conducted and nowhere was it shown that there was any cloud in the title of the Spouses Cornista, the latter having redeemed the property after they have lost it in a foreclosure sale.

ISSUE

Whether PNB is a mortgagee in good faith. (NO)

RULING

Resonating the findings of the RTC, the CA also declared that PNB fell short in exercising the degree of diligence expected from bank and financial Institutions. We hereby quote with approval the disquisition of the appellate court:

Thus, before approving a loan application, it is a **standard operating practice for these institutions to conduct an ocular inspection of the property offered for mortgage and to verify the genuineness of the title to determine the real owner thereof**. The apparent purpose of an ocular inspection is to protect the "true owner" of the property as well as innocent third parties with a right, interest or claim thereon from a usurper who may have acquired a fraudulent certificate of title thereto. Here, [the] PNB has failed to exercise the requisite due diligence in ascertaining the status and condition of the property being offered to it as security for the loan before it approved the same.

Clearly, the PNB failed to observe the exacting standards required of banking institutions which are behooved by statutes and jurisprudence to exercise greater care and prudence before entering into a mortgage contract.

No credible proof on the records could substantiate the claim of PNB that a physical inspection of the property was conducted. We agree with, both the RTC and CA that if in fact it were true that ocular inspection was conducted, a suspicion could have been raised as to the real status of property. By failing to uncover a crucial fact that the mortgagors were not the possessors of the subject property. We could not lend credence to claim of the bank that an ocular inspection of the property was conducted. What further tramples upon PNB's claim is the fact that, as shown on the records, it was Vila who was religiously paying the real property tax due on the property from 1989 to 1996, another significant fact that could have raised a red flag as to the real ownership of the property. The failure of the mortgagee to take precautionary steps would mean negligence on his part and would thereby preclude it from invoking that it is a mortgagee in good faith.

Before approving a loan application, it is standard operating procedure for banks and financial institutions to conduct an ocular inspection of the property offered for mortgage and to determine the real owner(s) thereof The apparent purpose of an ocular inspection is to protect the "true owner" of the property as well as innocent third parties with a right, interest or claim thereon from a usurper who may have acquired a fraudulent certificate of title thereto.

In this case, it was adjudged by the courts of competent jurisdiction in a final and executory decision that the Spouses Cornista's reacquisition of the property after the lapse of the redemption period is fraudulent and the property used by the mortgagors as collateral rightfully belongs to Vila, an innocent third party with a right, could have been protected if PNB only observed the degree diligence expected from it.

In Land Bank of the Philippines v. Belle Corporation, the Court exhorted banks to exercise the highest degree of diligence in its dealing with properties offered as securities for the loan obligation:

When the purchaser or the mortgagee is a bank, the rule on innocent purchasers or mortgagees for value is applied more strictly. Being in the business of extending loans secured by real estate mortgage, banks are presumed to be familiar with the rules on land registration. Since the banking business-is impressed with public interest, they are expected to be more cautious, to exercise a higher degree of diligence, care and prudence, than private individuals in their dealings, even those involving registered lands. Banks may not simply rely on the face of the certificate of title. Hence, they cannot assume that, xxx the title offered as security is on its face free of any encumbrances or lien, they are relieved of the responsibility of taking further steps to verify the title and inspect the properties to be mortgaged. As expected, the ascertainment of the status or condition of a property offered to it as security for a loan must be a standard and indispensable part of the bank's operations.

We never fail to stress the remarkable significance of a banking institution to commercial transactions, in particular, and to the country's economy in general. The banking system is an indispensable institution in the modern world and plays a vital role in the economic life of every civilized nation. Whether as mere passive entities for the safekeeping and saving of money or as active instruments of business and commerce, banks have become an ubiquitous presence among the people, who have come to regard them with respect and even gratitude and, most of all, confidence. **Consequently, the highest degree of diligence is expected, and high standards of integrity and performance are even required, of it**.

PNB clearly failed to observe the required degree of caution in readily approving the loan and accepting the collateral offered by the Spouses Cornista without first ascertaining the real ownership of the property. It **should not have simply relied on the face of title but went further to physically ascertain the actual condition of the property**. That the property offered as security was in the possession of the person other than the lone applying for the loan and the taxes were declared not in their names could have raised a suspicion. A person who deliberately ignores a significant fact that could create suspicion in an otherwise reasonable person is not an innocent purchaser for value.

Having laid down that the PNB is not in good faith, We are led to affirm the award of moral damages, exemplary damages, attorney's fees and costs of litigation in favor of Vila.

• PHILIPPINE NATIONAL BANK, Petitioner, -versus- PABLO V. RAYMUNDO, Respondents. (G.R. No. 208672, THIRD DIVISION, December 7, 2016, PERALTA, J.)

PHILIPPINE NATIONAL BANK, Petitioner, v. PABLO V. RAYMUNDO, Respondent. G.R. No. 208672, THIRD DIVISION, December 07, 2016, PERALTA, J.

Since their business and industry are imbued with public interest, banks are required to exercise extraordinary diligence, which is more than that of a Roman pater familias or a good father of a family, in handling their transactions. Banks are also expected to exercise the highest degree of diligence in the selection and supervision of their employees. By the very nature of their work in handling millions of pesos in daily transactions, the degree of responsibility, care and trustworthiness expected of bank employees and officials is far greater than those of ordinary clerks and employees.

A bank's disregard of its own banking policy amounts to gross negligence, which is described as "negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is duty to act, not inadvertently but willfully and unintentionally with a conscious indifference to consequences insofar as other persons may be affected." **Payment of the amounts of** checks without previously clearing them with the drawee bank, especially so where the drawee bank is a foreign bank and the amounts involved were large, is contrary to normal or ordinary banking practice. Before the check shall have been cleared for deposit, the collecting bank can only assume at its own risk that the check would be cleared and paid out. As a bank Branch Manager, Raymundo is expected to be an expert in banking procedures, and he has the necessary means to ascertain whether a check, local or foreign, is sufficiently funded.

FACTS

On July 30, 1993, accused-appellee Pablo V. Raymundo (Raymundo), then Department Manager of PNB San Pedro Branch, approved for deposit a foreign draft check dated June 23, 1993, in the amount of \$172,549.00 issued by Solomon Guggenheim Foundation, drawn against Morgan Guaranty Company of New York, payable to Merry May Juan (Ms. Juan) in the opening of the latter's checking account with PNB San Pedro Branch. Consequent to the approval for deposit of the foreign draft check, Checking Account No. 447-810168-1 and a check booklet were issued to Ms. Juan. On even date, Ms. Juan drew six (6) PNB Checks, five (5) of which were made payable to C&T Global Futures and one (1) payable to "CASH", all in the aggregate amount of FOUR MILLION PESOS (P4,000,000.00). The six (6) checks were negotiated by Ms. Juan and were approved for payment on the same day by Raymundo, without waiting for the foreign draft check, intended to fund the issued check, to be cleared by the PNB Foreign Currency Clearing Unit.

On August 2, 1993, the PNB Foreign Checks Unit and Clearing Services received the foreign draft check for negotiation with Morgan Trust Company of New York, through PNB's correspondent bank in New York, the Banker's Trust Co. of New York (BTCNY for brevity).

On August 6, 1993 and within the clearing period of twenty-one (21) days for foreign draft checks, the PNB received a telex message from BTCNY that the foreign draft check was dishonored for being fraudulent. Subsequent to the said telex message, a letter dated August 20, 1993 was sent by BTCNY to the PNB Corporate Auditor stating the same reason for such dishonor.

On September 9, 1993, Mr. Emerito Sapinoso, Department Manager II of the PNB Foreign Currency Clearing Unit, sent a memorandum to Raymundo, as then Manager of PNB San Pedro, and informed the latter of the return and dishonor of the foreign currency draft and the corresponding debit of the PNB's account to collect the proceeds of the erroneously paid foreign draft check.

For irregularly approving the payment of the six (6) checks issued by Ms. Juan, without waiting for the foreign draft check to be cleared, Raymundo, as then Department Manager of PNB San Pedro Branch, was administratively charged by PNB for Conduct Prejudicial to the Interest of the Service and/or Gross Violation of Bank's Rules and Regulations.

Accused Pablo V. Raymundo denied the allegations that he committed acts which defrauded the PNB of the sum of P4,000,000.00. Outlining the procedure from the time the check was presented to the PNB San Pedro Laguna Branch where he worked as Branch Manager up to the time it is paid or dishonored, he noted that the check will pass through the bookkeeper, Ms. Leonida Moredo, who would determine if the check is funded or not. If the check is not funded, the bookkeeper will accomplish a check return slip and will stamp the back and front of the check that it has no funds and thereafter give it to the accountant, Rodrigo Camello, to verify if indeed the check is not funded.

After the receipt of the check, the accountant will check the ledger and the circumstances of the return and thereafter forward the same to the branch manager, or in his absence, the cashier. Upon receipt of the check deposit slip, the branch manager, if there is no return slip, would automatically sign the check because the absence of a return slip is his guide that the check is good. He noted that it is the duty of the bookkeeper to go over the records of the account of each particular client. When he came to know that withdrawals had been made on a deposited check which had no funds, he immediately instructed bookkeeper Leonila Moredo and accountant Rodrigo Camello to hold further withdrawals on the account. He likewise filed criminal charges against Merry May Juan. The case was decided in his favor and the accused therein was made to pay him and the bank the amount of the check.

ISSUE

Whether Raymundo should be held civilly liable. (YES)

RULING

While his prompt filing of criminal and civil cases against Ms. Juan and her cohorts for the recovery of the money negates bad faith in causing undue injury to the PNB, it incidentally revealed Raymundo's gross negligence (1) in allowing the peso conversion of the foreign check to be credited to her newly-opened peso checking account, even before the lapse of the 21-day clearing period, and (2) in issuing her a check booklet, all on the very same day the said account was opened on July 30, 1993. In his desire to secure bigger bank deposits, Raymundo disregarded the bank's foreign check clearing policy, and risked his trust and confidence on Ms. Juan's and her cohorts' assurance that the foreign check was good and that they would not negotiate any check until the former check is cleared.

Since their business and industry are imbued with public interest, banks are required to exercise extraordinary diligence, which is more than that of a Roman pater familias or a good father of a family, in handling their transactions. Banks are also expected to exercise the highest degree of diligence in the selection and supervision of their employees. By the very nature of their work in handling millions of pesos in daily transactions, the degree of responsibility, care and trustworthiness expected of bank employees and officials is far greater than those of ordinary clerks and employees.

A bank's disregard of its own banking policy amounts to gross negligence, which is described as "negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is duty to act, not inadvertently but willfully and unintentionally with a conscious indifference to consequences insofar as other persons may be affected." Payment of the amounts of checks without previously clearing them with the drawee bank, especially so where the drawee bank is a foreign bank and the amounts involved were large, is contrary to normal or ordinary banking practice. Before the check shall have been cleared for deposit, the collecting bank can only assume at its own risk that the check would be cleared and paid out. As a bank Branch Manager, Raymundo is expected to be an expert in banking procedures, and he has the necessary means to ascertain whether a check, local or foreign, is sufficiently funded. Raymundo's act of approving the deposit to Ms. Juan's newly-opened peso checking account of the peso conversion [P4,752,689.65]24 of the foreign check prior to the lapse of the 21-day clearing period is the proximate cause why the six (6) checks worth P4,000,000.00 were later encashed, thereby causing the PNB undue injury. Defined as that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces injury and without which the result would not have occurred, the proximate cause can be determined by asking a simple question: "If the event did not happen, would the injury have resulted? If the answer is no, then the event is the proximate cause." If Raymundo did not disregard the bank's foreign check clearing policy when he approved crediting of the peso conversion of Ms. Juan's foreign check in her newly-opened peso checking account, the PNB would not have suffered losses due to the irregular encashment of the six (6) checks.

• SPOUSES CRISTINO and EDNA CARBONELL v. METROPOLITAN BANK and TRUST COMPANY, G.R. No. 178467, April 26, 2017, Third Division, BERSAMIN, J.

SPS. CRISTINO & EDNA CARBONELL, Petitioners, v. METROPOLITAN BANK AND TRUST COMPANY, Respondent.

G.R. No. 178467, THIRD DIVISION, April 26, 2017, BERSAMIN, J.

The General Banking Act of 2000 demands of banks the highest standards of integrity and performance. As such, the banks are under obligation to treat the accounts of their depositors with meticulous care. However, the banks' compliance with this degree of diligence is to be determined in accordance with the particular circumstances of each case.

In order for gross negligence to exist as to warrant holding the respondent liable therefor, the petitioners must establish that the latter did not exert any effort at all to avoid unpleasant consequences, or that it wilfully and intentionally disregarded the proper protocols or procedure in the handling of US dollar notes and in selecting and supervising its employees.

The CA and the RTC both found that the respondent had exercised the diligence required by law in observing the standard operating procedure, in taking the necessary precautions for handling the US dollar bills in question, and in selecting and supervising its employees.

In this connection, it is significant that the BSP certified that the falsity of the US dollar notes in question, which were "near perfect genuine notes," could be detected only with extreme difficulty even with the exercise of due diligence. Ms. Nanette Malabrigo, BSP's Senior Currency Analyst, testified that the subject dollar notes were "highly deceptive" inasmuch as the paper used for them were similar to that used in the printing of the genuine notes. She observed that the security fibers and the printing were perfect except for some microscopic defects, and that all lines were clear, sharp and well defined.

Here, although the petitioners suffered humiliation resulting from their unwitting use of the counterfeit US dollar bills, **the respondent**, **by virtue of its having observed the proper protocols and procedure in handling the US dollar bills involved**, **did not violate any legal duty towards them**. Being neither guilty of negligence nor remiss in its exercise of the degree of diligence required by law or the nature of its obligation as a banking institution, the latter was not liable for damages.

Given the situation being one of damnum absque injuria, they could not be compensated for the damage sustained.

FACTS

The petitioners initiated against the respondent, an action for damages, alleging that they had experienced emotional shock, mental anguish, public ridicule, humiliation, insults and embarrassment during their trip to Thailand because of the respondent's release to them of five US\$100 bills that later on turned out to be counterfeit. They claimed that they had travelled to Bangkok, Thailand after withdrawing US\$1,000.00 in US\$100 notes from their dollar account at the respondent's Pateros branch; that while in Bangkok, they had exchanged five US\$100 bills into Baht, but only four of the US\$100 bills had been accepted by the foreign exchange dealer because the fifth one was "no good;" that unconvinced by the reason for the rejection, they had asked a companion to exchange the same bill at Norkthon Bank in Bangkok; that the bank teller thereat had then informed them and their companion that the dollar bill was fake; that the teller had then confiscated the US\$100 bill and had threatened to report them to the police if they insisted in getting the fake dollar bill back; and that they had to settle for a Foreign Exchange Note receipt.

The petitioners claimed that later on, they had bought jewelry from a shop owner by using four of the remaining US\$100 bills as payment; that on the next day, however, they had been confronted by the shop owner at the hotel lobby because their four US\$100 bills had turned out to be counterfeit; that the shop owner had shouted at them: "You Filipinos, you are all cheaters!;" and that the incident had occurred within the hearing distance of tel low travelers and several foreigners.

The petitioners continued that upon their return to the Philippines, they had confronted the manager of the respondent's Pateros branch on the fake dollar bills, but the latter had insisted that the dollar bills she had released to them were genuine inasmuch as the bills had come from the head office; that in order to put the issue to rest, the counsel of the petitioners had submitted the subject US\$100 bills to the Bangko Sentral ng Pilipinas (BSP) for examination; **that the BSP had certified that the four US\$100 bills were near perfect genuine notes**; and that their counsel had explained by letter their unfortunate experience caused by the respondent's release of the fake US dollar bills to them, and had demanded moral damages of P10 Million and exemplary damages.

In response, the respondent's counsel wrote to the petitioners on March 1996 expressing sympathy with them on their experience but stressing that the respondent could not absolutely guarantee the genuineness of each and every foreign currency note that passed through its system; that it had also been a victim like them; and that it had exercised the diligence required in dealing with foreign currency notes and in the selection and supervision of its employees.

ISSUE

Whether Respondent should be held liable for damages. (NO)

RULING

The General Banking Act of 2000 demands of banks the highest standards of integrity and performance. As such, the banks are under obligation to treat the accounts of their depositors with

meticulous care. However, the banks' compliance with this degree of diligence is to be determined in accordance with the particular circumstances of each case.

The petitioners argue that the respondent was liable for failing to observe the diligence required from it by not doing an act from which the material damage had resulted by reason of inexcusable lack of precaution in the performance of its duties. Hence, the respondent was guilty of gross negligence, misrepresentation and bad faith amounting to fraud.

The petitioners' argument is unfounded.

Gross negligence connotes want of care in the performance of one's duties; it is a negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is duty to act, not inadvertently but wilfully and intentionally, with a conscious indifference to consequences insofar as other persons may be affected. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.

In order for gross negligence to exist as to warrant holding the respondent liable therefor, the petitioners must establish that the latter did not exert any effort at all to avoid unpleasant consequences, or that it wilfully and intentionally disregarded the proper protocols or procedure in the handling of US dollar notes and in selecting and supervising its employees.

The CA and the RTC both found that **the respondent had exercised the diligence required by law in observing the standard operating procedure, in taking the necessary precautions for handling the US dollar bills in question, and in selecting and supervising its employees**. Such factual findings by the trial court are entitled to great weight and respect especially after being affirmed by the appellate court, and could be overturned only upon a showing of a very good reason to warrant deviating from them.

In this connection, it is significant that the BSP certified that the falsity of the US dollar notes in question, which were "near perfect genuine notes," could be detected only with extreme difficulty even with the exercise of due diligence. Ms. Nanette Malabrigo, BSP's Senior Currency Analyst, testified that the subject dollar notes were "highly deceptive" inasmuch as the paper used for them were similar to that used in the printing of the genuine notes. She observed that the security fibers and the printing were perfect except for some microscopic defects, and that all lines were clear, sharp and well defined.

Here, although the petitioners suffered humiliation resulting from their unwitting use of the counterfeit US dollar bills, the respondent, by virtue of its having observed the proper protocols and procedure in handling the US dollar bills involved, did not violate any legal duty towards them. Being neither guilty of negligence nor remiss in its exercise of the degree of diligence required by law or the nature of its obligation as a banking institution, the latter was not liable for damages. Given the situation being one of damnum absque injuria, they could not be compensated for the damage sustained.

• Citystate Savings Bank v. Tobias, G.R. No. 227990, [March 7, 2018]

CITYSTATE SAVINGS BANK, Petitioner, v. TERESITA TOBIAS AND SHELLIDIE VALDEZ, Respondents.

G.R. No. 227990, SECOND DIVISION, March 07, 2018, REYES, JR., J.

A bank is liable for wrongful acts of its officers done in the interests of the bank or in the course of dealings of the officers in their representative capacity but not for acts outside the scope of their authority. A bank holding out its officers and agent as worthy of confidence will not be permitted to profit by the frauds they may thus be enabled to perpetuate in the apparent scope of their employment; nor will it be permitted to shirk its responsibility for such frauds, even though no benefit may accrue to the bank therefrom. Accordingly, a banking corporation is liable to innocent third persons where the representation is made in the course of its business by an agent acting within the general scope of his authority even though, in the particular case, the agent is secretly abusing his authority and attempting to perpetrate a fraud upon his principal or some other person, for his own ultimate benefit.

Application of these principles in especially necessary because banks have a fiduciary relationship with the public and their stability depends on the confidence of the people in their honesty and efficiency. Such faith will be eroded where banks do not exercise strict care in the selection and supervision of its employees, resulting in prejudice to their depositors.

As aptly pointed by the CA, petitioner's evidence bolsters the case against it, as **they support the finding that Robles as branch manager, has been vested with the apparent or implied authority to act for the petitioner in offering and facilitating banking transactions**. In this light, respondents cannot be blamed for believing that Robles has the authority to transact for and on behalf of the petitioner and for relying upon the representations made by him. After all, Robles as branch manager is recognized "within his field and as to third persons as the general agent and is in general charge of the corporation, with apparent authority commensurate with the ordinary business entrusted him and the usual course and conduct thereof."

FACTS

Rolando Robles, a CPA, has been employed with petitioner Citystate Savings Bank since July 1998. Robles was eventually promoted as manager for petitioner's Baliuag, Bulacan branch. Sometime in 2002, respondent Teresita Tobias was introduced by her youngest son to Robles. Robles persuaded Tobias to open an account with the petitioner and place her money in some high interest rate mechanism, to which the latter yielded.

Tobias was later offered by Robles to sign-up in petitioner's back-to-back scheme which is supposedly offered only to petitioner's most valued clients. Under the scheme, the depositors authorize the bank to use their bank deposits and invest the same in different business ventures that yield high interest. Lured by the attractive offer, Tobias signed the pertinent documents without reading its contents and invested a total of Php 1,800,000 to petitioner through Robles. Later, Tobias included her daughter respondent Valdez, as co-depositor in her accounts with the petitioner.

In 2005, Robles failed to remit to respondents the interest as scheduled. In a meeting with Robles' siblings, it was disclosed to the respondents that Robles withdrew the money and appropriated it

for personal use. Robles later talked to the respondents, promised that he would return the money. Robles, however, reneged on his promise.

On January 8, 2007, respondents filed a Complaint for sum of money and damages against Robles and the petitioner. Respondents alleged that Robles committed fraud in the performance of his duties as branch manager when he lured Tobias in signing several pieces of blank documents, under the assurance as bank manager of petitioner, everything was in order. The RTC ruled in favor of respondents. The CA modified the decision and ruled that petitioner and Robles are jointly and solidarily liable.

ISSUE

Whether the petitioner should be held liable. (YES)

RULING

The business of banking is one imbued with public interest. As such, banking institutions are obliged to exercise the highest degree of diligence as well as high standards of integrity and performance in all its transactions. The law expressly imposes upon the banks a fiduciary duty towards its clients and to treat in this regard the accounts of its depositors with meticulous care. The contract between the bank and its depositor is governed by the provisions of the Civil Code on simple loan or mutuum, with the bank as the debtor and the depositor as the creditor.

In light of these, banking institutions may be held liable for damages for failure to exercise the diligence required of it resulting to contractual breach or where the act or omission complained of constitutes an actionable tort.

In the case at bar, petitioner does not deny the validity of respondents' accounts, in fact it suggests that transactions with it have all been accounted for as it is based on official documents containing authentic signatures of Tobias. In fine, respondents' claim for damages is not predicated on breach of their contractual relationship with petitioner, but rather on Robles' act of misappropriation. At any rate, it cannot be said that the petitioner is guilty of breach of contract so as to warrant the imposition of liability solely upon it.

Nonetheless, while it is clear that the proximate cause of respondents' loss is the misappropriation of Robles, petitioner is still liable under Article 1911 of the Civil Code, to wit:

Art. 1911. Even when the agent has exceeded his authority, the principal is solidarity liable with the agent if the former allowed the latter to act as though he had full powers.

The case of Prudential Bank v. CA lends support to this conclusion. There, this Court first laid down the doctrine of apparent authority, with specific reference to banks, viz.:

Conformably, we have declared in countless decisions that the principal is liable for obligations contracted by the agent. The agent's apparent representation yields to the

principal's true representation and the contract is considered as entered into between the principal and the third person,

A bank is liable for wrongful acts of its officers done in the interests of the bank or in the course of dealings of the officers in their representative capacity but not for acts outside the scope of their authority. A bank holding out its officers and agent as worthy of confidence will not be permitted to profit by the frauds they may thus be enabled to perpetuate in the apparent scope of their employment; nor will it be permitted to shirk its responsibility for such frauds, even though no benefit may accrue to the bank therefrom. Accordingly, a banking corporation is liable to innocent third persons where the representation is made in the course of its business by an agent acting within the general scope of his authority even though, in the particular case, the agent is secretly abusing his authority and attempting to perpetrate a fraud upon his principal or some other person, for his own ultimate benefit.

Application of these principles in especially necessary because banks have a fiduciary relationship with the public and their stability depends on the confidence of the people in their honesty and efficiency. Such faith will be eroded where banks do not exercise strict care in the selection and supervision of its employees, resulting in prejudice to their depositors.

The existence of apparent or implied authority is measured by previous acts that have been ratified or approved or where the accruing benefits have been accepted by the principal. It may also be established by proof of the course of business, usages and practices of the bank; or knowledge that the bank or its officials have, or is presumed to have of its responsible officers' acts regarding bank branch affairs.

As aptly pointed by the CA, petitioner's evidence bolsters the case against it, as they support the finding that Robles as branch manager, has been vested with the apparent or implied authority to act for the petitioner in offering and facilitating banking transactions. In this light, respondents cannot be blamed for believing that Robles has the authority to transact for and on behalf of the petitioner and for relying upon the representations made by him. After all, Robles as branch manager is recognized "within his field and as to third persons as the general agent and is in general charge of the corporation, with apparent authority commensurate with the ordinary business entrusted him and the usual course and conduct thereof."

• JOSE T. ONG BUN v. BANK OF THE PHILIPPINE ISLANDS., G.R. No. 212362, SECOND DIVISION, March 14, 2018, PERALTA, J.

