

EMERITO M. RAMOS, ET AL., PETITIONERS, VS. CENTRAL BANK OF THE PHILIPPINES, ET AL., RESPONDENT.*G.R. No. L-29352. January