JOSE T. ONG BUN, Petitioner, -versus - BANK OF THE PHILIPPINE ISLANDS., Respondent G.R. No. 212362, SECOND DIVISION, March 14, 2018, PERALTA, J.

The CA further ruled that the surrender of the CCs is not required for the withdrawal of the certificates of deposit themselves or for the payment of the Silver Certificates of Deposit, hence, even if the holder has in his possession the said custodian certificates, this does not ipso facto mean that he is an unpaid depositor of the bank. Such conclusion is illogical because the very wordings contained in the CCs would suggest otherwise.

Furthermore, the surrender of such certificates would have promoted the protection of the bank and would have been more in line with the high standards expected of any banking institution. Banks, their business being impressed with public interest, are expected to exercise more care and prudence than private individuals in their dealings. The Court is not unmindful of the fact that a bank owes great fidelity to the public it deals with, its operation being essentially imbued with public interest

FACTS

Ma. Lourdes Ong, the wife of petitioner, purchased the following three (3) silver custodian certificates (CC) in the Spouses' name from the Far East Bank & Trust Company (FEBTC).

The three CCs have the following common provisions:

This instrument is transferable only in the books of the Custodian by the holder, or in the event of transfer, by the transferee or buyer thereof in person or by a duly authorized attorney-in-fact upon surrender of this instrument together with an acceptable deed of assignment.

The Holder hereof or transferee can withdraw at anytime during office hours his/her Silver Certificate of Deposit herein held in custody.

This instrument shall not be valid unless duly signed by the authorized signatories of the Bank, and shall cease to have force and effect upon payment under the terms hereof.

Thereafter, FEBTC merged with BPI after about eleven years since the said CCs were purchased.

After the death of Ma. Lourdes Ong in December 2002, petitioner discovered that the three CCs bought from FEBTC were still in the safety vault of his deceased wife and were not surrendered to FEBTC. As such, petitioner sent a letter dated August 12, 2003 to BPI, through the manager of its Trust Department Asset Management, to advise him on the procedure for the claim of the said certificates. BPI replied to petitioner and informed the latter that upon its merger with FEBTC in 2000, there were no Silver Certificates of Deposit outstanding, which meant that the certificates were fully paid on their respective participation's maturity dates which did not go beyond 1991. There were further exchanges of written communications between petitioner and BPI, but the latter still refused to pay petitioner's claim because his certificates were no longer outstanding in its records. Thus, petitioner, with the assistance of counsel, made a final demand in writing for the payment of the certificates, to no avail.

After about. three years from his discovery of the certificates, petitioner filed a complaint for collection of sum of money and damages against BPI on March 7, 2006 with the Regional Trial Court (RTC), Branch 33, Iloilo City (Civil Case No. 06-28822) praying that BPI be ordered to pay him P750,000.00 for the three CCs, legal interest, 1!75,000.00 for attorney's fees, P100,000.00 for moral damages, and an unspecified amount for exemplary damages as well as cost of suit.

After trial on the merits, the RTC found in favor of petitioner. CA reversed.

ISSUE

Whether the custodian certificates, standing alone, do not prove an outstanding deposit with the bank, but merely certify that FEBTC had in its custody for and in behalf of either petitioner or his late wife the corresponding Silver Certificates of Deposit and nothing more (NO)

RULING

The said CCs are proof that Silver Certificates of Deposits are in the custody of a custodian, which is, in this case, FEBTC. The CA therefore, erred in suggesting that the possession of petitioner of the same CCs does not prove an outstanding deposit because the latter are not the certificates of deposit themselves. What proves the deposits of the petitioner are the Silver Certificates of Deposits that have been admitted by the Trust Investments Group of the FEBTC to be in its custody as clearly shown by the wordings used in the subject CCs.

When the existence of a debt is fully established by the evidence contained in the record, the burden of proving that it has been extinguished by payment devolves upon the debtor who offers such defense to the claim of the creditor. Even where it is the plaintiff ([petitioner] herein) who alleges non-payment, the general rule is that the burden rests on the defendant ([respondent] herein) to prove payment, rather than on the plaintiff to prove non-payment. Verily, an obligation may be extinguished by payment. However, two requisites must concur: (1) identity of the prestation, and (2) its integrity. The first means that the very thing due must be delivered or released; and the second, that the prestation be fulfilled completely. In this case, no acknowledgment nor proof of full payment was presented by respondent but merely a pronouncement that there are no longer any outstanding Silver Certificates of Deposits in its books of accounts.

The CA further ruled that the surrender of the CCs is not required for the withdrawal of the certificates of deposit themselves or for the payment of the Silver Certificates of Deposit, hence, even if the holder has in his possession the said custodian certificates, this does not ipso facto mean that he is an unpaid depositor of the bank. Such conclusion is illogical because the very wordings contained in the CCs would suggest otherwise.

Furthermore, the surrender of such certificates would have promoted the protection of the bank and would have been more in line with the high standards expected of any banking institution. Banks, their business being impressed with public interest, are expected to exercise more care and prudence than private individuals in their dealings. The Court is not unmindful of the fact that a bank owes great fidelity to the public it deals with, its operation being essentially imbued with public interest.

• BANK OF THE PHILIPPINE ISLANDS and ANA C. GONZALES, v. SPOUSES FERNANDO V. QUIAOIT and NORA L. QUIAOIT, G.R. No. 199562, SECOND DIVISON, January 16, 2019, CARPIO, J.

BANK OF THE PHILIPPINE ISLANDS and ANA C. GONZALES, petitioners, vs. SPOUSES FERNANDO V. QUIAOIT and NORA L. QUIAOIT, respondents.

G.R. No. 199562, SECOND DIVISON, January 16, 2019, CARPIO, J.

The General Banking Act of 2000 demands of banks the highest standards of integrity and performance. The Court ruled that banks are under obligation to treat the accounts of their depositors with meticulous care. The Court ruled that the bank's compliance with this degree of diligence has to be determined in accordance with the particular circumstances of each case.

In this case, BPI failed to exercise the highest degree of diligence that is not only expected but required of a banking institution. It was established that on 15 April 1999, Fernando informed BPI to prepare US\$20,000 that he would withdraw from his account. The withdrawal, through encashment of BPI Greenhills Check No. 003434, was done five days later, or on 20 April 1999. BPI had ample opportunity to prepare the dollar bills. Since the dollar bills were handed to Lambayong inside an envelope and in bundles, Lambayong did not check them. However, as pointed out by the Court of Appeals, BPI could have listed down the serial numbers of the dollar bills and erased any doubt as to whether the counterfeit bills came from it. While BPI Greenhills marked the dollar bills with "chapa" to identify that they came from that branch, Lambayong was not informed of the markings and hence, she could not have checked if all the bills were marked.

FACTS

Fernando V. Quiaoit (Fernando) maintains peso and dollar accounts with the Bank of the Philippine Islands (BPI) Greenhills-Crossroads Branch (BPI Greenhills). Fernando, through Merlyn Lambayong (Lambayong), encashed BPI Greenhills Check No. 003434 for US\$20,000.

In a complaint filed by Fernando and his wife Nora L. Quiaoit (Nora) against BPI, they alleged that Lambayong did not count the US\$20,000 that she received because the money was placed in a large Manila envelope. They also alleged that BPI did not inform Lambayong that the dollar bills were marked with its "chapa" and the bank did not issue any receipt containing the serial number of the bills. Lambayong delivered the dollar bills to the spouses Quiaoit in US\$100 denomination in US\$10,000 per bundle. Nora then purchased plane tickets worth US\$13,100 for their travel abroad, using part of the US\$20,000 bills withdrawn from BPI.

On 22 April 1999, the spouses Quiaoit left the Philippines for Jerusalem and Europe. Nora handcarried US\$6,900 during the tour. The spouses Quiaoit alleged that Nora was placed in a shameful and embarrassing situation when several banks in Madrid, Spain refused to exchange some of the US\$100 bills because they were counterfeit. Nora was also threatened that she would be taken to the police station when she tried to purchase an item in a shop with the dollar bills. The spouses Quiaoit were also informed by their friends, a priest and a nun, that the US dollar bills they gave them were refused by third persons for being counterfeit. Their aunt, Elisa Galan (Galan) also returned, via DHL, the five US\$100 bills they gave her and advised them that they were not accepted for deposit by foreign banks for being counterfeit.

Ana C. Gonzales (Gonzales), the branch manager of BPI Greenhills, failed to resolve their concern or give them a return call. When the spouses Ouiaoit returned, they personally complained to Gonzales who went to Fernando's office with three bank personnel. Gonzales took from Fernando the remaining 44 dollar bills worth US\$4,400 and affixed her signature on the photocopy of the bills, acknowledging that she received them. Gonzales informed Fernando that the absence of the identification mark ("chapa") on the dollar bills meant they came from other sources and not from BPI Greenhills.

The spouses Quiaoit demanded in writing for the refund of the US\$4,400 from Gonzales. On 9 February 2000, BPI sent its written refusal to refund or reimburse the US\$4,400.

The spouses Quiaoit alleged that BPI failed in its duty to ensure that the foreign currency bills it furnishes its clients are genuine. According to them, they suffered public embarrassment, humiliation, and possible imprisonment in a foreign country due to BPI's negligence and bad faith. BPI countered that it is the bank's standing policy and part of its internal control to mark all dollar bills with "chapa" bearing the code of the branch when a foreign currency bill is exchanged or withdrawn. BPI alleged that the US\$20,000 in US\$100 bills encashed by Fernando through Lambayong were inspected, counted, personally examined, and subjected to a counterfeit detector machine by the bank teller under Gonzales' direct supervision. Gonzales also personally inspected and "piece-counted" the dollar bills which bore the identifying "chapa" and examined their genuineness and authenticity. BPI alleged that after its investigation, it was established that the 44 US\$100 bills surrendered by the spouses Quiaoit were not the same as the dollar bills disbursed to Lambayong. The dollar bills did not bear the identifying "chapa" from BPI Greenhills and as such, they came from another source.

The Regional Trial Court of Quezon City ruled in favor of the spouses Quiaoit. The Court of Appeals affirmed the trial court's Decision. The Court of Appeals ruled that BPI did not follow the normal banking procedure of listing the serial numbers of the dollar bills considering the reasonable length of time from the time Fernando advised them of the withdrawal until Lambayong's actual encashment of the check.

ISSUE

Whether BPI exercised due diligence in handling the withdrawal of the US dollar bills (NO)

RULING

No. In *Spouses Carbonell v. Metropolitan Bank and Trust Company*, the Court emphasized that the General Banking Act of 2000 demands of banks the highest standards of integrity and performance. The Court ruled that banks are under obligation to treat the accounts of their depositors with meticulous care. The Court ruled that the bank's compliance with this degree of diligence has to be determined in accordance with the particular circumstances of each case.

In this case, BPI failed to exercise the highest degree of diligence that is not only expected but required of a banking institution.

It was established that on 15 April 1999, Fernando informed BPI to prepare US\$20,000 that he would withdraw from his account. The withdrawal, through encashment of BPI Greenhills Check No. 003434, was done five days later, or on 20 April 1999. BPI had ample opportunity to prepare the dollar bills. Since the dollar bills were handed to Lambayong inside an envelope and in bundles,

Lambayong did not check them. However, as pointed out by the Court of Appeals, BPI could have listed down the serial numbers of the dollar bills and erased any doubt as to whether the counterfeit bills came from it. While BPI Greenhills marked the dollar bills with "chapa" to identify that they came from that branch, Lambayong was not informed of the markings and hence, she could not have checked if all the bills were marked.

BPI insists that there is no law requiring it to list down the serial numbers of the dollar bills. However, it is well-settled that the diligence required of banks is more than that of a good father of a family. Banks are required to exercise the highest degree of diligence in its banking transactions. In releasing the dollar bills without listing down their serial numbers, BPI failed to exercise the highest degree of care and diligence required of it. BPI exposed not only its client but also itself to the situation that led to this case. Had BPI listed down the serial numbers, BPI's presentation of a copy of such listed serial numbers would establish whether the returned 44 dollar bills came from BPI or not.

Granting that Lambayong counted the two bundles of the US\$100 bills she received from the bank, there was no way for her, or for the spouses Quiaoit, to determine whether the dollar bills were genuine or counterfeit. They did not have the expertise to verify the genuineness of the bills, and they were not informed about the "chapa" on the bills so that they could have checked the same. BPI cannot pass the burden on the spouses Quiaoit to verify the genuineness of the bills, even if they did not check or count the dollar bills in their possession while they were abroad.

As pointed out by the Court of Appeals, BPI had the last clear chance to prove that all the dollar bills it issued to the spouses Quiaoit were genuine and that the counterfeit bills did not come from it if only it listed down the serial numbers of the bills. BPI's lapses in processing the transaction fall below the extraordinary diligence required of it as a banking institution. Hence, it must bear the consequences of its action.

Spouses Quiaoit suffered serious anxiety, embarrassment, humiliation, and even threats of being taken to police authorities for using counterfeit bills. Hence, they are entitled to the moral damages awarded by the trial court and the Court of Appeals. Nevertheless, we delete the award of exemplary damages since it does not appear that BPI's negligence was attended with malice and bad faith. We sustain the award of attorney's fees because the spouses Quiaoit were forced to litigate to protect their rights.

12. Nature of Bank Funds and Bank Deposits

• Consolidated Bank and Trust Corporation vs. Court of Appeals, G.R. No. 138569, September 11, 2003

THE CONSOLIDATED BANK and TRUST CORPORATION, Petitioner, v. COURT OF APPEALS and L.C. DIAZ and COMPANY, CPA's, Respondents.

G.R. No. 138569, FIRST DIVISION, September 11, 2003, CARPIO, J.

The contract between the bank and its depositor is governed by the provisions of the Civil Code on simple loan. Article 1980 of the Civil Code expressly provides that.".. savings... deposits of money in banks and similar institutions shall be governed by the provisions concerning simple loan."

There is a debtor-creditor relationship between the bank and its depositor. The bank is the debtor and the depositor is the creditor. The depositor lends the bank money and the bank agrees to pay the depositor on demand. The savings deposit agreement between the bank and the depositor is the contract that determines the rights and obligations of the parties.

Bank tellers must exercise a high degree of diligence in insuring that they return the passbook only to the depositor or to his authorized representative. For failing to return the passbook to Calapre, the authorized representative of L.C. Diaz, Solidbank and Teller No. 6 presumptively failed to observe such high degree of diligence in safeguarding the passbook, and in insuring its return to the party authorized to receive the same.

FACTS

Solibank is a domestic banking corporation. While L.C. Diaz is a professional partnership, engaged in the practice of accounting. L.C. Diaz maintained a savings account with petitioner, Consolidated Bank and Trust Corporation, now known as Solidbank Coroporation. On August 14, 1991, L.C. Diaz's cashier, Mercedes Macaraya, instructed the messenger of the former, Ismael Calapre, to deposit money with Solidbank. Macaraya gave Calapre the Solidbank passbook together with savings deposit slips (both for cash and check) she had previously filled up for the private respondent.

Calapre went to Solidbank and presented to Teller No. 6 the two deposit slips and the passbook. The teller acknowledged receipt of the deposit by returning to Calapre the duplicate copies of the two deposit slips. Since the transaction took time and Calapre had to make another deposit for L.C. Diaz with Allied Bank, he left the passbook with Solidbank. Upon his return, Calapre retrieved the passbook from Solidbank, but Teller No. 6 informed him that "somebody got the passbook". Calapre went back to L.C. Diaz and reported the incident to Macaraya.

Macaraya immediately prepared a deposit slip in duplicate copies with a check of P200,000. Macaraya, together with Calapre, went to Solidbank and presented to Teller No. 6 the deposit slip and check. When Macaraya asked for the passbook, Teller No. 6 told Macaraya that someone got the passbook but she could not remember to whom she gave the passbook. When Macaraya asked Teller No. 6 if Calapre got the passbook, Teller No. 6 answered that someone shorter than Calapre got the passbook. Calapre was then standing beside Macaraya.

The following day, 15 August 1991, L.C. Diaz through its Chief Executive Officer, Luis C. Diaz, called up Solidbank to stop any transaction using the same passbook until L.C. Diaz could open a new account. On the same day, Diaz formally wrote Solidbank to make the same request. It was also on the same day that L.C. Diaz learned of the unauthorized withdrawal the day before, 14 August 1991, of P300,000 from its savings account. The withdrawal slip for the P300,000 bore the signatures of the authorized signatories of L.C. Diaz, namely Diaz and Rustico L. Murillo. The signatories, however, denied signing the withdrawal slip. A certain Noel Tamayo received the P300,000. L.C. Diaz demanded from Solidbank, return of its money. However, Solidbank refused.

ISSUES

1. Whether or not Solidbank should suffer the loss sustained by the private respondent. (YES)

2. Whether or not L.C. Diaz is guilty of contributory negligence. (YES)

RULING

1.

Solidbank is liable for breach of contract due to negligence, or culpa contractual.

The contract between the bank and its depositor is governed by the provisions of the Civil Code on simple loan. Article 1980 of the Civil Code expressly provides that." . . savings . . . deposits of money in banks and similar institutions shall be governed by the provisions concerning simple loan." There is a debtor-creditor relationship between the bank and its depositor. The bank is the debtor and the depositor is the creditor. The depositor lends the bank money and the bank agrees to pay the depositor on demand. The savings deposit agreement between the bank and the depositor is the contract that determines the rights and obligations of the parties.

The law imposes on banks high standards in view of the fiduciary nature of banking. Section 2 of Republic Act No. 8791 declares that the State recognizes the fiduciary nature of banking that requires high standards of integrity and performance. The fiduciary nature of banking does not convert a simple loan into a trust agreement because banks do not accept deposits to enrich depositors but to earn money for themselves.

Bank tellers must exercise a high degree of diligence in insuring that they return the passbook only to the depositor or to his authorized representative. For failing to return the passbook to Calapre, the authorized representative of L.C. Diaz, Solidbank and Teller No. 6 presumptively failed to observe such high degree of diligence in safeguarding the passbook, and in insuring its return to the party authorized to receive the same.

2.

In a case of culpa contractual, the contributory negligence or last clear chance by the plaintiff merely serves to reduce the recovery of damages by the plaintiff but does not exculpate the defendant from his breach of contract. Under Article 1172, liability (for culpa contractual) may be regulated by the courts, according to the circumstances. This means that if the defendant exercised the proper diligence in the selection and supervision of its employee, or if the plaintiff was guilty of contributory negligence, then the courts may reduce the award of damages. In this case, L.C. Diaz was guilty of contributory negligence in allowing a withdrawal slip signed by its authorized signatories to fall into the hands of an impostor. Thus, the liability of Solidbank should be reduced.

• Suan vs. Gonzales, 518 SCRA 82 (2007)

RUFA C. SUAN, Complainant, v. ATTY. RICARDO D. GONZALEZ, Respondent. A.C. NO. 6377, THIRD DIVISION, March 12, 2007, YNARES-SANTIAGO, J.

On the other hand, the complaint filed with the Bangko Sentral ng Pilipinas was an invocation of the **BSP's supervisory powers over banking operations which does not amount to a judicial proceeding**. It brought to the attention of the BSP the alleged questionable actions of the bank's Board of Directors in violation of the principles of good corporate governance. It prayed for the

conduct of an investigation over the alleged unsafe and unsound business practices of the bank and to make necessary corrective measures to prevent the collapse of the bank.

As such, the two proceedings are of different nature praying for different relief. Likewise, a ruling by the BSP concerning the soundness of the bank operations will not adversely or directly affect the resolution of the intra-corporate controversies pending before the trial court.

FACTS

The instant administrative complaint filed by Rufa C. Suan charges respondent Atty. Ricardo D. Gonzalez with violation of the Code of Professional Responsibility, perjury and forum shopping, and prays for his suspension or disbarment. Complainant is a Director and Vice President of Rural Green Bank of Caraga, Inc., a rural banking corporation with principal place of business at Montilla Blvd., Butuan City, while respondent is one of its stockholders.

On February 11, 2004, respondent filed a case for Mandamus, Computation of Interests, Enforcement of Inspection, Dividend and Appraisal Rights, Damages and Attorney's Fees against the Rural Green Bank of Caraga, Inc. and the members of its Board of Directors before the Regional Trial Court (RTC) of Butuan City, Branch 33, praying, inter alia, that a temporary restraining order be issued enjoining the conduct of the annual stockholders' meeting and the holding of the election of the Board of Directors.

On February 14, 2004, the trial court issued a temporary restraining order (TRO) conditioned upon respondent's posting of a bond. Thereafter, respondent submitted JCL Bond No. 01626 issued by Stronghold Insurance Company, Incorporated (SICI) together with a Certification issued by then Court Administrator, now Associate Justice, Presbitero J. Velasco, Jr. that, according to the Clerk of Court of the Municipal Trial Court in Cities (MTCC) of Butuan City, SICI has no pending obligation and/or liability to the government insofar as confiscated bonds in civil and criminal cases are concerned.

Based on the foregoing, Suan filed this complaint alleging that respondent engaged in unlawful, dishonest, immoral or deceitful conduct when he submitted the certification to the RTC despite knowing that the same is applicable only for transactions before the MTCC; and that the bond was defective because it was released by SICI despite respondent's failure to put up the required P100,000.00 collateral.

Suan also claimed that in the complaint filed by respondent, together with Eduardo, Purisima, Ruben, and Manuel, all surnamed Tan, before the Bangko Sentral ng Pilipinas (BSP) against Ismael E. Andaya and the members of the Board of Directors of the Rural Green Bank of Caraga, Inc. for alleged gross violation of the principles of good corporate governance, they represented themselves as the bank's minority stockholders with a total holdings amounting to more or less P5 million while the controlling stockholders own approximately 80% of the authorized capital stock.

Suan averred that respondent committed perjury because the above allegations were allegedly inconsistent with respondent's averments in the complaint pending before the RTC where he claimed that the majority stockholders own 70% (and not 80%) of the outstanding capital stock of

the Rural Green Bank of Caraga, Inc. while the minority stockholders' stake amounted to P6 million (and not P5 million).

Complainant finally claimed that respondent is guilty of forum shopping because the causes of action of the cases he filed before the RTC and the Bangko Sentral ng Pilipinas are the same.

ISSUE

Whether Atty. Gonzalez committed forum shopping. (NO)

RULING

We agree with the findings of the IBP that there is no forum shopping. The essence of forum shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. There is forum shopping when, between an action pending before this Court and another one, there exist: a) identity of parties, or at least such parties as represent the same interests in both actions, b) identity of rights asserted and relief prayed for, the relief being founded on the same facts, and c) the identity of the two preceding particulars is such that any judgment rendered in the other action, will, regardless of which party is successful amount to res judicata in the action under consideration; and said requisites also constitutive of lis pendens.

The filing of the intra-corporate case before the RTC does not amount to forum-shopping. It is a formal demand of respondent's legal rights in a court of justice in the manner prescribed by the court or by the law with respect to the controversy involved. The relief sought in the case is primarily to compel the bank to disclose its stockholdings, to allow them the inspection of corporate books and records, and the payment of damages. It was also prayed that a TRO be issued to enjoin the holding of the annual stockholder's meeting and the election of the members of the Board, which, only courts of justice can issue.

On the other hand, the complaint filed with the Bangko Sentral ng Pilipinas was an invocation of the BSP's supervisory powers over banking operations which does not amount to a judicial proceeding. It brought to the attention of the BSP the alleged questionable actions of the bank's Board of Directors in violation of the principles of good corporate governance. It prayed for the conduct of an investigation over the alleged unsafe and unsound business practices of the bank and to make necessary corrective measures to prevent the collapse of the bank.

As such, the two proceedings are of different nature praying for different relief. Likewise, a ruling by the BSP concerning the soundness of the bank operations will not adversely or directly affect the resolution of the intra-corporate controversies pending before the trial court.

13. Stipulation on Interests

• Fidelity Savings and Mortgage Bank vs. Hon. Pedro Cenzon, G.R. No. L-46208, April 5, 1990

FIDELITY SAVINGS AND MORTGAGE BANK, Petitioner, v. HON. PEDRO D. CENZON, in his capacity as Presiding Judge of the Court of First Instance of Manila (Branch XL) and SPOUSES TIMOTEO AND OLIMPIA SANTIAGO, Respondents.

G.R. No. L-46208, SECOND DIVISION, April 5, 1990, REGALADO, J.

It is a matter of common knowledge, which We take judicial notice of, that what enables a bank to pay stipulated interest on money deposited with it is that thru the other aspects of its operation it is able to generate funds to cover the payment of such interest. Unless a bank can lend money, engage in international transactions, acquire foreclosed mortgaged properties or their proceeds and generally engage in other banking and financing activities from which it can derive income, it is inconceivable how it can carry on as a depository obligated to pay stipulated interest. Conventional wisdom dictates this inexorable fair and just conclusion. And it can be said that all who deposit money in banks are aware of such a simple economic proposition. Consequently, it should be deemed read into every contract of deposit with a bank that **the obligation to pay interest on the deposit ceases the moment the operation of the bank is completely suspended by the duly constituted authority, the Central Bank.**

It is manifest that petitioner cannot be held liable for interest on bank deposits which accrued from the time it was prohibited by the Central Bank to continue with its banking operations, that is, when Resolution No. 350 to that effect was issued on February 18, 1969.

FACTS

Back on August 10, 1973, the plaintiffs (herein private respondents) and the defendants Fidelity Savings and Mortgage Bank (petitioner herein), Central Bank of the Philippines and Bibiana E. Lacuna had filed in said case in the lower court a partial stipulation of facts, as follows: That herein plaintiffs are husband and wife, both of legal age, and presently residing at No. 480 C. de la Paz Street, Sta. Elena, Marikina, Rizal; That herein defendant Fidelity Savings and Mortgage Bank is a corporation duly organized and existing under and by virtue of the laws of the Philippines; that defendant Central Bank of the Philippines is a corporation duly organized and existing under and by virtue of the laws of the Philippines; That herein defendant Bibiana E. Lacuna is of legal age and a resident of No. 42 East Lawin Street, Philamlife Homes, Quezon City, said defendant was an assistant Vice-President of the defendant fidelity Savings and Mortgage Bank,

Sometime on May 16, 1968, here in plaintiffs deposited with the defendant Fidelity Savings Bank the amount of FIFTY THOUSAND PESOS (P50,000.00) under Savings Account No. 16-0536. Sometime on July 6, 1968, herein plaintiff, deposited with the defendant Fidelity Savings and Mortgage Bank the amount of FIFTY THOUSAND PESOS (P50,000.00) under Certificate of Time Deposit No. 0210; that the aggregate amount of deposits of the plaintiffs with the defendant Fidelity Savings and Mortgage

Bank is ONE HUNDRED THOUSAND PESOS (P100,000.00);

On February 18, 1969, the Monetary Board, after finding the report of the Superintendent of Banks, that the condition of the defendant Fidelity Savings and Mortgage Bank is one of insolvency, to be true, issued Resolution No. 350 deciding, among others, as follows: 1) To forbid the Fidelity Savings

Bank to do business in the Philippines; 2) To instruct the Acting Superintendent of Banks to take charge, in the name of the Monetary Board, of the Bank's assets

The Superintendent of Banks took charge in the name of the Monetary Board, of the assets of defendant Fidelity Savings Bank on February 19, 1969; and that since that date up to this date, the Superintendent of Banks (now designated as Director, Department of Commercial and Savings Banks) has been taking charge of the assets of defendant Fidelity Savings and Mortgage Bank.

On October 10, 1969 the Philippine Deposit Insurance Corporation paid the plaintiffs the amount of TEN THOUSAND PESOS (P10,000.00) on the aggregate deposits of P100,000.00 pursuant to Republic Act No. 5517, thereby leaving a deposit balance of P90,000.00;

On December 9, 1969, the Monetary Board issued its Resolution No. 2124 directing the liquidation of the affairs of defendant Fidelity Savings Bank. The Solicitor General of the Philippines filed a "Petition for Assistance and Supervision in Liquidation" of the affairs of the defendant Fidelity Savings and Mortgage Bank with the Court of First Instance of Manila, assigned to Branch XIII and docketed as Civil Case No. 86005.

ISSUE

1. Whether or not an insolvent bank like the Fidelity Savings and Mortgage Bank may be adjudged to pay interest on unpaid deposits even after its closure by the Central Bank by reason of insolvency without violating the provisions of the Civil Code on preference of credits. (NO)

RULING

It is settled jurisprudence that a banking institution which has been declared insolvent and subsequently ordered closed by the Central Bank of the Philippines cannot be held liable to pay interest on bank deposits which accrued during the period when the bank is actually closed and non-operational.

In The Overseas Bank of Manila vs. Court of Appeals and Tony D. Tapia, we held that:

It is a matter of common knowledge, which We take judicial notice of, that what enables a bank to pay stipulated interest on money deposited with it is that thru the other aspects of its operation it is able to generate funds to cover the payment of such interest. Unless a bank can lend money, engage in international transactions, acquire foreclosed mortgaged properties or their proceeds and generally engage in other banking and financing activities from which it can derive income, it is inconceivable how it can carry on as a depository obligated to pay stipulated interest. Conventional wisdom dictates this inexorable fair and just conclusion. And it can be said that all who deposit money in banks are aware of such a simple economic proposition. Consequently, it should be deemed read into every contract of deposit with a bank that the obligation to pay interest on the deposit ceases the moment the operation of the bank is completely suspended by the duly constituted authority, the Central Bank.

It is manifest that petitioner cannot be held liable for interest on bank deposits which accrued from the time it was prohibited by the Central Bank to continue with its banking operations, that is, when Resolution No. 350 to that effect was issued on February 18, 1969.

• Ileana Macalinao vs. Bank of the Philippine Islands, G.R. No. 175490, September 17, 2009

ILEANA DR. MACALINAO, Petitioner, v. BANK OF THE PHILIPPINE ISLANDS, Respondent. G.R. NO. 175490, THIRD DIVISION, September 17, 200, VELASCO, JR., J.

The Interest Rate and Penalty Charge of 3% Per Month or 36% Per Annum Should Be Reduced to 2% Per Month or 24% Per Annum. Indeed, in the Terms and Conditions Governing the Issuance and Use of the BPI Credit Card, there was a stipulation on the 3% interest rate. Nevertheless, it should be noted that this is not the first time that this Court has considered the interest rate of 36% per annum as excessive and unconscionable.

We need not unsettle the principle we had affirmed in a plethora of cases that stipulated interest rates of 3% per month and higher are excessive, iniquitous, unconscionable and exorbitant. Such stipulations are void for being contrary to morals, if not against the law. While C.B. Circular No. 905-82, which took effect on January 1, 1983, effectively removed the ceiling on interest rates for both secured and unsecured loans, regardless of maturity, nothing in the said circular could possibly be read as granting carte blanche authority to lenders to raise interest rates to levels which would either enslave their borrowers or lead to a hemorrhaging of their assets.

FACTS

Petitioner Ileana Macalinao was an approved cardholder of BPI Mastercard, one of the credit card facilities of respondent BPI.Petitioner Macalinao made some purchases through the use of the said credit card and defaulted in paying for said purchases. She subsequently received a letter dated January 5, 2004 from respondent BPI, demanding payment of PhP 141,518.34.

Under the Terms and Conditions Governing the Issuance and Use of the BPI Credit and BPI Mastercard, the charges or balance thereof remaining unpaid after the payment due date indicated on the monthly Statement of Accounts shall bear interest at the rate of 3% per month and an additional penalty fee equivalent to another 3% per month.

For failure of petitioner Macalina<mark>o to settle her obligations, BP</mark>I filed with the Metropolitan Trial Court (MeTC) of Makati City a complaint for a sum of money against her and her husband.

The lower court ruled in favor of BPI and ordered Macalinao to pay the amount plus interest and penalty charges of 2% per month. On appeal to the CA, it increased the interest to 3% per month.

ISSUE

Whether or not the interest rate and penalty charge of 3% per month imposed by the CA is iniquitous as the same translates to 36% per annum or thrice the legal rate of interest. (YES)

RULING

The Interest Rate and Penalty Charge of 3% Per Month or 36% Per Annum Should Be Reduced to 2% Per Month or 24% Per Annum. Indeed, in the Terms and Conditions Governing the Issuance and Use of the BPI Credit Card, there was a stipulation on the 3% interest rate. Nevertheless, it should be noted that this is not the first time that this Court has considered the interest rate of 36% per annum as excessive and unconscionable.

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Since the stipulation on the interest rate is void, it is as if there was no express contract thereon. Hence, courts may reduce the interest rate as reason and equity demand.

The same is true with respect to the penalty charge. Notably, under the Terms and Conditions Governing the Issuance and Use of the BPI Credit Card, it was also stated therein that respondent BPI shall impose an additional penalty charge of 3% per month.

In the instant case, the records would reveal that petitioner Macalinao made partial payments to respondent BPI, as indicated in her Billing Statements. Further, the stipulated penalty charge of 3% per month or 36% per annum, in addition to regular interests, is indeed iniquitous and unconscionable.

Thus, under the circumstances, the Court finds it equitable to reduce the interest rate pegged by the CA at 1.5% monthly to 1% monthly and penalty charge fixed by the CA at 1.5% monthly to 1% monthly or a total of 2% per month or 24% per annum in line with the prevailing jurisprudence and in accordance with Art. 1229 of the Civil Code.

• Heirs of Estelita Burgos-Lipat namely: Alan B. Lipat and Alfredo B. Lipat, Jr. vs. Heirs of Eugenio D. Trinidad namely: Asuncion R. Trinidad, et. al., G.R. No. 185644, March 2, 2010

HEIRS OF ESTELITA BURGOS-LIPAT, NAMELY: ALAN B. LIPAT AND ALFREDO B. LIPAT, JR., Petitioners, VS. HEIRS OF EUGENIO D. TRINIDAD, NAMELY: ASUNCION R. TRINIDAD, VICTOR R. TRINIDAD, IMACULADA T. ALFONSO, CELESTINA T. NAGUIAT, FERNANDO R. TRINIDAD, MICHAEL R. TRINIDAD AND JOSEFINA T. NAGUIAT, Respondents. G.R. No. 185644, THIRD DIVISION, March 02, 2010, CORONA, J.

Section 78 of the General Banking Act requires payment of the amount fixed by the court in the order of execution, with interest thereon at the rate specified in the mortgage contract, and all the costs and other judicial expenses incurred by the bank or institution concerned by reason of the execution and sale and as a result of the custody of said property less the income received from the property. The rate

of interest specified in the mortgage contract shall be applied for the one-year period reckoned from the date of registration of the certificate of sale in accordance with the General Banking Act. However, since petitioners effectively had more than one year to exercise the right of redemption, justice, fairness and equity require that they pay 12% p.a. interest beyond the one-year period up to June 16, 2004 when Partas consigned the redemption price with the RTC.

FACTS

Petitioners Estelita Burgos-Lipat and Alfredo Lipat (spouses Lipat) obtained a P583,854 loan from Pacific Banking Corporation (PBC), secured by a real estate mortgage on their Quezon City property. The mortgage was eventually extended to secure additional loans, discounting lines, overdrafts and credit accommodations that petitioners subsequently obtained from PBC.

Due to petitioners' failure to pay their loans, PBC foreclosed on the subject property. Eugenio D. Trinidad was declared the highest bidder during the public auction and was issued a certificate of sale on January 31, 1989. The certificate of sale was registered on April 12, 1989.

Petitioners filed a complaint for annulment of mortgage, extra-judicial foreclosure and certificate of sale in the RTC of Quezon City against PBC, Eugenio D. Trinidad and the Registrar of Deeds and exofficio sheriff of Quezon City.

RTC dismissed the complaint but granted petitioners five months and 17 days from the finality of the decision to exercise their right of redemption over the foreclosed property.

Meanwhile, petitioners assigned their rights over the contested property to Partas Transporation Co., Inc. (PTCI). On June 16, 2004, within the given period left for redemption, PTCI exercised the right of redemption and paid the redemption amount computed by the sheriff. However, respondent heirs of Trinidad refused to claim the redemption money and surrender the certificate of title covering the foreclosed property, claiming the amount tendered was inadequate, i.e., the interest of 1% per month was computed only for a one-year period. Ultimately, the RTC upheld the exercise of redemption and directed respondents to surrender the certificate of title in an order dated May17,2005. Respondents' motion for reconsideration was denied in an order dated September 28, 2005.

Respondents filed a notice of appeal which was denied by the RTC on February 6, 2006.

Petitioners subsequently moved for execution of the May 17, 2005 order and the RTC granted the same in an order dated August 22, 2006.Without filing a motion for reconsideration of the order, respondents immediately filed a petition for certiorari in the CA.

In a decision dated July 31, 2008, the CA granted respondents' petition and set aside the August 22, 2006 RTC order. It held that the right to redemption should have been exercised within one year from the date of registration of the certificate of sale.

Petitioners filed a motion for reconsideration but the CA denied the same in a resolution dated December 5, 2008. Hence, this petition

ISSUE

Whether or not the same interest rate specified in the mortgage contract shall be applied even beyond the one-year redemption period. (NO)

RULING

Section 78 of the General Banking Act requires payment of the amount fixed by the court in the order of execution, with interest thereon at the rate specified in the mortgage contract, and all the costs and other judicial expenses incurred by the bank or institution concerned by reason of the execution and sale and as a result of the custody of said property less the income received from the property. The rate of interest specified in the mortgage contract shall be applied for the one-year period reckoned from the date of registration of the certificate of sale in accordance with the General Banking Act. However, since petitioners effectively had more than one year to exercise the right of redemption, justice, fairness and equity require that they pay 12% p.a. interest beyond the one-year period up to June 16, 2004 when Partas consigned the redemption price with the RTC.



Asia Trust Development Bank vs. Carmelo H. Tuble, G.R. No. 183987, July 25, 2012

ASIA TRUST DEVELOPMENT BANK, Petitioner, v. CARMELO H. TUBLE, Respondent. G.R. NO. 183987, SECOND DIVISION, July 25, 2012, SERENO, J.

While Article 2209 allows the recovery of interest sans stipulation, this charge is provided not as a form of monetary interest, but as one of compensatory interest. Monetary interest refers to the compensation set by the parties for the use or forbearance of money. On the other hand, compensatory interest refers to the penalty or indemnity for damages imposed by law or by the courts. Compensatory interest, as a form of damages, is due only if the obligor is proven to have defaulted in paying the loan. Thus, a default must exist before the bank can collect the compensatory legal interest of 12% per annum.

In the case at bar, Tuble was not yet in default because as evidence by PN No. 0142, the obligation was set to mature on January 1 1999. But Tuble had already settled his liabilities on March 17 1997 by paying the redemption price. Then, in 1999, the bank issued his Clearance and share in the DIP in view of the full settlement of his obligation.

FACTS

Respondent Carmelo H. Tuble, who served as the vice-president of petitioner Asiatrust Development Bank, availed himself of the car incentive plan and loan privileges offered by the bank.

Respondent acquired a Nissan Vanette through the company s car incentive plan. The arrangement was made to appear as a lease agreement requiring only the payment of monthly rentals. Accordingly, the lease would be terminated in case of the employee s resignation or retirement prior to full payment of the price.

As regards the loan privileges, Tuble obtained three separate loans. The first, a real estate loan evidenced by Promissory Note No. 0142 with maturity date of 1 January 1999, was secured by a mortgage over his property. No interest on this loan was indicated.

The second was a consumption loan, evidenced by Promissory Note No. 0143 with the maturity date of 31 January 1995 and interest at 18% per annum. Aside from the said indebtedness, Tuble allegedly obtained a salary loan, his third loan.

Later, he resigned. Respondent had the following obligations to the bank after his retirement: (1) the purchase or return of the Nissan Vanette; (2) P100,000 as consumption loan; (3) P421,800 as real estate loan; and (4) P16,250 as salary loan.

Respondent claimed that since he and the bank were debtors and creditors of each other, the offsetting of loans could legally take place. He then asked the bank to simply compute his DIP and apply his receivables to his outstanding loans. However, instead of heeding his request, the bank sent him a 1 June 1995 demand letter obliging him to pay his debts. The bank also required him to return the Nissan Vanette. Despite this demand, the vehicle was not surrendered.

Tuble wrote the bank again to follow up his request to offset the loans. This letter was not immediately acted upon. It was only on 13 October 1995 that the bank finally allowed the offsetting of his various claims and liabilities. As a result, his liabilities were reduced to P970,691.46 plus the unreturned value of the vehicle.

In order to recover the Nissan Vanette, the bank filed a Complaint for replevin against Tuble. Petitioner obtained a favorable judgment. Then, to collect the liabilities of respondent, it also filed a Petition for Extra-judicial Foreclosure of real estate mortgage over his property.

Thereafter, Tuble timely redeemed the property on 17 March 1997 for P1,318,401.91.

Despite his payment of the redemption price, Tuble questioned how the foreclosure basis of P421,800 ballooned to P1,318,401.91 in a matter of one year. Belatedly, the bank explained that this redemption price included the Nissan Vanette s book value, the salary loan, car insurance, 18% annual interest on the bank s redemption price of P421,800, penalty and interest charges on Promissory Note No. 0142, and litigation expenses

Because Tuble disputed the redemption price, he filed a Complaint for recovery of a sum of money and damages before the RTC. He specifically sought to collect P896,602.02representing the excess charges on the redemption price.

The RTC ruled in favor of Tuble. The trial court characterized the redemption price as excessive and arbitrary, because the correct redemption price should not have included the above-mentioned charges. Moral and exemplary damages were also awarded to him.

According to the trial court, the value of the car should not have been included, considering that the bank had already recovered the Nissan Vanette. The obligations arising from the salary loan and car insurance should have also been excluded, for there was no proof that these debts existed. The interest and penalty charges should have been deleted, too, because Promissory Note No. 0142 did

not indicate any interest or penalty charges. Neither should litigation expenses have been added, since there was no proof that the bank incurred those expenses.

As for the 18% annual interest on the bid price of P421,800, the RTC agreed with Tuble that this charge was unlawful.

On appeal, the CA affirmed the findings of the RTC. The appellate court only expounded the rule that, at the time of redemption, the one who redeemed is liable to pay only 1% monthly interest plus taxes. It also concluded that there was practically no basis to impose the additional charges.

ISSUE

Whether or not the Bank is justified in claiming Tuble's liability to pay legal interest, notwithstanding that PN No. 0142 contains no stipulation on interest payments. (NO)

RULING

While Article 2209 allows the recovery of interest sans stipulation, this charge is provided not as a form of monetary interest, but as one of compensatory interest. Monetary interest refers to the compensation set by the parties for the use or forbearance of money. On the other hand, compensatory interest refers to the penalty or indemnity for damages imposed by law or by the courts. Compensatory interest, as a form of damages, is due only if the obligor is proven to have defaulted in paying the loan. Thus, a default must exist before the bank can collect the compensatory legal interest of 12% per annum.

In the case at bar, Tuble was not yet in default because as evidence by PN No. 0142, the obligation was set to mature on January 1 1999. But Tuble had already settled his liabilities on March 17 1997 by paying the redemption price. Then, in 1999, the bank issued his Clearance and share in the DIP in view of the full settlement of his obligation.

• Advocates for Truth in Lending vs. BSP, G.R. No. 192986, January 15, 2013

ADVOCATES FOR TRUTH IN LENDING, INC. and EDUARDO B. OLAGUER, Petitioners, vs. BANGKO SENTRAL MONETARY BOARD, represented by its Chairman, GOVERNOR ARMANDO M. TETANGCO, JR., and its incumbent members: JUANITA D. AMATONG, ALFREDO C. ANTONIO, PETER FA VILA, NELLY F. VILLAFUERTE, IGNACIO R. BUNYE and CESAR V. PURISIMA, Respondents.

G.R. No. 192986, EN BANC, January 15, 2013, REYES, J.

The power of the CB to effectively suspend the Usury Law pursuant to P.D. No. 1684 has long been recognized and upheld in many cases. As the Court explained in the landmark case of Medel v. CA, citing several cases, CB Circular No. 905 "did not repeal nor in anyway amend the Usury Law but simply suspended the latters effectivity;" that "a CB Circular cannot repeal a law, [for] only a law can repeal another law;" that "by virtue of CB Circular No. 905, the Usury Law has been rendered ineffective; "and "Usury has been legally non-existent in our jurisdiction. Interest can now be charged as lender and borrower may agree upon.

Thus, according to the Court, by lifting the interest ceiling, CB Circular No. 905 merely upheld the parties freedom of contract to agree freely on the rate of interest. It cited Article 1306 of the New Civil Code, under which the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.

FACTS

Petitioner "Advocates for Truth in Lending, Inc." (AFTIL) is a non-profit, non-stock corporation organized to engage in pro bono concerns and activities relating to money lending issues. It was incorporated on July 9, 2010, and a month later, it filed this petition, joined by its founder and president, Eduardo B. Olaguer, suing as a taxpayer and a citizen.

R.A. No. 265, which created the Central Bank (CB) of the Philippines on June 15, 1948, empowered the CB-MB to, among others, set the maximum interest rates which banks may charge for all types of loans and other credit operations, within limits prescribed by the Usury Law.

On March 17, 1980, the Usury Law was amended by Presidential Decree (P.D.) No. 1684, giving the CB-MB authority to prescribe different maximum rates of interest which may be imposed for a loan or renewal thereof or the forbearance of any money, goods or credits, provided that the changes are effected gradually and announced in advance.

Thereafter, the CB-MB issued CB Circular No. 905, Series of 1982 removing the ceilings on interest rates on loans or forbearance of any money, goods or credits.

On June 14, 1993, President Fidel V. Ramos signed into law R.A. No. 7653 establishing the BangkoSentralngPilipinas (BSP) to replace the CB.

Petitioners, claiming that they are raising issues of transcendental importance to the public, filed directly with this Court this Petition for Certiorari under Rule 65 of the 1997 Rules of Court, seeking to declare that the BangkoSentralngPilipinas Monetary Board (BSP-MB), replacing the Central Bank Monetary Board (CB-MB) by virtue of Republic Act (R.A.) No. 7653, has no authority to continue enforcing Central Bank Circular No. 905, issued by the CB-MB in 1982, which "suspended" Act No. 2655, or the Usury Law of 1916.

ISSUE

1. Whether or not CB-MB merely suspended the effectivity of the Usury Law when it issued CB Circular No. 905. (YES)

RULING:

The power of the CB to effectively suspend the Usury Law pursuant to P.D. No. 1684 has long been recognized and upheld in many cases. As the Court explained in the landmark case of Medel v. CA, citing several cases, CB Circular No. 905 "did not repeal nor in anyway amend the Usury Law but simply suspended the latters effectivity;" that "a CB Circular cannot repeal a law, [for] only a law can repeal another law;" that "by virtue of CB Circular No. 905, the Usury Law has been rendered

ineffective; "and "Usury has been legally non-existent in our jurisdiction. Interest can now be charged as lender and borrower may agree upon.

Thus, according to the Court, by lifting the interest ceiling, CB Circular No. 905 merely upheld the parties freedom of contract to agree freely on the rate of interest. It cited Article 1306 of the New Civil Code, under which the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.

Moreover, it is settled that nothing in CB Circular No. 905 grants lenders a carte blanche authority to raise interest rates to levels which will either enslave their borrowers or lead to a hemorrhaging of their assets.

Stipulations authorizing iniquitous or unconscionable interests have been invariably struck down for being contrary to morals, if not against the law.

Nonetheless, the nullity of the stipulation of usurious interest does not affect the lenders right to recover the principal of a loan, nor affect the other terms thereof. Thus, in a usurious loan with mortgage, the right to foreclose the mortgage subsists, and this right can be exercised by the creditor upon failure by the debtor to pay the debt due. The debt due is considered as without the stipulated excessive interest, and a legal interest of 12% per annum will be added in place of the excessive interest formerly imposed.

• Villa Crista Monte Realty & Development Corp. v. Equitable PCI Bank, G.R. No. 208336, [November 21, 2018]

VILLA CRISTA MONTE REALTY & DEVELOPMENT CORPORATION, Petitioner, v. EQUITABLE PCI BANK (NOW KNOWN AS BANCO DE ORO UNIBANK, INC.), AND THE EX-OFFICIO SHERIFF OF QUEZON CITY AND/OR HIS DEPUTY OR AUTHORIZED REPRESENTATIVES, Respondents. G.R. No. 208336, FIRST DIVISION, November 21, 2018, BERSAMIN, J.

An escalation clause without a concomitant de-escalation clause is void and ineffectual for violating Presidential Decree No. 1684, otherwise known as Amending Further Act No. 2655, As Amended, Otherwise Known as "The Usury Law," as well as the principle of mutuality of contracts unless the established facts and circumstances, as well as the admissions of the parties, indicate that the lender at times lowered the interest rates, or, at least, allowed the borrower the discretion to continue with the repriced rates.

Contrary to the petitioner's position, there was mutuality of contracts between itself and the respondent. Tio, the petitioner's President, who signed the promissory notes in behalf of the petitioner, was aware of the provision in the documents pertaining to the monthly repricing of the interest rates. Although the promissory notes succinctly stipulated that the loans were subject to interest without need of prior notice to the borrower, the respondent sent notices to the petitioner each and every time it increased the interest rate. Equally of significance was that the respondent allowed the petitioner the sufficient time and opportunity either to reject the imposition of the increased interest rates by paying the outstanding obligations or by accepting the same through payment of whatever amounts were due. The sufficient time and opportunity negated the

petitioner's insistence about the respondent having unilaterally determined the interest rates in violation of the principle of mutuality of contracts embodied in Article 1308.

FACTS

Sometime in 1994, plaintiff-appellant Villa Crista Monte Realty Corporation was organized to engage in the business of real estate development. In order to fully develop its subdivision project, appellant applied for and was granted a credit line of P80 Million by then Equitable Philippine Commercial International Bank (E-PCIB), now Banco De Oro. By way of security for the said credit line, appellant executed a Real Estate Mortgage over the 80,000 square meters of its properties.

Appellant subsequently applied for an additional P50 Million credit accommodation from E-PCIB to which the latter readily acceded.

Under its approved P130 Million credit line, appellant separately obtained several loans covered by a promissory note in the prescribed form of the E-PCIB. Each promissory note provides for the following:

with interest thereon: (____ of at the percent %) rate per annum pavable at the rate of ____ percent (____ %) per annum for the first ____ days of this Note payable on, after which the interest rate shall be determined by the Lender without need of prior *notice to the Borrower* at the beginning of each succeeding ____ period, payable ____ of each such period, at the rate of ____ percent (____ %) per annum spread over ____ as announced anciJor published by the Bangko Sentral ng Pilipinas ("BSP") on or immediately preceding the commencement of each ____ (___) month period payable ____ of each such period: provided, however, that if, in either of the two above instances, where the rate is subject to periodic adjustment, the Borrower disagrees with the new rate, he shall prepay within five (5) days from the notice of the new rate the outstanding balance of the Loan with interest at the last applicable rate, provided, further, that the Borrower's failure to so prepay shall be deemed acceptance of the new rate. (Bold underscoring for emphasis)

Eventually, E-PCIB wrote several times to appellant apprising it of the increased rates in the interest to be imposed on its loans covered by the promissory notes. The increased rates ranged from 21% to 36% and were ostensibly anchored on the uniform provision in the promissory notes on monthly repricing.

Appellant reneged on paying its loan obligations amounting to P129,700,00.00, prompting E-PCIB to initiate foreclosure proceedings on the mortgaged properties. This led to appellant's filing of a complaint with the RTC Quezon City assailing the said auction sale and the amount claimed therein. Appellant contended, among others, that E-PCIB unilaterally made and imposed the increases in interest rates on appellant's loan without them being discussed and negotiated with, much less agreed upon by, appellant and, thus, invalid.

ISSUE

Whether the escalation clause provided for in the promissory notes are valid. (YES)

RULING

The agreement between the parties on the imposition of increasing interest rates on the loan is commonly known as the escalation clause. Generally, the escalation clause refers to the stipulation allowing increases in the interest rates agreed upon by the contracting parties. There is nothing inherently wrong with the escalation clause because it is validly stipulated in commercial contracts as one of the means adopted to maintain fiscal stability and to retain the value of money in long term contracts. In short, the escalation clause is not void per se.

Yet, the escalation clause that "grants the creditor an unbridled right to adjust the interest independently and upwardly, completely depriving the debtor of the right to assent to an important modification in the agreement" is void. Such escalation clause violates the principle of mutuality of contracts, and should be annulled. To prevent or forestall any one-sidedness that the escalation clause may cause in favor of the creditor, therefore, Presidential Decree No. 1684 was promulgated. This law specifically states, among others, as follows:

SECTION 2. The same Act is hereby amended by adding a new section after Section 7, to read as follows:

Sec. 7-a. Parties to an agreement pertaining to a loan or forbearance of money, goods or credits may stipulate that the rate of interest agreed upon may be increased in the event that the applicable maximum rate of interest is increased by law or by the Monetary Board: **Provided, That such stipulation shall be valid only if there is also a stipulation in the agreement that the rate of interest agreed upon shall be reduced in the event that the applicable maximum rate of interest is reduced by law or by the Monetary Board**: Provided, further, That the adjustment in the rate of interest agreed upon shall take effect on or after the effectivity of the increase or decrease in the maximum rate of interest. (Bold emphasis supplied)

Accordingly, the Court has ruled in Banco Filipino Savings and Mortgage Bank v. Judge Navarro that there should be a corresponding de- escalation clause that authorizes a reduction in the interest rates corresponding to downward changes made by law or by the Monetary Board. Verily, the escalation clause, to be valid, should specifically provide: (1) that there can be an increase in interest rates if allowed by law or by the Monetary Board; and (2) that there must be a stipulation for the reduction of the stipulated interest rates in the event that the applicable maximum rates of interest are reduced by law or by the Monetary Board. The latter stipulation ensures the mutuality of contracts, and is known as the de-escalation clause.

Although it would not necessarily prevent the lender from discriminatorily increasing the interest rates, the de-escalation clause's main objective is to prevent the unwanted one-sidedness in favor of the lender, a quality that is repugnant to the principle of mutuality of contracts. The clause proposes to ensure that any unconsented increase in interest rates is ineffective for transgressing the principle of mutuality of contracts. Indeed, the clause creates a balance in the contractual relationship between the lender and the borrower, and tempers the power of the stronger player between the two, which is the former.

No express de-escalation clause was stipulated in the promissory notes signed by the petitioner. Yet, the absence of the clause did not invalidate the repricing of the interest rates. **The repricing notices issued to the petitioner by E-PCIB indicated that on some occasions, the bank had reduced or adjusted the interest rates downward**. For example, the 26% interest rate for PN No. 970019HD for P2 million on July 30, 1997 was reduced to 22.5% in August 1997; the 26% interest rate for PN No. 970044HD for P2.7 million in July 1997 was decreased to 22.5% in August 1997. Based on the dictum in Llorin Jr., such actual reduction or downward adjustment by the lender bank eliminated any one-sidedness of its contracts with the borrower. As the Court opined in Llorin Jr.:

We are fully persuaded, however, to take particular exception from said ruling insofar as the case at bar is concerned, considering the peculiar circumstances obtaining herein. There is no dispute that the escalation clause in the promissory note involved in this case does not contain a correlative de-escalation clause or a provision providing for the reduction of the stipulated interest in the event that the applicable maximum rate of interest.is reduced by law or by the Monetary Board. Notwithstanding the absence of such stipulation. however, it is similarly not controverted but, as a matter of fact, specifically admitted by petitioner that respondent APEX unilaterally and actually decreased the interest charges it imposed on herein petitioner on three occasions. (Bold underscoring supplied)

It becomes inescapable for the Court to uphold the validity and enforceability of the escalation clause involved herein despite the absence of the de-escalation clause. The actual grant by the respondent of the decreases in the interest rates imposed on the loans extended to the petitioner rendered inexistent the evil of inequality sought to be thwarted by the enactment and application of Presidential Decree No. 1684. We do not see here a situation in which the petitioner did not stand on equality with the lender bank.

The binding effect on the parties of any agreement is premised on two settled principles, namely: (1) that any obligation arising from contract has the force of law between the parties; and (2) that there must be mutuality between the parties based on their essential equality. Any contract that appears to be heavily weighed in favor of only one of the parties so as to lead to an unconscionable result is void. Specifically, any stipulation regarding the validity or compliance of the contract that is left solely to the will of one of the parties is likewise invalid.

The principle of mutuality of contracts is embodied in Article 1308 of the Civil Code, to wit:

Article 1308. The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them.

The significance of Article 1308 cannot be doubted. It is elementary that there can be no contract in the absence of the mutual assent of the parties. When the assent of either party is wanting, the act of the non--assenting party has no efficacy for his act is as if it was done under duress or by an incapacitated person. Naturally, any modification made in the contract must still be with or upon the consent of the contracting parties. There must still be a meeting of the minds of all the parties on the modification, especially when the modification relates to an important or material aspect of the agreement. In loan contracts, the rate of interest is always important or material because it can make or break the capital ventures.

Contrary to the petitioner's position, there was mutuality of contracts between itself and the respondent. Tio, the petitioner's President, who signed the promissory notes in behalf of the petitioner, was aware of the provision in the documents pertaining to the monthly repricing of the interest rates. Although the promissory notes succinctly stipulated that the loans were subject to interest without need of prior notice to the borrower, the respondent sent notices to the petitioner each and every time it increased the interest rate. Equally of significance was that the respondent allowed the petitioner the sufficient time and opportunity either to reject the imposition of the increased interest rates by paying the outstanding obligations or by accepting the same through payment of whatever amounts were due. The sufficient time and opportunity negated the petitioner's insistence about the respondent having unilaterally determined the interest rates in violation of the principle of mutuality of contracts embodied in Article 1308.

It is noteworthy in this regard that the CA, despite being aware of the authority of the respondent as lender to reprice the interest rates without need of prior notice to the borrower, still recognized the validity of the stipulation in view of the option on the part of the petitioner to reject the repricing, to wit:

Significantly, the phrase "without need of prior notice to the borrower" should not be construed to be an absolute lack of notice to the borrower since receipt of said notice, in fact, is the reckoning point for the borrower to convey its objection to the said repricing by due payment of the obligation with the original interest rate or by its consent to the said repricing by the borrower's failure to so prepay.

There is no question, therefore, that the respondent accorded the petitioner the notice of any repricing of the interest rates. Although there have been occasions in which the Court struck down the escalation clauses in loan agreements for violating the mutuality of contracts, this case will not be one of them. This is because the respondent either has given notice to the petitioner whenever it repriced the interest rates in order to give the latter the option to reject the repricing, or has implemented the downward repricing of the interest rates. The respondent thereby served both the letter and the spirit of Presidential Decree No. 1684.

• Rey v. Anson, G.R. No. 211206, [November 7, 2018]

ROSEMARIE Q. REY, Petitioner, v. CESAR G. ANSON, Respondent. G.R. No. 211206, THIRD DIVISION, November 07, 2018, PERALTA, J.

As case law instructs, the **imposition of an unconscionable rate of interest on a money debt, even if knowingly and voluntarily assumed, is immoral and unjust**. It is tantamount to a repugnant spoliation and an iniquitous deprivation of property, repulsive to the common sense of man. It has no support in law, in principles of justice, or in the human conscience nor is there any reason whatsoever which may justify such imposition as righteous and as one that may be sustained within the sphere of public or private morals.

In several cases, we have ruled that stipulations authorizing iniquitous or unconscionable interests are contrary to morals, if not against the law. In Medel v. Court of Appeals, we annulled a stipulated 5.5%

per month or 66% per annum interest on a P500,000.00 loan and a 6% per month or 72% per annum interest on a P60,000.00 loan, respectively, for being excessive, iniquitous, unconscionable and exorbitant. In Ruiz v. Court of Appeals, we declared a 3% monthly interest imposed on four separate loans to be excessive. In both cases, the interest rates were reduced to 12% per annum.

In the case before us, even if Rosemarie Rey initially suggested the interest rate on the first loan, **voluntariness does not make the stipulation on an interest, which is iniquitous, valid**. As Rosemarie Rey later realized through the counsel of her lawyer that the interest rates of the first and second loans were excessive and no interest should be imposed on the third and fourth loans, she came to court for recomputation of the loans and recovery of excess payments.

Anent the third and fourth loans both in the amount of P100,000.00, the Court of Appeals correctly held that as the agreement of 3% monthly interest on the third loan and 4% monthly interest on the fourth loan was merely verbal and not put in writing, no interest was due on the third and fourth loans. This is in accordance with Article 1956 of the Civil Code which provides that "**[n]o interest shall be due unless it has been stipulated in writing.**" Hence, the payments made as of March 18, 2005 in the third loan amounting to P141,360.00 resulted in the overpayment of P41,360.00.

FACTS

Rosemarie Rey is the President and one of the owners of Southern Luzon Technological College Foundation Incorporated, a computer school in Legazpi City. On August 23, 2002, Rosemarie Rey borrowed from Cesar Anson the amount of P200,000.00 payable in one year, and subject to 7.5% interest per month or P15,000.00 monthly interest.

On August 26, 2002, Rosemarie Rey again borrowed from Cesar Anson P350,000.00, subject to 7% interest per month, and payable in four months.

Rosemarie Rey faithfully paid the interest on the first loan for twelve (12) months. She was, however, unable to pay the principal amount of P200,000.00 when it became due on August 24, 2003. She appealed to Cesar Anson not to foreclose the mortgage or to impose the stipulated penalty charges, but instead to extend the terms thereof. Cesar Anson agreed and Rosemarie Rey later signed a promissory note dated April 23, 2004 and executed a Deed of Real Estate Mortgage dated May 3, 2004, stating that the Spouses Rey's principal obligation of P200,000.00 shall be payable in four (4) months from the execution of the Deed of Real Estate Mortgage, and it shall be subject to interest of 7.5% per month. These two documents cancelled, updated and replaced the original agreement on the first loan.

Rosemarie Rey was able to make good on her interest payments, but thereafter failed to pay the principal amount of P200,000.00.

Anent the second loan of P350,000.00, Rosemarie Rey failed to faithfully pay monthly interest thereon and she was unable to pay the principal amount thereof when it became due on December 26, 2002. Rosemarie Rey appealed to Cesar Anson not to foreclose the mortgage securing the same or to impose the penalty charges, but instead to extend the terms thereof. Cesar Anson agreed, and the parties executed anew a Deed of Real Estate Mortgage dated January 19, 2003 wherein

Rosemarie Rey acknowledged her indebtedness to Cesar Anson in the amount of P611,340.00, payable within four months from the execution of the Deed of Real Estate Mortgage, and subject to 7% interest per month.

Four months thereafter, Rosemarie Rey again failed to fulfill her obligation on the second loan. The same was extended once more in a Deed of Real Estate Mortgage dated June 19, 2003 wherein Rosemarie Rey acknowledged indebtedness to Cesar Anson in the amount of P761,450.00, payable within six months from the execution of the Deed of Real Estate Mortgage, and subject to the same 7% interest per month.

On February 24, 2004, Rosemarie Rey obtained a third loan from Cesar Anson in the amount of P100,000.00. The third loan was not put in writing, but the parties verbally agreed that the same would be subject to 3% monthly interest.

A week later or on March 2, 2004, Rosemarie Rey obtained a fourth loan from Cesar Anson for P100,000.00. It was also not put in writing, but there was an oral agreement of 4% monthly interest.

Instead of paying her loan obligations, Rosemarie Rey, through counsel, sent Cesar Anson a letter dated August 8, 2005, stating that the interest rates imposed on the four loans were irregular, if not contrary to law. The 7.5% and 7% monthly interest rates imposed on the first and second loans, respectively, were excessive and unconscionable and should be adjusted to the legal rate. Moreover, no interest should have been imposed on the third and fourth loans in the absence of any written agreement imposing interest.

ISSUES

1. Whether the interest rate on the first two loans are valid. (NO)

2. Whether interest may be chargeable on the 3rd and 4th loan. (NO)

RULING

1.

The freedom of contract is not absolute. Article 1306 of the Civil Code provides that "[t]he contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy."

In Sps. Albos v. Sps. Embisan, et al. the Court held:

As case law instructs, **the imposition of an unconscionable rate of interest on a money debt, even if knowingly and voluntarily assumed, is immoral and unjust**. It is tantamount to a repugnant spoliation and an iniquitous deprivation of property, repulsive to the common sense of man. It has no support in law, in principles of justice, or in the human conscience nor is there any reason whatsoever which may justify such imposition as righteous and as one that may be sustained within the sphere of public or private morals.

Summarizing the jurisprudential trend towards this direction is the recent case of Castro v. Tan in which We held:

While we agree with petitioners that parties to a loan agreement have wide latitude to stipulate on any interest rate in view of the Central Bank Circular No. 905 s. 1982 which suspended the Usury Law ceiling on interest effective January 1, 1983, it is also worth stressing that **interest rates whenever unconscionable may still be declared illegal**. There is certainly nothing in said circular which grants lenders carte blanche authority to raise interest rates to levels which will either enslave their borrowers or lead to a hemorrhaging of their assets.

In several cases, we have ruled that stipulations authorizing iniquitous or unconscionable interests are contrary to morals, if not against the law. In Medel v. Court of Appeals, we annulled a stipulated 5.5% per month or 66% per annum interest on a P500,000.00 loan and a 6% per month or 72% per annum interest on a P60,000.00 loan, respectively, for being excessive, iniquitous, unconscionable and exorbitant. In Ruiz v. Court of Appeals, we declared a **3% monthly interest imposed on four separate loans to be excessive**. In both cases, the interest rates were reduced to 12% per annum.

In this case, the 5% monthly interest rate, or 60% per annum, compounded monthly, stipulated in the Kasulatan is even higher than the 3% monthly interest rate imposed in the Ruiz case. Thus, we similarly hold the 5% monthly interest to be excessive, iniquitous, unconscionable and exorbitant, contrary to morals, and the law. It is therefore void ab initio for being violative of Article 1306 of the Civil Code. With this, and in accord with the Medel and Ruiz cases, we hold that the Court of Appeals correctly imposed the legal interest of 12% per annum in place of the excessive interest stipulated in the Kasulatan.

In the case before us, even if Rosemarie Rey initially suggested the interest rate on the first loan, **voluntariness does not make the stipulation on an interest, which is iniquitous, valid**. As Rosemarie Rey later realized through the counsel of her lawyer that the interest rates of the first and second loans were excessive and no interest should be imposed on the third and fourth loans, she came to court for recomputation of the loans and recovery of excess payments.

In this case, the first loan had a 7.5% monthly interest rate or 90% interest per annum, while the second loan had a 7% monthly interest rate or 84% interest per annum, which rates are very much higher than the 3% monthly interest rate imposed in Ruiz v. Court of Appeals and the 5% monthly interest rate imposed in Sps. Albos v. Sps. Embisan, et al. Based on the ruling of the Spouses Albos case, the Court holds that the interest rates of 7.5% and 7% are excessive, unconscionable, iniquitous, and contrary to law and morals; and, therefore, void ab initio. Hence, the Court of Appeals erred in sustaining the imposition of the said interest rates, while the RTC correctly imposed the legal interest of 12% per annum in place of the said interest rates.

2.

Anent the third and fourth loans both in the amount of P100,000.00, the Court of Appeals correctly held that as the agreement of 3% monthly interest on the third loan and 4% monthly interest on the fourth loan was merely verbal and not put in writing, no interest was due on the third and fourth loans. This is in accordance with Article 1956 of the Civil Code which provides that "[**n**]o interest shall be due unless it has been stipulated in writing." Hence, the payments made as of March 18, 2005 in the third loan amounting to P141,360.00 resulted in the overpayment of P41,360.00. Moreover, the payments made as of February 2, 2005 in the fourth loan amounting to P17,960.0036 resulted in an overpayment of P17,960.00. Consequently, as found by the Court of Appeals, there was a total overpayment of P59,320.00 for the third and fourth loans.

14. Grant of Loans and Security Requirements

- c. Single Borrower's Limit
- d. Restrictions on Bank Exposure to DOSRI (Directors, Officers, Stockholders and their Related Interests
 - Banco de Oro vs. Bayuga, 93 SCRA 443 (1979)

BANCO DE ORO, Petitioner-Appellant, v. JAIME Z. BAYUGA and ROBERTO P. TOLENTINO, respondents-appellees, THE COURT OF APPEALS and HON. FRANCISCO DE LA ROSA in his capacity as Judge of the CFI-Rizal, Branch VII-Pasay City, Respondents G.R. No. L-49568, FIRST DIVISION, October 17, 1979, MELENCIO-HERRERA, J.

The lack of good faith and of a sense of fair play on the part of private respondents was all too evident. 'They were treating the release of the amount of P389,000.00 in their favor more as a money judgment, which it is not, rather than as a loan which it is. They want to avail of the full benefits of the loan without assumption of the corresponding obligations, or very minimally at, that. Since receipt of the aforestated amount, they have even refused to make any monthly amortizations even upon demand by the BANK, contending that "no amount of the said loan is due. It will only be paid ten (10) years after the execution of the mortgage contract as interpreted by our Courts."

The unfairness and inequity of this posture to the banking business is too evident to require elaboration. Funds of a bank are, in a sense, held in trust. There are the interests of depositors to be protected. The collateral the BANK has in its favor, with a loan value of only P157,889.76, is far from adequate to answer for the amount of P389,000.00 that is now in the hands of private respondents. The manner of repayment by private respondents of that amount remains nebulous. Of course, the BANK is not without fault for this sorry state of affairs.

FACTS

As security for a loan respondent Jaime Z. Bayuga, Roberto P. Tolentino, and Leonardo Zaballero, executed a Real Estate Mortgage in favor of the Acme Savings Bank (now Banco de Oro, petitioner herein) over a parcel of land. The purpose of the loan was for the "acquisition of real estate property."

The BANK made a partial release of P200,000.00 less charges of P6,000.00, which amount was credited to the account of TOLENTINO in the said BANK. On the same date, out of the balance of P194,000.00, TOLENTINO purchased from the BANK a certificate of time deposit in the amount of P50,000.00. He also withdrew on the said date P100,000.00, and on November 16, 1976, the amount of P44,000.00. TOLENTINO then purchased from the BANK a Manager's check in the total amount of P144,000.00, P135,000.00 of which he deposited in his savings account, and P9,000.00 in his checking account, both with the Far East Bank & Trust Company.

Thereafter, claiming that the borrowers showed no indication of complying with his obligation to pay the amount of the loan to the vendor (Algue, Inc.) of the Tagaytay City property, which constituted diversion in violation of Sec. 77, Republic Act No. 337, the BANK stopped payment of its Manager's check at the same time that it refused to release the balance of the loan. That action was necessary, according to the BANK, in order to prevent private respondent from perpetrating a fraud against it.

Respondents filed an action for specific performance which the lower court granted but the bank appealed to CA and while pending appeal, the lower court issued a writ of execution of its judgement. CA affirmed the lower court decision.

ISSUE

Whether the bank has the right to refuse the release of the loan. (YES)

RULING

The lack of good faith and of a sense of fair play on the part of private respondents was all too evident. 'They were treating the release of the amount of P389,000.00 in their favor more as a money judgment, which it is not, rather than as a loan which it is. They want to avail of the full benefits of the loan without assumption of the corresponding obligations, or very minimally at, that. Since receipt of the aforestated amount, they have even refused to make any monthly amortizations even upon demand by the BANK, contending that "no amount of the said loan is due. It will only be paid ten (10) years after the execution of the mortgage contract as interpreted by our Courts."

The unfairness and inequity of this posture to the banking business is too evident to require elaboration. Funds of a bank are, in a sense, held in trust. There are the interests of depositors to be protected. The collateral the BANK has in its favor, with a loan value of only P157,889.76, is far from adequate to answer for the amount of P389,000.00 that is now in the hands of private respondents. The manner of repayment by private respondents of that amount remains nebulous. Of course, the BANK is not without fault for this sorry state of affairs.

• People vs. Jalandoni, 122 SCRA 588 (1983)

THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, v. TERESA JALANDONI, Accused-Appellant.

G.R. No. L-57555, SECOND DIVISION, May 30, 1983, ABAD SANTOS, J.

Appellant did not act fraudulently when she deposited the RCBC checks with the BPI and thereafter issued against said deposit several checks in favor of third persons resulting in a debit balance or overdraft when eight of the RCBC checks were dishonored for lack of sufficient funds. The record shows that the appellant, a long time depositor with good credit standing, had been accorded overdraft (OD) or drawn against uncollected deposit (DAUD) privileges, not just for the nine (9) checks mentioned in the information, but for many other past transactions. Leading credence to the claim of the appellant that she had been given OD and/or DAUD privileges is the fact that BPI Branch Manager Manuel L. Garcia was not accused as a co-principal and was allowed to retire. If the appellant had in fact acted fraudulently she could not have done so without the active cooperation of Mr. Garcia. Hence, if Mr. Garcia was innocent of any criminal act, the same can be said for the appellant. Moreover, appellant's claim that it was not her intention to defraud the bank is bolstered by her uncontradicted statement that she mortgaged to the bank a lot belonging to her son for loan which was applied to one of the dishonored checks in dispute and that she gave the BPI president, who is a family friend, jewelry as a token of her sincerity to pay.

FACTS

On July 30, 1962, the spouses, H. M. Jalandoni and appellant Teresa Jalandoni, opened a joint current account with the Bank of the Philippine Islands (BPI, for short), Plaza Cervantes Branch and were assigned current account No. 2274-1. On November 22, 1973, after the death of husband H. M. Jalandoni, Ma. Theresa Macapagal, daughter of appellant herein, replaced her father as co-owner with her mother, of current account No. 2274-1.

Appellant Teresa Jala<mark>ndoni, likewise, opened a current account with the Riz</mark>al Commercial Banking Corporation (RCBC, for short), Greenhills Branch and was assigned current account No. 6-06061.

On September 8, 1976, appellant Teresa Jalandoni drew three checks totalling P750,000.00, all payable to cash, against her current account No. 6-06061 with the Rizal Commercial Banking Corporation and deposited same in her current account No. 2274-1, with the Bank of the Philippine Islands Plaza Cervantes Branch. Prior to, or simultaneously, with, said deposit, she issued 25 checks in the total amount of P745,980.00 which the drawee bank honored, and paid, on her assurance made to the bank manager that the RCBC checks which she had issued and deposited were funded. At the same time and upon appellant's request, the bank returned to her the other eleven checks which were also issued against her current account No. 2274-1.

On September 9, 1976, appellant drew three checks totalling P650,000.00, all payable to cash, against her current account No. 6-06061 with the RCBC, and deposited the same in her current account No. 2274-1, with the BPI, Cervantes Branch. Prior to, or simultaneous with, said deposit, appellant, likewise, issued 26 checks totalling P639,700.00, which the drawee bank honored and paid on the same date of deposit, on her assurance made to the bank manager that the RCBC checks which she had issued and deposited were funded. Again, on the same date, and upon her request, the bank returned to her the other eleven checks which were also issued against her current account No. 2274-1.

On September 10, 1976, appellant for the third time drew three checks, totalling P750,000.00 all payable to cash against her current account No. 6-06061 with the RCBC, and deposited the same with her current account No. 2274-1 with the BPI, Cervantes Branch. Again, prior to, or simultaneously with, said deposit, she issued 22 checks in the total amount of P656,100.00 which the drawee bank honored and paid on the same date of deposit, on her assurance made to the bank manager that the RCBC checks which she had issued and deposited were funded. At the same time, and upon her request, the bank manager returned to her the other six checks which she also issued against her current account No. 2274-1.

All of the above RCBC checks, except Check No. 2424530, in the amount of P200,000.00, when presented for payment were dishonored for lack of sufficient funds.

The appellant does not question the veracity of the transactions, but alleges as a defense that she had been previously granted an overdraft, and that it was not her intention to defraud the bank.

ISSUE

Whether the appellant acted fraudulently in her transactions with the Plaza Cervantes Branch of the Bank of the Philippine Islands. (NO)

RULING

Appellant did not act fraudulently when she deposited the RCBC checks with the BPI and thereafter issued against said deposit several checks in favor of third persons resulting in a debit balance or overdraft when eight of the RCBC checks were dishonored for lack of sufficient funds. The record shows that the appellant, a long time depositor with good credit standing, had been accorded overdraft (OD) or drawn against uncollected deposit (DAUD) privileges, not just for the nine (9) checks mentioned in the information, but for many other past transactions. Leading credence to the claim of the appellant that she had been given OD and/or DAUD privileges is the fact that BPI Branch Manager Manuel L. Garcia was not accused as a co-principal and was allowed to retire. If the appellant had in fact acted fraudulently she could not have done so without the active cooperation of Mr. Garcia. Hence, if Mr. Garcia was innocent of any criminal act, the same can be said for the appellant. Moreover, appellant's claim that it was not her intention to defraud the bank is bolstered by her uncontradicted statement that she mortgaged to the bank a lot belonging to her son for loan which was applied to one of the dishonored checks in dispute and that she gave the BPI president, who is a family friend, jewelry as a token of her sincerity to pay.

• Jose C. Go vs. BSP, G.R. No. 178429, October 23, 2009

JOSE C. GO, Petitioner, vs. BANGKO SENTRAL NG PILIPINAS, Respondent. G.R. No. 178429, SECOND DIVISION, October 23, 2009, BRION, J.

Under Section 83, RA 337, the following elements must be present to constitute a violation of its first paragraph:

1. the offender is a director or officer of any banking institution;

2. the offender, either directly or indirectly, for himself or as representative or agent of another, performs any of the following acts:

a. he borrows any of the deposits or funds of such bank; or b. he becomes a guarantor, indorser, or surety for loans from such bank to others, or c. he becomes in any manner an obligor for money borrowed from bank or loaned by it;

3. the offender has performed any of such acts without the written approval of the majority of the directors of the bank, excluding the offender, as the director concerned.

A simple reading of the above elements easily rejects Go's contention that the law penalizes a bank director or officer only either for borrowing the bank's deposits or funds or for guarantying loans by the bank, but not for acting in both capacities. The essence of the crime is becoming an obligor of the bank without securing the necessary written approval of the majority of the bank's directors.

FACTS

An Information for violation of Section 83 of Republic Act No. 337 (RA 337) or the General Banking Act, as amended by Presidential Decree No. 1795, was filed against Go before the RTC.

After the arraignment, both the prosecution and accused Go took part in the pre-trial conference where the marking of the voluminous evidence for the parties was accomplished. After the completion of the marking, the trial court ordered the parties to proceed to trial on the merits.

Before the trial could commence, Go filed a motion to quash the Information claiming that it is defective and the facts do not constitute an offense.

In support of his motion to quash, Go averred that based on the facts alleged in the Information, he was being prosecuted for borrowing the deposits or funds of the Orient Bank and/or acting as a guarantor, indorser or obligor for the bank's loans to other persons. The use of the word "and/or" meant that he was charged for being either a borrower or a guarantor, or for being both a borrower and guarantor. Go claimed that the charge was not only vague, but also did not constitute an offense. He posited that Section 83 of RA 337 penalized only directors and officers of banking institutions who acted either as borrower or as guarantor, but not as both.

Go further pointed out that the Information failed to state that his alleged act of borrowing and/or guarantying was not among the exceptions provided for in the law.

ISSUE

Whether Go's contention that Section 83 of RA 337 means penalizing a director or officer of a banking institution for either borrowing the deposits or funds of the bank or guaranteeing or indorsing loans to others, but not for assuming both capacities and that the acts so charged do not constitute an offense. (NO)

RULING

Under Section 83, RA 337, the following elements must be present to constitute a violation of its first paragraph:

1. the offender is a director or officer of any banking institution;

2. the offender, either directly or indirectly, for himself or as representative or agent of another, performs any of the following acts:

a. he borrows any of the deposits or funds of such bank; or
b. he becomes a guarantor, indorser, or surety for loans from such bank to others, or
c. he becomes in any manner an obligor for money borrowed from bank or loaned by it;

3. the offender has performed any of such acts without the written approval of the majority of the directors of the bank, excluding the offender, as the director concerned.

A simple reading of the above elements easily rejects Go's contention that the law penalizes a bank director or officer only either for borrowing the bank's deposits or funds or for guarantying loans by the bank, but not for acting in both capacities. The essence of the crime is becoming an obligor of the bank without securing the necessary written approval of the majority of the bank's directors.

The second element merely lists down the various modes of committing the offense. The third mode, by declaring that "[no director or officer of any banking institution shall xxx] in any manner be an obligor for money borrowed from the bank or loaned by it," in fact serves a catch-all phrase that covers any situation when a director or officer of the bank becomes its obligor. The prohibition is directed against a bank director or officer who becomes in any manner an obligor for money borrowed from or loaned by the bank without the written approval of the majority of the bank's board of directors. To make a distinction between the act of borrowing and guarantying is therefore unnecessary because in either situation, the director or officer concerned becomes an obligor of the bank against whom the obligation is juridically demandable.

• Hilario P. Soriano vs. People of the Philippines, et. al., G.R. No. 162336, February 1, 2010

HILARIO P. SORIANO, Petitioner, v. PEOPLE OF THE PHILIPPINES, BANGKO SENTRAL NG PILIPINAS (BSP), PHILIPPINE DEPOSIT INSURANCE CORPORATION (PDIC), PUBLIC PROSECUTOR ANTONIO C.BUAN, and STATE PROSECUTOR ALBERTO R. FONACIER, Respondents.

G.R. No. 162336, SECOND DIVISION, February 1, 2010, DEL CASTILLO, J.

The prohibition in Section 83 is broad enough to cover various modes of borrowing. It covers loans by a bank director or officer (like herein petitioner) which are made either: (1) directly, (2) indirectly, (3) for himself, (4) or as the representative or agent of others. It applies even if the director or officer is a mere guarantor, indorser or surety for someone else's loan or is in any manner an obligor for money

borrowed from the bank or loaned by it. Indirect borrowing applies in the instant case, the information describes the manner of securing loan as indirect; names petitioner as the benefactor of the indirect loan; and states that the requirements of the law were not complied with. It contains all the required elements for a violation of Section 83, even if petitioner did not secure the loan in his own name. In sum, information filed against Soriano do not negate each other.

FACTS

Affidavits were submitted before the Prosecutor's office charging Hilario Soriano with Estafa through falsification of commercial documents in relation to P.D. No. 1689 and for violation of Section 83 of RA No. 337, whereby it was alleged that spouses Enrico and Amalia Carlos appeared to have an outstanding loan of ₱8 million with the Rural Bank of San Miguel (Bulacan), Inc. (RBSM), but had never applied for nor received such loan; that it was petitioner, who was then president of RBSM, who had ordered, facilitated, and received the proceeds of the loan; and that the ₱8 million loan had never been authorized by RBSM's Board of Directors and no report thereof had ever been submitted to the Department of Rural Banks, Supervision and Examination Sector of the BSP.

Petitioner moved to quash. Petitioner contended that the commission of estafa under paragraph 1(b) of Article 315 of the RPC is inherently incompatible with the violation of DOSRI law (as set out in Section 83 of RA 337, as amended by PD 1795), hence a person cannot be charged for both offenses. He argued that a violation of DOSRI law requires the offender to obtain a loan from his bank, without complying with procedural, reportorial, or ceiling requirements. On the other hand, estafa under par. 1(b), Article 315 of the RPC requires the offender to misappropriate or convert something that he holds in trust, or on commission, or for administration, or under any other obligation involving the duty to return the same.

Essentially, the petitioner theorized that the characterization of possession is different in the two offenses. If petitioner acquired the loan as DOSRI, he owned the loaned money and therefore, cannot misappropriate or convert it as contemplated in the offense of estafa. Conversely, if petitioner committed estafa, then he merely held the money in trust for someone else and therefore, did not acquire a loan in violation of DOSRI rules.

ISSUE

Whether a loan transaction within the ambit of the DOSRI law (violation of Section 83 of RA 337, as amended) could also be the subject of Estafa under Article 315 (1) (b) of the Revised Penal Code. (YES)

RULING

Petitioner's theory is based on the false premises that the loan was extended to him by the bank in his own name, and that he became the owner of the loan proceeds. Both premises are wrong.

The bank money (amounting to P8 million) which came to the possession of petitioner was money held in trust or administration by him for the bank, in his fiduciary capacity as the President of said bank. It is not accurate to say that petitioner became the owner of the P8 million because it was the proceeds of a loan. That would have been correct if the bank knowingly extended the loan to petitioner himself. But that is not the case here. According to the information for estafa, the loan was supposed to be for another person, a certain "Enrico Carlos"; petitioner, through falsification, made it appear that said "Enrico Carlos" applied for the loan when in fact he ("Enrico Carlos") did not. Through such fraudulent device, petitioner obtained the loan proceeds and converted the same. Under these circumstances, it cannot be said that petitioner became the legal owner of the P8 million. Thus, petitioner remained the bank's fiduciary with respect to that money, which makes it capable of misappropriation or conversion in his hands.

The prohibition in Section 83 is broad enough to cover various modes of borrowing. It covers loans by a bank director or officer (like herein petitioner) which are made either: (1) directly, (2) indirectly, (3) for himself, (4) or as the representative or agent of others. It applies even if the director or officer is a mere guarantor, indorser or surety for someone else's loan or is in any manner an obligor for money borrowed from the bank or loaned by it. Indirect borrowing applies in the instant case, the information describes the manner of securing loan as indirect; names petitioner as the benefactor of the indirect loan; and states that the requirements of the law were not complied with. It contains all the required elements for a violation of Section 83, even if petitioner did not secure the loan in his own name. In sum, information filed against Soriano do not negate each other.

• Republic of the Philippines vs. Sandiganbayan, et. al., G.R. No. 166859/G.R. No. 169203/G.R. No. 180702, April 12, 2011

REPUBLIC OF THE PHILIPPINES, Petitioner, VS. SANDIGANBAYAN (FIRST DIVISION), EDUARDO M. COJUANGCO, JR., AGRICULTURAL CONSULTANCY SERVICES, INC., ARCHIPELAGO **REALTY CORP., BALETE RANCH, INC., BLACK STALLION RANCH, INC., CHRISTENSEN** PLANTATION COMPANY, DISCOVERY REALTY CORP., DREAM PASTURES, INC., ECHO RANCH, INC., FAR EAST RANCH, INC., FILSOV SHIPPING COMPANY, INC., FIRST UNITED TRANSPORT, INC., HABAGAT REALTY DEVELOPMENT, INC., KALAWAKAN RESORTS, INC., KAUNLARAN AGRICULTURAL CORP., LABAYUG AIR TERMINALS, INC., LANDAIR INTERNATIONAL MARKETING CORP., LHL CATTLE CORP., LUCENA OIL FACTORY, INC., MEADOW LARK PLANTATIONS, INC., METROPLEX COMMODITIES, INC., MISTY MOUNTAIN AGRICULTURAL CORP., NORTHEAST CONTRACT TRADERS, INC., NORTHERN CARRIERS CORP., OCEANSIDE MARITIME ENTERPRISES, INC., ORO VERDE SERVICES, INC., PASTORAL FARMS, INC., PCY OIL MANUFACTURING CORP., PHILIPPINE TECHNOLOGIES, INC., PRIMAVERA FARMS, INC., PUNONG-BAYAN HOUSING DEVELOPMENT CORP., PURA ELECTRIC COMPANY, INC., RADIO AUDIENCE DEVELOPERS INTEGRATED ORGANIZATION, INC., RADYO PILIPINO CORP., RANCHO GRANDE, INC., REDDEE DEVELOPERS, INC., SAN ESTEBAN DEVELOPMENT CORP., SILVER LEAF PLANTATIONS, INC., SOUTHERN SERVICE TRADERS, INC., SOUTHERN STAR CATTLE CORP., SPADE ONE RESORTS CORP., UNEXPLORED LAND DEVELOPERS, INC., VERDANT PLANTATIONS, INC., VESTA AGRICULTURAL CORP. AND WINGS RESORTS CORP., **Respondents**.

G.R. No. 166859, EN BANC, April 12, 2011, BERSAMIN, J.

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. SANDIGANBAYAN (FIRST DIVISION), EDUARDO M. COJUANGCO, JR., MEADOW LARK PLANTATIONS, INC., SILVER LEAF PLANTATIONS, INC., PRIMAVERA FARMS, INC., PASTORAL FARMS, INC., BLACK STALLION RANCH, INC., MISTY MOUNTAINS AGRICULTURAL CORP., ARCHIPELAGO REALTY CORP., AGRICULTURAL CONSULTANCY SERVICES, INC., SOUTHERN STAR CATTLE CORP., LHL CATTLE CORP., RANCHO GRANDE, INC., DREAM PASTURES, INC., FAR EAST RANCH, INC., ECHO RANCH, INC., LAND AIR INTERNATIONAL MARKETING CORP., REDDEE DEVELOPERS, INC., PCY OIL MANUFACTURING CORP., LUCENA OIL FACTORY, INC., METROPLEX COMMODITIES, INC., VESTA AGRICULTURAL CORP., VERDANT PLANTATIONS, INC., KAUNLARAN AGRICULTURAL CORP., ECJ & SONS AGRICULTURAL ENTERPRISES, INC., RADYO PILIPINO CORP., DISCOVERY REALTY CORP., FIRST UNITED TRANSPORT, INC., RADIO AUDIENCE DEVELOPERS INTEGRATED ORGANIZATION, INC., ARCHIPELAGO FINANCE AND LEASING CORP., SAN ESTEBAN DEVELOPMENT CORP., CHRISTENSEN PLANTATION COMPANY, NORTHERN CARRIERS CORP., VENTURE SECURITIES, INC., BALETE RANCH, INC., ORO VERDE SERVICES, INC., AND KALAWAKAN RESORTS, INC., RESPONDENTS. G.R. NO. 169203, EN BANC, April 12, 2011, BERSAMIN, J.

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. EDUARDO M. COJUANGCO, JR., FERDINAND E. MARCOS, IMELDA R. MARCOS, EDGARDO J. ANGARA,* JOSE C. CONCEPCION, AVELINO V. CRUZ, EDUARDO U. ESCUETA, PARAJA G. HAYUDINI, JUAN PONCE ENRILE, TEODORO D. REGALA, DANILO URSUA, ROGELIO A. VINLUAN, AGRICULTURAL CONSULTANCY SERVICES, INC., ANGLO VENTURES, INC., ARCHIPELAGO REALTY CORP., AP HOLDINGS, INC., ARC INVESTMENT, INC., ASC INVESTMENT, INC., AUTONOMOUS DEVELOPMENT CORP., BALETE RANCH, INC., BLACK STALLION RANCH, INC., CAGAYAN DE ORO OIL COMPANY, INC., CHRISTENSEN PLANTATION COMPANY, COCOA INVESTORS, INC., DAVAO AGRICULTURAL AVIATION, INC., DISCOVERY REALTY CORP., DREAM PASTURES, INC., ECHO RANCH, INC., ECJ & SONS AGRI. ENT., INC., FAR EAST RANCH, INC., FILSOV SHIPPING COMPANY, INC., FIRST **MERIDIAN DEVELOPMENT, INC., FIRST UNITED TRANSPORT, INC., GRANEXPORT** MANUFACTURING CORP., HABAGAT REALTY DEVELOPMENT, INC., HYCO AGRICULTURAL, INC., ILIGAN COCONUT INDUSTRIES, INC., KALAWAKAN RESORTS, INC., KAUNLARAN AGRICULTURAL CORP., LABAYOG AIR TERMINALS, INC., LANDAIR INTERNATIONAL MARKETING CORP., LEGASPI OIL COMPANY, LHL CATTLE CORP., LUCENA OIL FACTORY, INC., **MEADOW LARK PLANTATIONS, INC., METROPLEX COMMODITIES, INC., MISTY MOUNTAIN** AGRICULTURAL CORP., NORTHEAST CONTRACT TRADERS, INC., NORTHERN CARRIERS CORP., OCEANSIDE MARITIME ENTERPRISES, INC., ORO VERDE SERVICES, INC., PASTORAL FARMS, INC., PCY OIL MANUFACTURING CORP., PHILIPPINE RADIO CORP., INC., PHILIPPINE **TECHNOLOGIES, INC., PRIMAVERA FARMS, INC., PUNONG-BAYAN HOUSING DEVELOPMENT** CORP., PURA ELECTRIC COMPANY, INC., RADIO AUDIENCE DEVELOPERS INTEGRATED ORGANIZATION, INC., RADYO PILIPINO CORP., RANCHO GRANDE, INC., RANDY ALLIED VENTURES, INC., REDDEE DEVELOPERS, INC., ROCKSTEEL RESOURCES, INC., ROXAS SHARES, INC., SAN ESTEBAN DEVELOPMENT CORP., SAN MIGUEL CORPORATION OFFICERS, INC., SAN PABLO MANUFACTURING CORP., SOUTHERN LUZON OIL MILLS, INC., SILVER LEAF PLANTATIONS, INC., SORIANO SHARES, INC., SOUTHERN SERVICE TRADERS, INC., SOUTHERN STAR CATTLE CORP., SPADE 1 RESORTS CORP., TAGUM AGRICULTURAL DEVELOPMENT CORP., TEDEUM RESOURCES, INC., THILAGRO EDIBLE OIL MILLS, INC., TODA HOLDINGS, INC., **UNEXPLORED LAND DEVELOPERS, INC., VALHALLA PROPERTIES, INC., VENTURES** SECURITIES, INC., VERDANT PLANTATIONS, INC., VESTA AGRICULTURAL CORP. AND WINGS **RESORTS CORP., RESPONDENTS.**

JOVITO R. SALONGA, WIGBERTO E. TAÃ'ADA, OSCAR F. SANTOS, VIRGILIO M. DAVID, ROMEO C. ROYANDAYAN FOR HIMSELF AND FOR SURIGAO DEL SUR FEDERATION OF AGRICULTURAL COOPERATIVES (SUFAC), MORO FARMERS ASSOCIATION OF ZAMBOANGA DEL SUR (MOFAZS) AND COCONUT FARMERS OF SOUTHERN LEYTE COOPERATIVE (COFA-SL); PHILIPPINE RURAL RECONSTRUCTION MOVEMENT (PRRM), REPRESENTED BY CONRADO S. NAVARRO; COCONUT INDUSTRY REFORM MOVEMENT, INC. (COIR) REPRESENTED BY JOSE MARIE T. FAUSTINO; VICENTE FABE FOR HIMSELF AND FOR PAMBANSANG KILUSAN NG MGA SAMAHAN NG MAGSASAKA (PAKISAMA); NONITO CLEMENTE FOR HIMSELF AND FOR THE NAGKAKAISANG UGNAYAN NG MGA MALILIIT NA MAGSASAKA AT MANGGAGAWA SA NIYUGAN (NIUGAN); DIONELO M. SUANTE, SR. FOR HIMSELF AND FOR KALIPUNAN NG MALILIIT NA MAGNINIYOG NG PILIPINAS (KAMMPIL), INC., PETITIONERS-INTERVENORS. G.R. NO. 180702, EN BANC, April 12, 2011, BERSAMIN, J.

Firstly, as earlier pointed out, the Republic adduced no evidence on the significant particulars of the supposed loan, like the amount, the actual borrower, the approving official, etc. It did not also establish whether or not the loans were DOSRI or issued in violation of the Single Borrower's Limit. Secondly, the Republic could not outrightly assume that President Marcos had issued LOI 926 for the purpose of allowing the loans by the UCPB in favor of Cojuangco. There must be competent evidence to that effect. And, finally, the loans, assuming that they were of a DOSRI nature or without the benefit of the required approvals or in excess of the Single Borrower's Limit, would not be void for that reason. Instead, the bank or the officers responsible for the approval and grant of the DOSRI loan would be subject only to sanctions under the law.

FACTS

For over two decades, the issue of whether the sequestered sizable block of shares representing 20% of the outstanding capital stock of San Miguel Corporation (SMC) at the time of acquisition belonged to their registered owners or to the coconut farmers has remained unresolved.

The Republic argues and concludes that Cojuangco took money from the bank entrusted by law with the administration of coconut levy funds and was placed treating the funds of UCPB and the CIIF as his own personal capital to buy his SMC shares. The republic suggests that Cojuangco had been enabled to obtain the loans by the issuance of LOI 926 exempting the UCPB from the DOSRI and Single Borrower's Limit restrictions.

ISSUE

Whether or not there was a violation of the DOSRI and Single Borrower's restriction. (NO)

RULING

The Republic's lack of proof on the source of the funds by which Cojuangco, et al. had acquired their block of SMC shares has made it shift its position, that it now suggests that Cojuangco had been enabled to obtain the loans by the issuance of LOI 926 exempting the UCPB from the DOSRI and the Single Borrower's Limit restrictions.

We reject the Republic's suggestion.

Firstly, as earlier pointed out, the Republic adduced no evidence on the significant particulars of the supposed loan, like the amount, the actual borrower, the approving official, etc. It did not also establish whether or not the loans were DOSRI or issued in violation of the Single Borrower's Limit. Secondly, the Republic could not outrightly assume that President Marcos had issued LOI 926 for the purpose of allowing the loans by the UCPB in favor of Cojuangco. There must be competent evidence to that effect. And, finally, the loans, assuming that they were of a DOSRI nature or without the benefit of the required approvals or in excess of the Single Borrower's Limit, would not be void for that reason. Instead, the bank or the officers responsible for the approval and grant of the DOSRI loan would be subject only to sanctions under the law.

D. Anti-Money Laundering Act (R.A. No. 9160, as amended)

c. Unlawful Activities or Predicate Crimes

• Republic of the Philippines vs. Glasgow Credit and Collection Services, Inc., G.R. No. 170281, January 18, 2008

REPUBLIC OF THE PHILIPPINES, represented by the ANTI-MONEY LAUNDERING COUNCIL, Petitioner, v. GLASGOW CREDIT AND COLLECTION SERVICES, INC. and CITYSTATE SAVINGS BANK, INC., Respondents.

G.R. NO. 170281, FIRST DIVISION, January 18, 2008, CORONA, J.

Under Section 3, Title II of the Rule of Procedure in Cases of Civil Forfeiture, therefore, the venue of civil forfeiture cases is any RTC of the judicial region where the monetary instrument, property or proceeds representing, involving, or relating to an unlawful activity or to a money laundering offense are located. Pasig City, where the account sought to be forfeited in this case is situated, is within the National Capital Judicial Region (NCJR). Clearly, the complaint for civil forfeiture of the account may be filed in any RTC of the NCJR. Since the RTC Manila is one of the RTCs of the NCJR, it was a proper venue of the Republic's complaint for civil forfeiture of Glasgow's account.

Moreover, RA 9160, as amended, and its implementing rules and regulations lay down two conditions when applying the rules for civil forfeiture:

(1) when there is a suspicious transaction report or a covered transaction report deemed suspicious after investigation by the AMLC and

(2) the court has, in a petition filed for the purpose, ordered the seizure of any monetary instrument or property, in whole or in part, directly or indirectly, related to said report.

Since account no. CA-005-10-000121-5 of Glasgow in CSBI was (1) covered by several suspicious transaction reports and (2) placed under the control of the trial court upon the issuance of the writ of preliminary injunction, the conditions provided in Section 12(a) of RA 9160, as amended, were satisfied. Hence, the Republic, represented by the AMLC, properly instituted the complaint for civil forfeiture.

A criminal conviction for an unlawful activity is not a prerequisite for the institution of a civil forfeiture proceeding. Stated otherwise, a finding of guilt for an unlawful activity is not an essential element of civil forfeiture.

FACTS

Glasgow has funds in the amount of P21,301,430.28 deposited with Citystate Bank under Account No. CA 005-10-000121-5. The said bank account is related to unlawful activities of Estafa and violation of Securities Regulation Code committed by Glasglow. The deposit has been a subject of Suspicious Transaction Reports and after appropriate investigation, the Anti- Money Laundering Council issued Resolutions directing the issuance of freeze orders against the bank accounts of Glasgow. Pursuant to said AMLC Resolutions, Freeze Orders were issued on different dates addressed to the concerned bank.

On July 18, 2003, the Republic filed a complaint in the Regional Trial Court of Manila for civil forfeiture of assets with urgent plea for issuance of temporary restraining order and/or writ of preliminary injunction against the bank deposits in the account number maintained by Glasgow in Citystate Savings Bank, Inc. (CBSI). The case, filed pursuant to RA 9160 or Anti-Money Laundering Act of 2001, as amended, was docketed as Civil Case No. 03-107319.

On August 12, 2005, the OSG received a copy of Glasgow's "Motion to Dismiss (By Way of Special Appearance)" dated August 11, 2005. It alleged that (1) the court had no jurisdiction over its person as summons had not yet been served on it; (2) the complaint was premature and stated no cause of action as there was still no conviction for estafa or other criminal violations implicating Glasgow and (3) there was failure to prosecute on the part of the Republic.

The Republic opposed Glasgow's motion to dismiss. It contended that its suit was an action quasi in rem where jurisdiction over the person of the defendant was not a prerequisite to confer jurisdiction on the court. It asserted that prior conviction for unlawful activity was not a precondition to the filing of a civil forfeiture case and that its complaint alleged ultimate facts sufficient to establish a cause of action. It denied that it failed to prosecute the case.

On October 27, 2005, the trial court issued the assailed order. It dismissed the case on the following grounds: (1) improper venue as it should have been filed in the RTC of Pasig where CSBI, the depository bank of the account sought to be forfeited, was located; (2) insufficiency of the complaint in form and substance and (3) failure to prosecute. It lifted the writ of preliminary injunction and directed CSBI to release to Glasgow or its authorized representative the funds in the bank account.

ISSUE

Whether the complaint for civil forfeiture was correctly dismissed on grounds of improper venue, insufficiency in form and substance and failure to prosecute. (NO)

RULING

The Complaint Was Filed in The Proper Venue

Under Section 3, Title II of the Rule of Procedure in Cases of Civil Forfeiture, therefore, the venue of civil forfeiture cases is any RTC of the judicial region where the monetary instrument,

property or proceeds representing, involving, or relating to an unlawful activity or to a money laundering offense are located. Pasig City, where the account sought to be forfeited in this case is situated, is within the National Capital Judicial Region (NCJR). Clearly, the complaint for civil forfeiture of the account may be filed in any RTC of the NCJR. Since the RTC Manila is one of the RTCs of the NCJR, it was a proper venue of the Republic's complaint for civil forfeiture of Glasgow's account.

The Complaint Was Sufficient In Form And Substance

In a motion to dismiss a complaint based on lack of cause of action, the question submitted to the court for determination is the sufficiency of the allegations made in the complaint to constitute a cause of action and not whether those allegations of fact are true, for said motion must hypothetically admit the truth of the facts alleged in the complaint.

The test of the sufficiency of the facts alleged in the complaint is whether or not, admitting the facts alleged, the court could render a valid judgment upon the same in accordance with the prayer of the complaint.

In this connection, Section 4, Title II of the Rule of Procedure in Cases of Civil Forfeiture provides that petition for civil forfeiture shall be verified and contain the following allegations:

(a) The name and address of the respondent;

(b) A description with reasonable particularity of the monetary instrument, property, or proceeds, and their location; and

(c) The acts or omissions prohibited by and the specific provisions of the Anti-Money Laundering Act, as amended, which are alleged to be the grounds relied upon for the forfeiture of the monetary instrument, property, or proceeds; and [(d)] The reliefs prayed for.

The form and substance of the Republic's complaint substantially conformed with Section 4, Title II of the Rule of Procedure in Cases of Civil Forfeiture. The verified complaint of the Republic contained the following allegations:

(a) the name and address of the primary defendant therein, Glasgow;

(b) a description of the proceeds of Glasgow's unlawful activities with particularity, as well as the location thereof, account no. CA-005-10-000121-5 in the amount of P21,301,430.28 maintained with CSBI;

(c) the acts prohibited by and the specific provisions of RA 9160, as amended, constituting the grounds for the forfeiture of the said proceeds. In particular, suspicious transaction reports showed that Glasgow engaged in unlawful activities of estafa and violation of the Securities Regulation Code; the proceeds of the unlawful activities were transacted and deposited with CSBI account thereby making them appear to have originated from legitimate sources; as such, Glasgow engaged in money laundering; and the AMLC subjected the account to freeze order and

(d) the reliefs prayed for, namely, the issuance of a TRO or writ of preliminary injunction and the forfeiture of the account in favor of the government as well as other reliefs just and equitable under the premises.

Moreover, RA 9160, as amended, and its implementing rules and regulations lay down two conditions when applying the rules for civil forfeiture:

(1) when there is a suspicious transaction report or a covered transaction report deemed suspicious after investigation by the AMLC and

(2) the court has, in a petition filed for the purpose, ordered the seizure of any monetary instrument or property, in whole or in part, directly or indirectly, related to said report. Since account no. CA-005-10-000121-5 of Glasgow in CSBI was (1) covered by several suspicious transaction reports and (2) placed under the control of the trial court upon the issuance of the writ of preliminary injunction, the conditions provided in Section 12(a) of RA 9160, as amended, were satisfied. Hence, the Republic, represented by the AMLC, properly instituted the

Whether or not there is truth in the allegation that account no. CA-005-10-000121-5 contains the proceeds of unlawful activities is an evidentiary matter that may be proven during trial. The complaint, however, did not even have to show or allege that Glasgow had been implicated in a conviction for, or the commission of, the unlawful activities of estafa and violation of the Securities Regulation Code.

A criminal conviction for an unlawful activity is not a prerequisite for the institution of a civil forfeiture proceeding. Stated otherwise, a finding of guilt for an unlawful activity is not an essential element of civil forfeiture.

Section 6 of RA 9160 and its IRR amended, states that:

complaint for civil forfeiture.

(a) Any person may be charged with and convicted of both the offense of money laundering and the unlawful activity as defined under Rule 3(i) of the AMLA.

(b) Any proceeding relating to the unlawful activity shall be given precedence over the prosecution of any offense or violation under the AMLA without prejudice to the application *ex-parte* by the AMLC for a freeze order with respect to the monetary instrument or property involved therein and resort to other remedies provided under the AMLA, the Rules of Court and other pertinent laws and rules.

Finally, Section 27 of the Rule of Procedure in Cases of Civil Forfeiture provides:

Sec. 27. *No prior charge, pendency or conviction necessary.* – No prior criminal charge, pendency of or conviction for an unlawful activity or money laundering offense is necessary for the commencement or the resolution of a petition for civil forfeiture. (emphasis supplied)

There Was No Failure To Prosecute

How could the Republic be faulted for failure to prosecute the complaint for civil forfeiture? While there was admittedly a delay in the proceeding, it could not be entirely or primarily ascribed to the Republic. That Glasgow's whereabouts could not be ascertained was not only beyond the Republic's control, it was also attributable to Glasgow which left its principal office address without informing the Securities and Exchange Commission or any official regulatory body of its new address. Moreover, as early as October 8, 2003, the Republic was already seeking leave of court to serve summons by publication.

While a court can dismiss a case on the ground of *non prosequitur*, the real test for the exercise of such power is whether, under the circumstances, plaintiff is chargeable with want of due diligence in failing to proceed with reasonable promptitude. In the absence of a pattern or scheme to delay the disposition of the case or a wanton failure to observe the mandatory requirement of the rules on the part of the plaintiff, as in the case at bar, courts should decide to dispense with rather than wield their authority to dismiss (*Marahay v. Melicor*).

We see no pattern or scheme on the part of the Republic to delay the disposition of the case or a wanton failure to observe the mandatory requirement of the rules. The trial court should not have so eagerly wielded its power to dismiss the Republic's complaint.

Service Of Summons May Be By Publication

Civil Forfeiture under RA 9160 is an action in rem. In actions *in rem* or *quasi in rem*, jurisdiction over the person of the defendant is not a prerequisite to conferring jurisdiction on the court, provided that the court acquires jurisdiction over the *res*. Nonetheless, summons must be served upon the defendant in order to satisfy the requirements of due process. For this purpose, service may be made by publication as such mode of service is allowed in actions *in rem* and *quasi in rem*.

In this connection, Section 8, Title II of the Rule of Procedure in Cases of Civil Forfeiture provides that respondent shall be given notice of the petition in the same manner as service of summons under Rule 14 of the Rules of Court and the ROC provides:

(b) Where the respondent is designated as an unknown owner or whenever his whereabouts are unknown and cannot be ascertained by diligent inquiry, service may, by leave of court, be effected upon him by publication of the notice of the petition in a newspaper of general circulation in such places and for such time as the court may order. In the event that the cost of publication exceeds the value or amount of the property to be forfeited by ten percent, publication shall not be required.

• Republic of the Philippines vs. Hon. Antonio Eugenio, G.R. No. 174629, February 14, 2008

REPUBLIC OF THE PHILIPPINES, Represented by THE ANTI-MONEY LAUNDERING COUNCIL (AMLC), Petitioner, v. HON. ANTONIO M. EUGENIO, JR., AS PRESIDING JUDGE OF RTC, MANILA, BRANCH 34, PANTALEON ALVAREZ and LILIA CHENG, Respondents. G.R. NO. 174629, SECOND DIVISION, February 14, 2008, TINGA, J.

The AMLA also provides exceptions to the Bank Secrecy Act. Under Section 11, theAMLC may inquire into a bank account upon order of any competent court in cases of violation of the AMLA, it having been established that there is probable cause that the deposits or investments are related to unlawful activities as defined in Section 3(i) of the law, or a money laundering offense under Section 4 thereof. Further, in instances where there is probable cause that the deposits or investments are related to kidnapping for ransom, certain violations of the Comprehensive Dangerous Drugs Act of 2002, hijacking and other violations under R.A. No. 6235, destructive arson and murder, then there is no need for the AMLC to obtain a court order before it could inquire into such accounts.

While petitioner would premise that the inquiry into Lilia Cheng's accounts finds root in Section 11 of the AMLA, it cannot be denied that the authority to inquire under Section 11 is only exceptional in character, contrary as it is to the general rule preserving the secrecy of bank deposits. Even though she may not have been the subject of the inquiry orders, her bank accounts nevertheless were, and she thus has the standing to vindicate the right to secrecy that attaches to said accounts and their owners. This statutory right to privacy will not prevent the courts from authorizing the inquiry anyway upon the fulfillment of the requirements set forth under Section 11 of the AMLA or Section 2 of the Bank Secrecy Act; at the same time, the owner of the accounts have the right to challenge whether the requirements were indeed complied with.

Of course, Section 11 also allows the AMLC to inquire into bank accounts without having to obtain a judicial order in cases where there is probable cause that the deposits or investments are related to kidnapping for ransom, certain violations of the Comprehensive Dangerous Drugs Act of 2002, hijacking and other violations under R.A. No. 6235, destructive arson and murder. Since such special circumstances do not apply in this case, there is no need for us to pass comment on this proviso.

In the instances where a court order is required for the issuance of the bank inquiry order, nothing in Section 11 specifically authorizes that such court order may be issued ex parte.

The necessary implication of this finding that Section 11 of the AMLA does not generally authorize the issuance ex parte of the bank inquiry order would be that such orders cannot be issued unless notice is given to the owners of the account, allowing them the opportunity to contest the issuance of the order. Without such a consequence, the legislated distinction between ex parte proceedings under Section 10 and those which are not ex parte under Section 11 would be lost and rendered useless.

FACTS

A series of investigations concerning the award of the NAIA 3 contracts to PIATCO were undertaken by the Ombudsman and the Compliance and Investigation Staff (CIS) of petitioner Anti-Money Laundering Council (AMLC). The Office of the Solicitor General (OSG) wrote the AMLC requesting the latter's assistance "in obtaining more evidence to completely reveal the financial trail of corruption surrounding the NAIA 3 Project. The CIS conducted an intelligence database search on the financial transactions of certain individuals involved in the award, including respondent Pantaleon Alvarez (Alvarez) who had been the Chairman of the NAIA 3 Project. By this time, Alvarez had already been charged by the Ombudsman with violation of Section 3(j) of R.A. No. 3019. The search revealed that Alvarez maintained eight (8) bank accounts with six (6) different banks.

The AMLC issued a resolution whereby the Council authorized the Executive Director of the AMLC to sign and verify an application to inquire into and/or examine the deposits or investments of Pantaleon Alvarez, Wilfredo Trinidad, Alfredo Liongson, and Cheng Yong. The rationale for the said resolution was founded on the cited findings of the CIS that amounts were transferred from a Hong Kong bank account owned by Jetstream Pacific Ltd. Account to bank accounts in the Philippines maintained by Liongson and Cheng Yong.

Under the authority granted by the Resolution, the AMLC filed an application to inquire into or examine the deposits or investments of Alvarez, Trinidad, Liongson and Cheng Yong before the RTC of Makati. Thereafter, the Makati RTC rendered a bank inquiry order granting the AMLC the authority to inquire and examine the subject bank accounts of Alvarez, Trinidad, Liongson and Cheng Yong, the trial court being satisfied that there existed "probable cause to believe that the deposits in various bank accounts, details of which appear in paragraph 1 of the Application, are related to the offense of violation of Anti-Graft and Corrupt Practices Act. Pursuant to the Makati RTC bank inquiry order, the CIS proceeded to inquire and examine the deposits, investments and related web accounts of the four.

ISSUES

- 1.) Whether or not the bank accounts of respondents can be examined.
- 2.) Whether or not the AMLA has retroactive effect
- 3.) Whether or not bank inquiry order can be issued upon ex parte application

RULING

1.) NO.

R.A. No. 1405 otherwise known as the Bank Secrecy Act of 1955. The right to privacy is enshrined in Section 2 of that law, to wit:

SECTION 2. All deposits of whatever nature with banks or banking institutions in the Philippines including investments in bonds issued by the Government of the Philippines, its political subdivisions and its instrumentalities, are hereby considered as of an absolutely confidential nature.

Because of the Bank Secrecy Act, the confidentiality of bank deposits remains a basic state policy in the Philippines. Subsequent laws, including the AMLA, may have added exceptions to the Bank Secrecy Act, yet the secrecy of bank deposits still lies as the general rule.

Any exception to the rule of absolute confidentiality must be specifically legislated. Section 2 of the Bank Secrecy Act itself prescribes exceptions whereby these bank accounts may be examined by "any person, government official, bureau or office"; namely when: (1) upon written permission of the depositor; (2) in cases of impeachment; (3) the examination of bank accounts is upon order of a competent court in cases of bribery or dereliction of duty of public officials; and (4) the money deposited or invested is the subject matter of the litigation. Section 8 of R.A. Act No. 3019, the Anti-Graft and Corrupt Practices Act, has been recognized by this Court as constituting an additional exception to the rule of absolute confidentiality, and there have been other similar recognitions as well.

The AMLA also provides exceptions to the Bank Secrecy Act. Under Section 11, the AMLC may inquire into a bank account upon order of any competent court in cases of violation of the AMLA, it having been established that there is probable cause that the deposits or investments are related to unlawful activities as defined in Section 3(i) of the law, or a money laundering offense under Section 4 thereof. Further, in instances where there is probable cause that the deposits or investments are related to kidnapping for ransom, certain violations of the Comprehensive Dangerous Drugs Act of 2002, hijacking and other violations under R.A. No. 6235, destructive arson and murder, then there is no need for the AMLC to obtain a court order before it could inquire into such accounts.

It cannot be successfully argued the proceedings relating to the bank inquiry order under Section 11 of the AMLA is a "litigation" encompassed in one of the exceptions to the Bank Secrecy Act which is when "the money deposited or invested is the subject matter of the litigation." The orientation of the bank inquiry order is simply to serve as a provisional relief or remedy. As earlier stated, the application for such does not entail a full-blown trial.

Nevertheless, just because the AMLA establishes additional exceptions to the Bank Secrecy Act it does not mean that the later law has dispensed with the general principle established in the older law that "[a]ll deposits of whatever nature with banks or banking institutions in the Philippines x x are hereby considered as of an absolutely confidential nature."

The presence of this statutory right to privacy addresses at least one of the arguments raised by petitioner, that Lilia Cheng had no personality to assail the inquiry orders before the Court of Appeals because she was not the subject of said orders.

We are reasonably convinced that Lilia Cheng has sufficiently demonstrated her joint ownership of the three accounts, and such conclusion leads us to acknowledge that she has the standing to assail via certiorari the inquiry orders authorizing the examination of her bank accounts as the orders interfere with her statutory right to maintain the secrecy of said accounts.

While petitioner would premise that the inquiry into Lilia Cheng's accounts finds root in Section 11 of the AMLA, it cannot be denied that the authority to inquire under Section 11 is only exceptional in character, contrary as it is to the general rule preserving the secrecy of bank deposits. Even though she may not have been the subject of the inquiry orders, her bank accounts nevertheless were, and she thus has the standing to vindicate the right to secrecy that attaches to said accounts and their owners. This statutory right to privacy will not prevent the courts from authorizing the

inquiry anyway upon the fulfillment of the requirements set forth under Section 11 of the AMLA or Section 2 of the Bank Secrecy Act; at the same time, the owner of the accounts have the right to challenge whether the requirements were indeed complied with.

2.) NO

There is a point of concern which needs to be addressed. Lilia Cheng argues that the AMLA, being a substantive penal statute, has no retroactive effect and the bank inquiry order could not apply to deposits or investments opened prior to the effectivity of Rep. Act No. 9164, or on 17 October 2001. Thus, she concludes, her subject bank accounts, opened between 1989 to 1990, could not be the subject of the bank inquiry order lest there be a violation of the constitutional prohibition against *ex post facto* laws.

No *ex post facto* law may be enacted, and no law may be construed in such fashion as to permit a criminal prosecution offensive to the *ex post facto* clause. As applied to the AMLA, it is plain that no person may be prosecuted under the penal provisions of the AMLA for acts committed prior to the enactment of the law on 17 October 2001. As much was understood by the lawmakers since they deliberated upon the AMLA, and indeed there is no serious dispute on that point.

3.) NO

Money laundering has been generally defined as any act or attempted act to conceal or disguise the identity of illegally obtained proceeds so that they appear to have originated from legitimate sources.

Section 4 of the AMLA states that "[m]oney laundering is a crime whereby the proceeds of an unlawful activity as [defined in the law] are transacted, thereby making them appear to have originated from legitimate sources."

The AMLA also authorizes certain provisional remedies that would aid the AMLC in the enforcement of the AMLA. These are the "freeze order" authorized under Section 10, and the "bank inquiry order" authorized under Section 11.

Respondents posit that a bank inquiry order under Section 11 may be obtained only upon the preexistence of a money laundering offense case already filed before the courts. The conclusion is based on the phrase "upon order of any competent court in cases of violation of this Act," the word "cases" generally understood as referring to actual cases pending with the courts.

We are unconvinced by this proposition, and agree instead with the then Solicitor General who conceded that the use of the phrase "in cases of" was unfortunate, yet submitted that it should be interpreted to mean "in the event there are violations" of the AMLA, and not that there are already cases pending in court concerning such violations. If the contrary position is adopted, then the bank inquiry order would be limited in purpose as a tool in aid of litigation of live cases, and wholly inutile as a means for the government to ascertain whether there is sufficient evidence to sustain an intended prosecution of the account holder for violation of the AMLA. Should that be the situation, in all likelihood the AMLC would be virtually deprived of its character as a discovery tool, and thus would become less circumspect in filing complaints against suspect account holders.

Still, even if the bank inquiry order may be availed of without need of a pre-existing case under the AMLA, it does not follow that such order may be availed of *ex parte*. There are several reasons why the AMLA does not generally sanction *ex parte* applications and issuances of the bank inquiry order. *SEC. 11. Authority to Inquire into Bank Deposits* - the AMLC may inquire into or examine any particular deposit or investment with any banking institution or non bank financial institution upon order of any competent court in cases of violation of this Act, when it has been established that there is probable cause that the deposits or investments are related to an unlawful activity as defined in Section 3(i) hereof or a money laundering offense under Section 4 hereof, except that no court order shall be required in cases involving unlawful activities defined in Sections 3(i)1, (2) and (12).

Of course, Section 11 also allows the AMLC to inquire into bank accounts without having to obtain a judicial order in cases where there is probable cause that the deposits or investments are related to kidnapping for ransom, certain violations of the Comprehensive Dangerous Drugs Act of 2002, hijacking and other violations under R.A. No. 6235, destructive arson and murder. Since such special circumstances do not apply in this case, there is no need for us to pass comment on this proviso.

In the instances where a court order is required for the issuance of the bank inquiry order, nothing in Section 11 specifically authorizes that such court order may be issued *ex parte. Meanwhile in freeze orders:*

SEC. 10. Freezing of Monetary Instrument or Property. — The Court of Appeals, upon application *ex parte* by the AMLC and after determination that probable cause exists that any monetary instrument or property is in any way related to an unlawful activity as defined in Section 3(i) hereof, may issue a freeze order which shall be effective immediately. The freeze order shall be for a period of twenty (20) days unless extended by the court.

Although oriented towards different purposes, the freeze order under Section 10 and the bank inquiry order under Section 11 are similar in that they are extraordinary provisional reliefs which the AMLC may avail of to effectively combat and prosecute money laundering offenses. Crucially, Section 10 uses specific language to authorize an *ex parte* application for the provisional relief therein, a circumstance absent in Section 11.

If indeed the legislature had intended to authorize *ex parte* proceedings for the issuance of the bank inquiry order, then it could have easily expressed such intent in the law, as it did with the freeze order under Section 10

The Court could divine the sense in allowing *ex parte* proceedings under Section 10 and in proscribing the same under Section 11. A freeze order under Section 10 on the one hand is aimed at preserving monetary instruments or property in any way deemed related to unlawful activities as defined in Section 3(i) of the AMLA. The owner of such monetary instruments or property would thus be inhibited from utilizing the same for the duration of the freeze order. To make such freeze order anteceded by a judicial proceeding with notice to the account holder would allow for or lead to the dissipation of such funds even before the order could be issued.

On the other hand, a bank inquiry order under Section 11 does not necessitate any form of physical seizure of property of the account holder. What the bank inquiry order authorizes is the examination of the particular deposits or investments in banking institutions or non-bank financial institutions. The monetary instruments or property deposited with such banks or financial institutions are not seized in a physical sense, but are examined on particular details such as the account holder's record of deposits and transactions. Unlike the assets subject of the freeze order, the records to be inspected under a bank inquiry order cannot be physically seized or hidden by the account holder. Said records are in the possession of the bank and therefore cannot be destroyed at the instance of the account holder alone as that would require the extraordinary cooperation and devotion of the bank.

The necessary implication of this finding that Section 11 of the AMLA does not generally authorize the issuance *ex parte* of the bank inquiry order would be that such orders cannot be issued unless notice is given to the owners of the account, allowing them the opportunity to contest the issuance of the order. Without such a consequence, the legislated distinction between *ex parte* proceedings under Section 10 and those which are not *ex parte* under Section 11 would be lost and rendered useless.

AUM

The court receiving the application for inquiry order cannot simply take the AMLC's word that probable cause exists that the deposits or investments are related to an unlawful activity. It will have to exercise its own determinative function in order to be convinced of such fact. The account holder would be certainly capable of contesting such probable cause if given the opportunity to be apprised of the pending application to inquire into his account; hence a notice requirement would not be an empty spectacle. It may be so that the process of obtaining the inquiry order may become more cumbersome or prolonged because of the notice requirement, yet we fail to see any unreasonable burden cast by such circumstance. After all, as earlier stated, requiring notice to the account holder should not, in any way, compromise the integrity of the bank records subject of the inquiry which remain in the possession and control of the bank.

• REPUBLIC OF THE PHILIPPINES, represented by the ANTI-MONEY LAUNDERING COUNCIL v.JOCELYN I. BOLANTE, OWEN VINCENT D. BOLANTE, MA. CAROL D. BOLANTE, ALEJO LAMERA, CARMEN LAMERA, EDNA CONSTANTINO, ARIEL C. PANGANIBAN, KATHERINE G. BOMBEO, SAMUEL S. BOMBEO, MOLUGAN FOUNDATION, SAMUEL G. BOMBEO, JR., and NATIONAL LIVELIHOOD DEVELOPMENT CORPORATION (Formerly Livelihood Corporation), G.R. No. 186717, April 17, 2017, First Division, SERENO, CJ.

REPUBLIC OF THE PHILIPPINES, represented by the ANTI-MONEY LAUNDERING COUNCIL, Petitioners vs. JOCELYN I. BOLANTE, OWEN VINCENT D. BOLANTE, MA. CAROL D. BOLANTE, ALEJO LAMERA, CARMEN LAMERA, EDNA CONSTANTINO, ARIEL C. PANGANIBAN, KATHERINE G. BOMBEO, SAMUEL S. BOMBEO, MOLUGAN FOUNDATION, SAMUEL G. BOMBEO, JR., and NATIONAL LIVELIHOOD DEVELOPMENT CORPORATION (Formerly Livelihood Corporation), Respondents

G.R. No. 186717, FIRST DIVISION, April 17, 2017, SERENO, J.

REPUBLIC OF THE PHILIPPINES, represented by the ANTI-MONEY LAUNDERING COUNCIL, Petitioner, vs. HON. WINLOVE M. DUMAYAS, Presiding Judge of Branch 59, Regional Trial Court in Makati City, JOCELYN I. BOLANTE, ARIEL C. PANGANIBAN, DONNIE RAY G. PANGANIBAN, EARL WALTER G. PANGANIBAN, DARRYL G. PANGANIBAN, GAVINA G. PANGANIBAN, JAYPEE G. PANGANIBAN, SAMUEL S. BOMBEO, KA THERINE G. BOMBEO, SAMUEL G. BOMBEO, JR., NATIONAL LIVELIHOOD DEVELOPMENT CORPORATION (FORMERLY LIVELIHOOD CORPORATION), MOLUGAN FOUNDATION, ASSEMBLY OF GRACIOUS SAMARITANS FOUNDATION, INC., ONE ACCORD CHRISTIAN COMMUNITY ENDEAVOR FOR SALVATION & SUCCESS THROUGH POVERTY ALLEVIATION, INC., SOCIETY'S MULTI-PURPOSE FOUNDATION, INC., ALLIANCE FOR THE CONSERVATION OF ENVIRONMENT OF PANGASINAN, INC., AND STA. LUCIA EDUCATIONAL ASSOCIATION OF BULACAN, INC., Respondents.

G.R. No. 190357, FIRST DIVISION, April 17, 2017, SERENO, J.

Presently, while **Eugenio** still provides much needed guidance in the resolution of issues relating to the freeze and bank inquiry orders, **the Decision in that case no longer applies insofar as it requires that notice be given to the account holders before a bank inquiry order may be issued**. Upon the enactment of R.A. 10167 on 18 June 2012, Section 11 of R.A. 9160 was further amended to allow the AMLC to file an ex parte application for an order allowing an inquiry into bank deposits and investments. Section 11 of R.A. 9160 now reads:

Section 11. Authority to Inquire into Bank Deposits. - Notwithstanding the provisions of Republic Act No. 1405, as amended, Republic Act No. 6426, as amended, Republic Act No. 8791, and other laws, the AMLC may inquire into or examine any particular deposit or investment, including related accounts, with any banking institution or non-bank financial institution upon order of any competent court based on an **ex parte application** in cases of violations of this Act, when it has been established that there is probable cause that the deposits or investments, including related accounts involved, are related to an unlawful activity as defined in Section 3(i) hereof or a money laundering offense under Section 4 hereof; except that no court order shall be required in cases involving activities defined in Section 3(i)(1), (2), and (12), which are Punishable under the penal laws of other countries, and terrorism and conspiracy to commit terrorism as defined and penalized under Republic Act No. 9372.

For the trial court to issue a bank inquiry order, it is necessary for the AMLC to be able to show specific facts and circumstances that provide a link between an unlawful activity or a money laundering offense, on the one hand, and the account or monetary instrument or property sought to be examined on the other hand. In this case, the RTC found the evidence presented by the AMLC wanting. For its part, the latter insists that the RTC's determination was tainted with grave abuse of discretion for ignoring the glaring existence of probable cause that the subject bank deposits and investments were related to an unlawful activity.

We find no reason to conclude that the RTC determined the existence of probable cause, or lack thereof, in an arbitrary and whimsical manner. To repeat, the application for the issuance of a bank inquiry order was supported by only two pieces of evidence: Senate Committee Report No. 54 and the testimony of witness Thelma Espina.

We have had occasion to rule that reports of the Senate stand on the same level as other pieces of evidence submitted by the parties, and that the facts and arguments presented therein should undergo the same level of judicial scrutiny and analysis. As courts have the discretion to accept or reject them, no grave error can be ascribed to the RTC for rejecting and refusing to give probative value to Senate Committee Report No. 54.

FACTS

In April 2005, the Philippine National Bank (PNB) submitted to the Anti-Money Laundering Council (AMLC) a series of suspicious transaction reports involving the accounts of Livelihood Corporation (LIVECOR), Molugan Foundation (Molugan), and Assembly of Gracious Samaritans, Inc. (AGS). According to the reports, LIVECOR transferred to Molugan a total amount of ₱172.6 million in a span of 15 months from 2004 to 2005. On 30 April 2004, LIVECOR transferred ₱40 million to AGS, which received another P38 million from Molugan on the same day. Curiously, AGS returned the P38 million to Molugan also on the same day.

The transactions were reported "suspicious" because they had no underlying legal or trade obligation, purpose or economic justification; nor were they commensurate to the business or financial capacity of Molugan and AGS, which were both lowly capitalized at P50,000 each.

On 7 March 2006, the Senate furnished the AMLC a copy of its Committee Report No. 54. Committee Report No. 54 narrated that former Undersecretary of Agriculture Jocelyn I. Bolante (Bolante) requested the Department of Budget and Management to release to the Department of Agriculture the amount of ₱728 million for the purchase of farm inputs under the Ginintuang Masaganang Ani Program. This amount was used to purchase liquid fertilizers from Freshan Philippines, Inc., which were then distributed to local government units and congressional districts beginning January 2004. Based on the Audit Report prepared by the Commission on Audit (COA), the use of the funds was characterized by massive irregularities, overpricing, violations of the procurement law and wanton wastage of scarce government resources.

Committee Report No. 54 also stated that at the time that he served as Undersecretary of Agriculture, Bolante was also appointed by President Gloria Macapagal Arroyo as acting Chairman of LIVECOR.

The AMLC issued Resolution No. 75 finding probable cause to believe that the accounts of LIVECOR, Molugan and AGS - the subjects of the suspicious transaction reports submitted by PNB - were related to what became known as the "fertilizer fund scam." The pertinent portion of Resolution No. 75 provides:

Under the foregoing circumstances, there is probable cause to believe that the accounts of the foundations and its officers are related to the fertilizer fund scam. The release of the amount of ₱728 million for the purchase of farm inputs to the Department of Agriculture was made by Undersecretary Bolante. Undersecretary Bolante was the Acting Chairman of LIVECOR. LIVECOR transferred huge amounts of money to Molugan and AGS, while the latter foundations transferred money to each other. Mr. [Samuel S.] Bombeo was the President, Secretary, and Treasurer of Molugan. He, therefore, played a key role in these

transactions. On the other hand, Mr. [Ariel] Panganiban was the signatory to the account or AGS. Without his participation, these transactions could not have been possible.

The acts involved in the "fertilizer scam" may constitute violation of Section 3(e) of Republic Act No. 3019, x x x as well as violation or Republic Act No. 7080 (Plunder).

Thus, the AMLC authorized the filing of a petition for the issuance of an order allowing an inquiry into the six accounts of LIVECOR, Molugan, AGS, Samuel S. Bombeo and Ariel Panganiban.

The petition was filed ex parte before the RTC and docketed as AMLC SP Case No. 06-003. On 17 November 2006, the trial court found probable cause and issued the Order prayed for. It allowed the AMLC to inquire into and examine the six bank deposits or investments and the related web of accounts.

On 14 February 2008, the Supreme Court promulgated Republic v. Eugenio. It ruled that when the legislature crafted Section 11 25 of R.A. 9160 (Anti Money Laundering Act of 2001), as amended, it did not intend to authorize ex parte proceedings for the issuance of a bank inquiry order by the CA. Thus, a bank inquiry order cannot be issued unless notice is given to the account holders. That notice would allow them the opportunity to contest the issuance of the order.

In view of this development, the AMLC issued Resolution No. 40. It authorized the filing of a petition for the issuance of a freeze order against the 70 accounts found to be related to the fertilizer fund scam.

Hence, the Republic filed an Ex Parte Petition docketed as CA-G.R. AMLC No. 00014 before the CA, seeking the issuance of a freeze order against the 70 accounts.

In the meantime, the Republic filed an Ex Parte Application docketed as AMLC Case No. 07-001 before the RTC. Drawing on the authority provided by the AMLC through Resolution No. 90, the ex parte application sought the issuance of an order allowing an inquiry into the 70 accounts.

The RTC found probable cause and issued the Order prayed for. It allowed the AMLC to inquire into and examine the 70 bank deposits or investments and the related web of accounts.

On 20 October 2008, the Supreme Court denied with finality the motion for reconsideration filed by the Republic in Eugenio. The Court reiterated that Section 11 of R.A. 9160, as then worded, did not allow a bank inquiry order to be issued ex parte; and that the concerns of the Republic about the consequences of this ruling could be more properly lodged in the legislature.

Thus, in order to comply with the ruling in Eugenio, the Republic filed an Amended and Supplemental Application in AMLC Case No. 07- 001 before the RTC. The Republic sought, after notice to the account holders, the issuance of an order allowing an inquiry into the original 70 accounts plus the six bank accounts that were the subject of AMLC SP Case No. 06-003. A summary hearing thereon ensued.

On the belief that the finality of Eugenio constituted a supervening event that might justify the filing of another petition for a freeze order, the AMLC issued Resolution No. 5. The resolution authorized

the filing of a new petition for the issuance of a freeze order against 24 of the 31 accounts previously frozen by the CA.

Hence, the Republic filed an Urgent Ex Parte Petition docketed as **CA-G.R. AMLC No. 00024** before the CA seeking the issuance of a freeze order against the 24 accounts.

The assailed CA Resolution dated 27 February 2009 denied the application to extend the freeze order issued on 4 February 2009.

The CA found that the Republic had committed forum shopping. Specifically, the appellate court found that the parties in CA-G.R. AMLC No. 00024 were the same as those in CA-G.R. AMLC No. 00014. The petition in CA-G.R. AMLC No. 00024 sought the issuance of a freeze order against the same accounts covered by CA-G.R. AMLC No. 00014. Finally, the rights asserted and reliefs prayed for in both petitions were substantially founded on the same facts, thereby raising identical causes of action and issues.

At the time of the submission of respondents' Comment and petitioner's Consolidated Reply in G.R. No. 186717, the RTC issued the challenged Resolution dated 3 July 2009 in AMLC Case No. 07-001. The trial court denied the Republic's application for an order allowing an inquiry into the total of 76 bank deposits and investments of respondents.

The RTC found no probable cause to believe that the deposits and investments of respondents were related to an unlawful activity. It pointed out that the Republic, in support of the latter's application, relied merely on two pieces of evidence: Senate Committee Report No. 54 and the court testimony of witness Thelma Espina of the AMLC Secretariat. According to the RTC, Senate Committee Report No. 54 cannot be taken "hook, line and sinker," because the Senate only conducts inquiries in aid of legislation.

Citing Neri v. Senate Committee on Accountability of Public Officers and Investigations, the trial court pronounced that the Senate cannot assume the power reposed in prosecutorial bodies and the courts - the power to determine who are liable for a crime or an illegal activity. On the other hand, the trial court noted that the testimony of the witness merely relied on Senate Committee Report No. 54. The latter "admitted that the AMLC did not bother to confirm the veracity of the statements contained therein."

ISSUES

- 1. Whether an *ex parte* bank inquiry order may now be issued. (YES)
- 2. Whether the RTC committed grave abuse of discretion in ruling that there exists no probable cause to allow an inquiry into the total of 76 deposits and investments of respondents. (NO)

RULING

1.

Presently, while *Eugenio* still provides much needed guidance in the resolution of issues relating to the freeze and bank inquiry orders, **the Decision in that case no longer applies insofar as it requires that notice be given to the account holders before a bank inquiry order may be issued**. Upon the enactment of R.A. 10167 on 18 June 2012, Section 11 of R.A. 9160 was further amended to allow the AMLC to file an ex parte application for an order allowing an inquiry into bank deposits and investments. Section 11 of R.A. 9160 now reads:

Section 11. Authority to Inquire into Bank Deposits. - Notwithstanding the provisions of Republic Act No. 1405, as amended, Republic Act No. 6426, as amended, Republic Act No. 8791, and other laws, the AMLC may inquire into or examine any particular deposit or investment, including related accounts, with any banking institution or non-bank financial institution upon order of any competent court based on an **ex parte application** in cases of violations of this Act, when it has been established that there is probable cause that the deposits or investments, including related accounts involved, are related to an unlawful activity as defined in Section 3(i) hereof or a money laundering offense under Section 4 hereof; except that no court order shall be required in cases involving activities defined in Section 3(i)(1), (2), and (12), which are Punishable under the penal laws of other countries, and terrorism and conspiracy to commit terrorism as defined and penalized under Republic Act No. 9372.

The Court of Appeals shall act on the application to inquire in lo or examine any depositor or investment with any banking institution or nonbank financial institution within twenty-four (24) hours from filing of the application.

To ensure compliance with this Act, the Bangko Sentral ng Pilipinas may, in the course of a periodic or special examination, check the compliance of a Covered institution with the requirements of the AMLA and its implementing rules and regulations.

A court order ex parte must first be obtained before the AMLC can inquire into these related Accounts: Provided, That the procedure for the ex parte application of the ex parte court order for the principal account shall be the same with that of the related accounts.

The authority to inquire into or examine the main account and the related accounts shall comply with the requirements of Article III, Sections 2 and 3 of the 1987 Constitution.

2.

In the issuance of a bank inquiry order, the power to determine the existence of probable cause is lodged in the trial court. As we ruled in Eugenio:

Section 11 itself requires that it be established that "there is probable cause that the deposits or investments are related to unlawful activities," and it obviously is the court which stands as arbiter whether there is indeed such probable cause. The process of

inquiring into the existence of probable cause would involve the function of determination reposed on the trial court. Determination clearly implies a function of adjudication on the part of the trial court, and not a mechanical application of a standard predetermination by some other body. The word "determination" implies deliberation and is, in normal legal contemplation, equivalent to "the decision of a court of justice."

The court receiving the application for inquiry order cannot simply take the AMLC's word that probable cause exists that the deposits or investments are related to an unlawful activity. It will have to exercise its own determinative function in order to be convinced of such fact.

For the trial court to issue a bank inquiry order, it is necessary for the AMLC to be able to show specific facts and circumstances that provide a link between an unlawful activity or a money laundering offense, on the one hand, and the account or monetary instrument or property sought to be examined on the other hand. In this case, the RTC found the evidence presented by the AMLC wanting. For its part, the latter insists that the RTC's determination was tainted with grave abuse of discretion for ignoring the glaring existence of probable cause that the subject bank deposits and investments were related to an unlawful activity.

Grave abuse of discretion is present where power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal hostility, that is so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined or to act at all in contemplation of law. For certiorari to lie, it must be shown that there was a capricious, arbitrary and whimsical exercise of power - the very antithesis of the judicial prerogative.

We find no reason to conclude that the RTC determined the existence of probable cause, or lack thereof, in an arbitrary and whimsical manner.

To repeat, the application for the issuance of a bank inquiry order was supported by only two pieces of evidence: Senate Committee Report No. 54 and the testimony of witness Thelma Espina.

We have had occasion to rule that reports of the Senate stand on the same level as other pieces of evidence submitted by the parties, and that the facts and arguments presented therein should undergo the same level of judicial scrutiny and analysis. As courts have the discretion to accept or reject them, no grave error can be ascribed to the RTC for rejecting and refusing to give probative value to Senate Committee Report No. 54.

At any rate, Senate Committee Report No. 54 only provided the AMLC with a description of the alleged unlawful activity, which is the fertilizer fund scam. It also named the alleged mastermind of the scam, who was respondent Bolante. The entire case of the AMLC, however, hinged on the following excerpt of Senate Committee Report No. 54:

But Undersecretary Bolante's power over the agriculture department was widely known. And it encompasses more than what the Administrative Code provided.

In fact, **at the time that he was Undersecretary, Jocelyn Bolante** was concurrently appointed by the President in other powerful positions: as Acting Chairman of the National

Irrigation Administration, as **Acting Chairman of the Livelihood Corporation** x x x. 103 (Emphasis supplied)

It was this excerpt that led the AMLC to connect the fertilizer fund scam to the suspicious transaction reports earlier submitted to it by PNB.

However, the R TC found during trial that respondent Bolante had ceased to be a member of the board of trustees of LIVECOR for 14 months before the latter even made the initial transaction, which was the subject of the suspicious transaction reports. Furthermore, the RTC took note that according to the Audit Report submitted by the Commission on Audit, no part of the P728 million fertilizer fund was ever released to LIVECOR.

We note that in the RTC Order dated 17 November 2006 in AMLC SP Case No. 06-003, the AMLC was already allowed ex parte to inquire into and examine the six bank deposits or investments and the related web of accounts of LIVECOR, Molugan, AGS, Samuel S. Bombeo and Ariel Panganiban. With the resources available to the AMLC, coupled with a bank inquiry order granted 15 months before Eugenio was even pro mu I gated, the AMLC should have been able to obtain more evidence establishing a more substantive link tying Bolante and the fertilizer fund scam to LIVECOR. It did not help that the AMLC failed to include in its application for a bank inquiry order in AMLC SP Case No. 06-003 LIVECOR's PNB account as indicated in the suspicious transaction reports. This PNB account was included only in the application for a bank inquiry order in AMLC Case No. 07-001.

As it stands, the evidence relied upon by the AMLC in 2006 was still the same evidence it used to apply for a bank inquiry order in 2008. Regrettably, this evidence proved to be insufficient when weighed against that presented by the respondents, who were given notice and the opportunity to contest the issuance of the bank inquiry order pursuant to Eugenio. In fine, the RTC did not commit grave abuse of discretion in denying the application.

• Philippine Deposit Insurance Corp. v. Gidwani, G.R. No. 234616, [June 20, 2018]

PHILIPPINE DEPOSIT INSURANCE CORPORATION, Petitioner, -versus- MANU GIDWANI, Respondent.

G.R. No. 234616, Third Division, June 20, 2018, Velasco, Jr., J.

Section 4. Money Laundering Offense. - Money laundering is a crime whereby the proceeds of an unlawful activity are transacted, thereby making them appear to have originated from legitimate sources. It is committed by the following:

a. Any person knowing that any monetary instrument or property represents, involves, or relates to the proceeds of any unlawful activity, transacts or attempts to transact said monetary instrument or property.

According to PDIC, the crime charged was committed when the 86 other individuals fraudulently declared that they are the bona fide owners of 471 deposits with the legacy banks; that the purported depositors, in conspiracy with Manu, falsified official documents by making the untruthful statement

of ownership in their deposit insurance claims; that PDIC relied on the representations of the claimants when it released to them the deposit insurance proceeds amounting to P98,733,690.21, of which P97,733,690.21 was deposited to the RCBC account of Manu Gidwani; and that the government suffered damage when PDIC discovered upon investigation that Manu was the sole beneficial owner of the bank accounts.

FACTS

Pursuant to several resolutions of the Monetary Board of the Bangko Sentral ng Pilipinas, the rural banks owned and controlled by the Legacy Group of Companies were ordered closed and thereafter placed under the receivership of petitioner Philippine Deposit Insurance Corporation.

Respondent Manu, together with his wife Champa Gidwani and 86 other individuals, represented themselves to be owners of 471 deposit accounts with the Legacy Banks and filed claims with PDIC. The claims were processed and granted, resulting in the issuance of 683 Landbank of the Philippines checks in favor of the 86 individuals, excluding the spouses Gidwani, in the aggregate amount of P98,733,690.21.

Two diagonal lines appeared in each of the Landbank checks, indicating that they were crossedchecks "Payable to the Payee's Account Only." Despite these explicit instructions, the individuals did not deposit the crossed checks in their respective bank accounts. Rather, the face value of all the checks were credited to a single account with Rizal Commercial Banking Corporation (RCBC)-RCBC Account No. 1-419-86822-8, owned by Manu.

PDIC alleges that it only discovered the foregoing circumstance when the checks were cleared and returned to it. This prompted PDIC to conduct an investigation on the true nature of the deposit placements of the 86 individuals. Based on available blank documents, they allegedly did not have the financial capacity to deposit the amounts recorded under their names, let alone make the deposits in various Legacy Banks located nationwide. It is PDIC's contention, therefore, that with willful malice and intent to circumvent the law, the Gidwani spouses made it appear that the deposits for which the insurance was paid were owned by 86 distinct individuals when, in truth and in fact, all the deposits were maintained for the sole benefit of the Gidwani spouses.

Pursuant to its mandate to safeguard the deposit insurance fund against illegal schemes and machinations, PDIC, on November 6, 2012, lodged a criminal complaint, docketed as I.S. No. XVI-INV-12K-00480, before the DOJ Task Force on Financial Fraud for estafa through falsification under the Revised Penal Code and for money laundering as defined in Section 4(a) of AMLA against the Gidwani spouses and the 86 other individuals.

In their counter-affidavits, the Gidwani spouses denied the charges against them, particularly on being owners of the accounts in question. In brief, they claimed that there was no falsification committed by them since what was stated about the 86 individuals being the owners of their respective accounts was true.

On January 14, 2014, the DOJ Task Force promulgated a Resolution dismissing the Complaint. PDIC's motion for reconsideration was denied through the DOJ Task Force's Resolution dated December 3, 2014. Unperturbed, PDIC interposed a petition for review with the Office of the SOJ.

However, then Undersecretary of Justice Jose F. Justininano likewise denied PDIC's appeal. Based on the Justiniano Resolution, PDIC failed to overcome the presumption of ownership over the subject deposits. On June 3, 2016, then SOJ Emmanuel Caparas, however, overturned the Justianio Resolution through his own ruling granting PDIC's motion for reconsideration. SOJ Caparas ratiocinated that, on the charge of estafa through falsification, the individual depositors committed false pretenses when they made it appear that they were the legitimate owners of the subject bank accounts with the Legacy Banks, which information was used in the processing of the insurance claims with PDIC, even when in truth and in fact, the accounts were owned and controlled by Manu.

Aggrieved, several of the respondents filed their respective motions for reconsideration of the Caparas Resolution. Meanwhile, herein respondent Manu immediately elevated the matter to the CA, ascribing grave abuse of discretion on the part of SOJ Caparas in finding probable cause to charge him with estafa and for violation of the AMLA.

On November 29, 2016, SOJ Vitaliano N. Aguirre granted the motions for reconsideration of several of Manu's co-respondents a quo, reinstating the Justiniano Resolution.

The CA reversed the Caparas Resolution and held that SOJ Caparas gravely abused his discretion when he reversed and set aside the earlier resolutions of the DOJ Task Force and of SOJ Justiniano even though no new evidence was offered by PDIC to support its allegations against Manu and his co-respondents. PDIC moved for reconsideration from this adverse ruling, but the CA affirmed its earlier ruling. Thus, the present petition.

ISSUE

Whether there is probable cause in the criminal complaint for estafa through falsification under Art. 315(2)(a) in relation to Art. 172(1)31 and 171(4)32 of the RPC, and for money laundering as defined in Section 4(a) of RA 9160. (YES)

RULING

Proceeding to the crux of the controversy, the Court now resolves whether or not the CA erred in dismissing due to lack of probable cause the criminal complaint for estafa through falsification under Art. 315(2)(a) in relation to Art. 172(1)31 and 171(4)32 of the RPC, and for money laundering as defined in Section 4(a) of RA 9160. Here, the legal proscriptions purportedly violated by respondent read:

Article 315. Swindling (estafa). - x x x

 $\mathbf{x} \mathbf{x} \mathbf{x} \mathbf{x}$

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

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Section 4. Money Laundering Offense. - Money laundering is a crime whereby the proceeds of an unlawful activity are transacted, thereby making them appear to have originated from legitimate sources. It is committed by the following:

a. Any person knowing that any monetary instrument or property represents, involves, or relates to the proceeds of any unlawful activity, transacts or attempts to transact said monetary instrument or property.

Jurisprudence elucidates that the elements of estafa or swindling under paragraph 2 (a) of Article 315 of the RPC are the following:

- 1. That there must be a false pretense, fraudulent act or fraudulent means;
- 2. That such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud;
- 3. That the offended party must have relied on the false pretense, fraudulent act, or fraudulent means, that is, he was induced to part with his money or property because of the false pretense, fraudulent act, or fraudulent means;
- 4. That as a result thereof, the offended party suffered damage.

According to PDIC, the crime charged was committed when the 86 other individuals fraudulently declared that they are the bona fide owners of 471 deposits with the legacy banks; that the purported depositors, in conspiracy with Manu, falsified official documents by making the untruthful statement of ownership in their deposit insurance claims; that PDIC relied on the representations of the claimants when it released to them the deposit insurance proceeds amounting to P98,733,690.21, of which P97,733,690.21 was deposited to the RCBC account of Manu Gidwani; and that the government suffered damage when PDIC discovered upon investigation that Manu was the sole beneficial owner of the bank accounts.

In the assailed Decision, the CA did not give credence to the allegations of PDIC. It ruled instead that "PDIC failed to prove that [Manu] is the owner of all subject bank accounts or financed the same" and, as such, Manu could not be considered to have committed false pretenses or misrepresentation against PDIC.

We disagree.

It must be recalled that the criminal case is still in the stage of preliminary investigation. Under Rule 112, Section 1 of the Rules of Court, a preliminary investigation is "an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial." The investigation is advisedly called preliminary, because it is yet to be followed by the trial proper in a

court of law. The occasion is not for the full and exhaustive display of the parties since the function of the investigating prosecutor is not to determine the guilt or innocence of an accused.

In this case, the PDIC reportedly discovered that there was only one beneficial owner of the 471 bank accounts with the Legacy Banks of the 86 individual depositors respondent Manu. To illustrate, PDIC reportedly discovered that 142 of these 471 accounts, with the total amount of P20,966,439.09, were in the names of helpers and rank-and-file employees of the Gidwani spouses who do not have the financial capacity to deposit the amounts recorded under their names. Moreover, the helpers and rank-and-file employees who reside and are employed in Bacolod City maintained bank accounts in Legacy Banks located in different parts of the country.

That these individuals reported either respondent Manu's office or business address as their own further arouses serious suspicion on the true ownership of the funds deposited. It gives the impression that they had been used by respondent as dummies, and their purported ownership mere subterfuge, in order to increase the amount of his protected deposit.

Respondent likewise raised that he and the individual depositors entered into a fund management scheme to facilitate the transactions with the Legacy Banks; he did not deny opening and funding some of the accounts for the individual creditors, and even admitted to receiving advance interests for the subject bank accounts that were meant for the actual depositors. Anent this contention, SOJ Caparas held that the allegation of a fund management scheme is barren and self-serving, and that, in any event, the agreement partakes the nature of an investment contract that ought to have been registered first with the Securities and Exchange Commission before it can be given effect.

Whether or not there indeed existed an agreement between respondent Manu and the individual depositors is a matter best left ventilated during trial proper, where evidence can be presented and appreciated fully. Suffice it to state for now that the Court herein finds probable cause to charge respondent for estafa and money laundering.

d. Freezing of Monetary Instrument or Property

• Republic of the Philippines vs. Cabrini Green & Ross, Inc., G.R. No. 154522, May 5, 2006

REPUBLIC OF THE PHILIPPINES, Represented by the ANTI-MONEY LAUNDERING COUNCIL, Petitioner, v. CABRINI GREEN & ROSS, INC., MICHAEL J. FINDLAY and JANE GELBERG, Respondents.

G.R. NO. 154522, SECOND DIVISION, May 5, 2006, CORONA, J.

SEC. 7. Section 10 of [RA 9160] is hereby amended to read as follows:

SEC. 10. Freezing of Monetary Instrument or Property. – **The Court of Appeals**, upon application ex parte by the AMLC and after determination that probable cause exists that any monetary instrument or property is in any way related to an unlawful activity as defined in Sec. 3(i) hereof, may issue a freeze order which shall be effective immediately. The freeze order shall be for a period of twenty (20) days **unless extended by the court**. (emphasis supplied) The amendment by RA 9194 of RA 9160 erased any doubt on the jurisdiction of the CA over the extension of freeze orders. As the law now stands, it is solely the CA which has the authority to issue a freeze order as well as to extend its effectivity. It also has the exclusive jurisdiction to extend existing freeze orders previously issued by the AMLC vis-à-vis accounts and deposits related to money-laundering activities.

FACTS

Anti-Money Laundering Council issued a freeze order in various bank accounts found to be related to the unlawful activities of the respondents. Under RA 9160, the freeze order shall be effective for 15 days "unless extended by the court". Before the expiration of the said freeze order, AMCL filed a various petitions for the extension of the freeze orders to the Court of Appeals with the belief that the power of the Court of Appeals to issue Temporary Restraining Order (TRO) and Writ of Injunction against freeze orders carries with it the power to extend the effectivity of the same.

The Court of appeals dismissed the said petitions. It uniformly ruled that it was not vested by RA 9160 the authority to extend the effectivity of freeze orders.

ISSUE

Whether the Court of Appeals has the authority to extend the effectivity of freeze orders issued by the AMLC. (YES)

RULING

During the pendency of the case a Congress enacted RA 9194 An Act Amending Republic Act No. 9160, Otherwise Known as the "Anti-Money Laundering Act of 2001").6 It amended Section 10 of RA 9160 as follows:

SEC. 7. Section 10 of [RA 9160] is hereby amended to read as follows:

SEC. 10. Freezing of Monetary Instrument or Property. – **The Court of Appeals**, upon application ex parte by the AMLC and after determination that probable cause exists that any monetary instrument or property is in any way related to an unlawful activity as defined in Sec. 3(i) hereof, may issue a freeze order which shall be effective immediately. The freeze order shall be for a period of twenty (20) days **unless extended by the court**. (emphasis supplied)

Section 12 of RA 9194 further provides:

SEC 12. Transitory Provision. – Existing freeze orders issued by the AMLC shall remain in force for a period of thirty (30) days after the effectivity of this Act, unless extended by the **Court of Appeals**. (emphasis supplied)

On April 3, 2003, the Office of the Solicitor General filed a Very Urgent Motion to Remand the Cases to the Honorable Court of Appeals (with Prayer for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction). The OSG prayed to remand the cases to CA pursuant to RA

9194. It also prayed for the issuance of TRO on 29 pending cases in the CA involving the same issue. On April 21, 2003, the CA issued TRO in the said cases. Respondents, the concerned banks, and all persons acting in their behalf were directed to give full force and effect to existing freeze orders until further orders from this Court. Furthermore, on May 5, 2003, OSG informed the court that CA issued a resolution granting extension of freeze order which is the subject of GR. No. 154694. Hence, the OSG prayed for the dismissal of the said case and the remand of GR. Nos. G.R. Nos. 154522, 155554 and 155711 to the CA.

The amendment by RA 9194 of RA 9160 erased any doubt on the jurisdiction of the CA over the extension of freeze orders. As the law now stands, it is solely the CA which has the authority to issue a freeze order as well as to extend its effectivity. It also has the exclusive jurisdiction to extend existing freeze orders previously issued by the AMLC vis-à-vis accounts and deposits related to money-laundering activities.

• Ret. Lt. Gen. Jacinto Ligot, et. al. vs. Republic of the Philippines, G.R. No. 176944, March 6, 2013

RET. LT. GEN. JACINTO C. LIGOT, ERLINDA Y. LIGOT, PAULO Y. LIGOT, RIZA Y. LIGOT, and MIGUEL Y. LIGOT, Petitioners, v. REPUBLIC OF THE PHILIPPINES, represented by the ANTI-MONEY LAUNDERING COUNCIL, Respondent.

G.R. NO. 176944, SECOND DIVISION, March 6, 2013, BRION, J.

Ligot's claim that the CA erred in extending the effectivity period of the freeze order because they have not yet been convicted of any of the offenses enumerated in RA 9160 that would support the AMLC's accusation of money-laundering activity it not tenable. **Based on section 10, there are two** requisites for the issuance of the freeze order (1) the application ex parte by the AMLC and (2) the determination of probable cause by CA. The probable cause required for the issuance of freeze order is different from the probable cause required for the institution of a criminal action. As defined in the law, the probable cause required for the issuance of a freeze order refers to "such facts and circumstances which would lead a reasonably discreet, prudent or cautious man to believe that an unlawful activity and/or a money laundering offense is about to be, is being or has been committed and that the account or any monetary instrument or property subject thereof sought to be frozen is in any way related to said unlawful activity and/or money laundering offense.

It should be noted that the existence of an unlawful activity that would justify the issuance and the extension of the freeze order has likewise been established in this case. Lt. Ligot himself admitted that his income came from his salary as an officer of AFP. Yet, the Ombudsman's investigation revealed that the bank accounts, investments and properties of Ligot amount to more than Fifty-Four Million Pesos which are grossly disproportionate to Lt. Ligot's income. For failure of the petitioner to provide evidence showing that he has other sources of income, the CA properly found a probable cause that these funds have been illegally acquired.

The silence of the law, however, does not in any way affect the Court's own power under the Constitution to "promulgate rules concerning the protection and enforcement of constitutional rights xxx and procedure in all courts." Pursuant to this power, **the Court issued A.M. No. 05-11-04-SC**, **limiting the effectivity of an extended freeze order to six months** – to otherwise leave the grant of the extension to the sole discretion of the CA, which may extend a freeze order indefinitely or to an

unreasonable amount of time – carries serious implications on an individual's substantive right to due process. This right demands that no person be denied his right to property or be subjected to any governmental action that amounts to a denial. The right to due process, under these terms, requires a limitation or at least an inquiry on whether sufficient justification for the governmental action.

FACTS

Republic of the Philippines represented by Anti-Money Laundering Council (AMLC) filed an Urgent Ex-Parte Application for the issuance of a freeze order with the Court of Appeals against certain monetary and instruments and properties of the petitioners, pursuant to Section 10 of Republic Act No. 9160, as amended otherwise known as Anti-Money Laundering Act of 2001 based on the letter sent by the Ombudsman to the AMLC recommending the latter to conduct investigation on Lt. Gen. Ligot and his family for possible violation of RA. 9160.

Ombudsman's complaint alleges that Lt. Ligot who served the Armed Forces of the Philippines for 33 years and 2 months, declared in his Statement of Assets, Liabilities and Net Worth (SALN) that as of December 31, 2003 he had assets in the total amount of Three Million Eight Hundred Forty-Eight Thousand and Three Pesos (₱3,848,003.00). In contrast, his declared assets in his 1982 SALN amounted only to One Hundred Five Thousand Pesos (₱ 105,000.00). Aside from these, the Ombudsman's investigation found that the petitioner and his family have assets and properties that were not declared in the SALN amounting to at least Fifty-Four Million One Thousand Two Hundred Seventeen Pesos (₱54,001,217.00). Considering the source of income of the petitioner and assets in the name of his wife and children, the ombudsman declared the said assets to be illegally obtained and unexplained wealth pursuant to RA 1379 (An Act Declaring Forfeiture in Favor of the State Any Property Found to Have Been Unlawfully Acquired by Any Public Officer or Employee and Providing for the Proceedings Therefor).

Ombudsman also investigated the records of the Social Security System of Yambao, petitioner's brother. It revealed that he had been employed in private sector. Based on his contributions, he does not have a substantial salary. Also, they found that he had an investment in Mabelline Food Inc. but the company only had a net income of ₱5,062.96 in 2002 and ₱693.67 in 2003. But despite Yambao's lack of substantial income, the records show that he has a real properties and vehicles registered in his name amounting to Eight Million Seven Hundred Sixty Three Thousand Five Hundred Fifty Pesos (₱8,763,550.00), which he acquired from 1993 onwards. The Office of the Ombudsman further observed that in the documents it examined, Yambao declared three of the Ligots' addresses as his own. From these circumstances, the Ombudsman concluded that Yambao acted as a dummy and/or nominee of the Ligot spouses, and all the properties registered in Yambao's name actually belong to the Ligot family.

ISSUE

1. Whether the CA erred in finding that probable cause exists to support the issuance of freeze order. (NO)

2. Whether or not CA erred in extending the freeze order for an indefinite period. (YES)

RULING

1.

The CA did not err in finding that there is a probable cause to support the issuance of freeze order.

The legal basis for the issuance of a freeze order is Section 10 of RA No. 9160, as amended by RA No. 9194, which states:

Section 10. Freezing of Monetary Instrument or Property. – The Court of Appeals, upon application ex parte by the AMLC and after determination that probable cause exists that any monetary instrument or property is in any way related to an unlawful activity as defined in Section 3(i) hereof, may issue a freeze order which shall be effective immediately. The freeze order shall be for a period of twenty (20) days unless extended by the court.

Ligot's claim that the CA erred in extending the effectivity period of the freeze order because they have not yet been convicted of any of the offenses enumerated in RA 9160 that would support the AMLC's accusation of money-laundering activity it not tenable. Based on section 10, there are two requisites for the issuance of the freeze order (1) the application exparte by the AMLC and (2) the determination of probable cause by CA. The probable cause required for the issuance of freeze order is different from the probable cause required for the institution of a criminal action. As defined in the law, the probable cause required for the issuance of a freeze order refers to "such facts and circumstances which would lead a reasonably discreet, prudent or cautious man to believe that an unlawful activity and/or a money laundering offense is about to be, is being or has been committed and that the account or any monetary instrument or property subject thereof sought to be frozen is in any way related to said unlawful activity and/or money laundering offense. In other words, in resolving the issue of whether probable cause exists, the CA's statutorily-guided determination's focus is not on the probable commission of an unlawful activity (or money laundering) that the Office of the Ombudsman has already determined to exist, but on whether the bank accounts, assets, or other monetary instruments sought to be frozen are in any way related to any of the illegal activities enumerated under RA No. 9160, as amended. Thus, contrary to the Ligots' claim, a freeze order is not dependent on a separate criminal charge, much less does it depend on a conviction.

It should be noted that the existence of an unlawful activity that would justify the issuance and the extension of the freeze order has likewise been established in this case. Lt. Ligot himself admitted that his income came from his salary as an officer of AFP. Yet, the Ombudsman's investigation revealed that the bank accounts, investments and properties of Ligot amount to more than Fifty-Four Million Pesos which are grossly disproportionate to Lt. Ligot's income. For failure of the petitioner to provide evidence showing that he has other sources of income, the CA properly found a probable cause that these funds have been illegally acquired.

2.

The CA erred in issuing the freeze order for indefinite period.

The petitioners claim that the effectiveness of the freeze order ceased to be effective six months after the original freeze order first expired, the claim is with merit.

The primary objective of a freeze order is to temporarily preserve monetary instruments or property that are in any way related to an unlawful activity or money laundering, by preventing the owner from utilizing them during the duration of the freeze order. Upon examination of the Anti-Money Laundering Act of 2001, it was found that the law is silent as to the maximum period of time that the freeze order can be extended by the CA. The final sentence of Section 10 of the Anti-Money Laundering Act of 2001 provides, "the freeze order shall be for a period of twenty (20) days unless extended by the court." In contrast, Section 55 of the Rule in Civil Forfeiture Cases qualifies the grant of extension "for a period not exceeding six months" "for good cause" shown.

The court observed in this point that nothing in the law grants the owner of the "frozen" property any substantive right to demand that the freeze order be lifted, except by implication, i.e., if he can show that no probable cause exists or if the 20-day period has already lapsed without any extension being requested from and granted by the CA. The silence of the law, however, does not in any way affect the Court's own power under the Constitution to "promulgate rules concerning the protection and enforcement of constitutional rights xxx and procedure in all courts." Pursuant to this power, the Court issued A.M. No. 05-11-04-SC, limiting the effectivity of an extended freeze order to six months – to otherwise leave the grant of the extension to the sole discretion of the CA, which may extend a freeze order indefinitely or to an unreasonable amount of time – carries serious implications on an individual's substantive right to due process. This right demands that no person be denied his right to property or be subjected to any governmental action that amounts to a denial. The right to due process, under these terms, requires a limitation or at least an inquiry on whether sufficient justification for the governmental action.

The Ligots' case perfectly illustrates the inequity that would result from giving the CA the power to extend freeze orders without limitations. As narrated above, the CA, via its September 20, 2005 resolution, extended the freeze order over the Ligots' various bank accounts and personal properties "until after all the appropriate proceedings and/or investigations being conducted are terminated. These periods of extension are way beyond the intent and purposes of a freeze order which is intended solely as an interim relief. The term of the CA's extension, too, borders on inflicting a punishment to the Ligots, in violation of their constitutionally protected right to be presumed innocent, because the unreasonable denial of their property comes before final conviction.

In the court's mind, the six-month extension period is ordinarily sufficient for the government to act against the suspected money launderer and to file the appropriate forfeiture case against him, and is a reasonable period as well that recognizes the property owner's right to due process. In this case, the period of inaction of six years, under the circumstances, already far exceeded what is reasonable.

Thus, as a rule, the effectivity of a freeze order may be extended by the CA for a period not exceeding six months. Before or upon the lapse of this period, ideally, the Republic should have already filed a case for civil forfeiture against the property owner with the proper courts and accordingly secure an asset preservation order or it should have filed the necessary information.

In the present case, we note that the Republic has not offered any explanation why it took six years (from the time it secured a freeze order) before a civil forfeiture case was filed in court, despite the clear tenor of the Rule in Civil Forfeiture Cases allowing the extension of a freeze order for only a period of six months.

• SUBIDO PAGENTE CERTEZA MENDOZA and BINAY LAW OFFICES, Petitioner, - versus - THE COURT OF APPEALS, HON. ANDRES B. REYES, JR., in his capacity as Presiding Justice of the Court of Appeals, and the ANTI-MONEY LAUNDERING COUNCIL, represented by its members, HON. AMANDO M. TETANGCO, JR., Governor of the BANGKO SENTRAL NG PILIPINAS, HON. TERESITA J. HERBOSA, Chairperson of the Securities and Exchange Commission, and HON. EMMANUEL F. DOOC, Insurance Commissioner of the Insurance Commission. Respondents. (G.R. No. 216914, EN BANC, December 6, 2016, PEREZ,J.)

SUBIDO PAGENTE CERTEZA MENDOZA and BINAY LAW OFFICES, Petitioner, - versus - THE COURT OF APPEALS, HON. ANDRES B. REYES, JR., in his capacity as Presiding Justice of the Court of Appeals, and the ANTI-MONEY LAUNDERING COUNCIL, represented by its members, HON. AMANDO M. TETANGCO, JR., Governor of the BANGKO SENTRAL NG PILIPINAS, HON. TERESITA J. HERBOSA, Chairperson of the Securities and Exchange Commission, and HON. EMMANUEL F. DOOC, Insurance Commissioner of the Insurance Commission. Respondents. G.R. No. 216914, EN BANC, December 6, 2016, PEREZ,J.

Taken into account Section 11 of the AMLA, the Court found nothing arbitrary in the allowance and authorization to AMLC to undertake an inquiry into certain bank accounts or deposits. Instead, the Court found that it provides safeguards before a bank inquiry order is issued, ensuring adherence to the general state policy of preserving the absolutely confidential nature of Philippine bank accounts:

- a. The AMLC is required to establish probable cause as basis for its ex-parte application for bank inquiry order;
- b. The CA, independent of the AMLC's demonstration of probable cause, itself makes a finding of probable cause that the deposits or investments are related to an unlawful activity under Section 3(i) or a money laundering offense under Section 4 of the AMLA;
- c. A bank inquiry court order ex-parte for related accounts is preceded by a bank inquiry court order ex-parte for the principal account which court order ex-parte for related accounts is separately based on probable cause that such related account is materially linked to the principal account inquired into; and
- d. The authority to inquire into or examine the main or principal account and the related accounts shall comply with the requirements of Article III, Sections 2 and 3 of the Constitution.

FACTS

In 2015, a year before the 2016 presidential elections, reports abounded on the supposed disproportionate wealth of then Vice President Jejomar Binay and the rest of his family, some of whom were likewise elected public officers. The Office of the Ombudsman and the Senate conducted investigations and inquiries thereon.

From various news reports announcing the inquiry into then Vice President Binay's bank accounts, including accounts of members of his family, petitioner **Subido Pagente Certeza Mendoza & Binay Law Firm (SPCMB)** was most concerned with the article published in the Manila Times on

25 February 2015 entitled *"Inspect Binay Bank Accounts"* stating that Anti-Money Laundering Council (AMLC) asked the Court of Appeals (CA) to allow the Council to peek into the bank accounts of the law office linked to the Binay family, the Subido Pagente Certeza Mendoza & Binay Law Firm, where the Vice President's daughter Abigail was a former partner.

The following day, 26 February 2015, SPCMB wrote public respondent, Presiding Justice of the CA, Andres B. Reyes, Jr requesting for a copy of the *ex-parte* application for bank examination filed by respondent AMLC and <u>all other pleadings, motions, orders, resolutions, and processes issued by the respondent court of appeals</u>in relation thereto. In response, the Presiding justice Reyes wrote SPCMB denying its request.

By 8 March 2015, the Manila Times published another article entitled, *"CA orders probe of Binay 's assets"* reporting that the appellate court had issued a Resolution granting the *ex-parte* application of the AMLC to examine the bank accounts of SPCMB.

Forestalled in the CA thus alleging that it had no ordinary, plain, speedy, and adequate remedy to protect its rights and interests in the purported ongoing unconstitutional examination of its bank accounts by public respondent Anti-Money Laundering Council (AMLC), SPCMB undertook direct resort to this Court *via* this petition for *certiorari* and prohibition.

ISSUES

- 1. Whether or not the *ex-parte* application and inquiry by the AMLC into certain bank deposits and investments violate substantive and procedural due process. (NO)
- 2. Whether or not the *ex-parte* application and inquiry by the AMLC into certain bank deposits and investments violate the constitutional right to privacy. (NO)
- 3. Whether or not the owner of the bank account is precluded from ascertaining from the CA, **postissuance of the bank inquiry order** *ex-parte*, if his account is indeed the subject of an examination. (NO)

RULING

1. The right to due process has two aspects: (1) substantive which deals with the extrinsic and intrinsic validity of the law; and (2) procedural which delves into the rules government must follow before it deprives a person of its life, liberty or property.

Section 11 of the AMLA providing for *ex-parte* application and inquiry by the AMLC into certain bank deposits and investments does **not violate substantive due process**, there being **no physical seizure of property involved at that stage**. It is the preliminary and actual seizure of the bank deposits or investments in question which brings these within reach of the judicial process, specifically a determination that the seizure violated due process.

SPCMB's constitutional right to **procedural due process is likewise not violated** by the *ex-parte* application and inquiry by the AMLC into certain bank deposits and investments. AMLC does not possess quasi-judicial powers and hence, it has no adjudicatory power. AMLC's investigation of

money laundering offenses and its determination of possible money laundering offenses, specifically its inquiry into certain bank accounts allowed by court order, does not transform it into an investigative body exercising quasi-judicial powers.

- 2. In the case of *Rep. of the Phils. v. Hon. Judge Eugenio, Jr., et al. (Eugenio),* the court laid down the following principle:
 - a. The Constitution did not allocate specific rights peculiar to bank deposits;
 - b. The general rule of absolute confidentiality is simply statutory, *i.e.* not specified in the Constitution;
 - c. Exceptions to the general rule of absolute confidentiality have been carved out by the Legislature which legislation have been sustained, albeit subjected to heightened scrutiny by the courts; and
 - d. One such legislated exception is Section 11 of the AMLA.

Taken into account Section 11 of the AMLA, the Court found nothing arbitrary in the allowance and authorization to AMLC to undertake an inquiry into certain bank accounts or deposits. Instead, the Court found that it provides **safeguards before a bank inquiry order is issued, ensuring adherence to the general state policy of preserving the absolutely confidential nature of Philippine bank accounts:**

- e. The AMLC is required to establish probable cause as basis for its *ex-parte* application for bank inquiry order;
- f. The CA, independent of the AMLC's demonstration of probable cause, itself makes a finding of probable cause that the deposits or investments are related to an unlawful activity under Section 3(i) or a money laundering offense under Section 4 of the AMLA;
- g. A bank inquiry court order *ex-parte* for related accounts is preceded by a bank inquiry court order *ex-parte* for the principal account which court order *ex-parte* for related accounts is separately based on probable cause that such related account is materially linked to the principal account inquired into; and
- h. The authority to inquire into or examine the main or principal account and the related accounts shall comply with the requirements of Article III, Sections 2 and 3 of the Constitution.

Bound by these requirements for issuance of a bank inquiry order under Section 11 of the AMLA, the Court are hard pressed to declare that it violates SPCMB's right to privacy.

3. Nonetheless, although the bank inquiry order *ex-parte* passes constitutional muster, there is nothing in Section 11 nor the implementing rules and regulations of the AMLA which prohibits the owner of the bank account, as in this instance SPCMB, to ascertain from the CA, post issuance of the bank inquiry order *ex-parte*, **if his account is indeed the subject of an examination**. Considering the safeguards under Section 11 preceding the issuance of such an order, the Court find that there is **nothing therein which precludes the owner of the account from challenging the basis for the issuance thereof**.

Note, however, that the allowance to question the bank inquiry order herein is tied to the appellate court's issuance of a freeze order on the principal accounts. The occasion for the issuance of the

freeze order upon the actual physical seizure of the investigated and inquired into bank account, calls into motions the opportunity for the bank account owner to then question, not just probable cause for the issuance of the freeze order under Section 10, but, to begin with, the determination of probable cause for an *ex-parte* bank inquiry order into a purported related account under Section 11. To emphasize, this **allowance to the owner of the bank account to question the bank inquiry order is granted only after issuance of the freeze order physically seizing the subject bank account. It cannot be undertaken prior to the issuance of the freeze order.**

All told, the Court affirm the constitutionality of Section 11 of the AMLA allowing the *ex-parte* application by the AMLC for authority to inquire into, and examine, certain bank deposits and investments.

The *ex-parte* inquiry shall be upon probable cause that the deposits or investments are related to an unlawful activity as defined in Section 3(i) of the law or a money laundering offense under Section 4 of the same law. To effect the limit on the *ex-parte* inquiry, the petition under oath for authority to inquire, must, akin to the requirement of a petition for freeze order enumerated in Title VIII of A.M. No. 05-11-,04-SC, contain the name and address of the respondent; the grounds relied upon for the issuance of the order of inquiry; and the supporting evidence that the subject bank deposit are in any way related to or involved in an unlawful activity.

If the CA finds **no substantial merit** in the petition, it shall **dismiss the petition outright** stating the specific reasons for such denial. If **found meritorious** and there is a subsequent petition for freeze order, the proceedings shall be **governed by the existing Rules on Petitions for Freeze Order in the CA**. From the issuance of a freeze order, the party aggrieved by the ruling of the court may appeal to the Supreme Court by petition for review on *certiorari* under Rule 45 of the Rules of Court raising all pertinent questions of law and issues, including the propriety of the issuance of a bank inquiry order. The appeal shall not stay the enforcement of the subject decision or final order unless the Supreme Court directs otherwise.

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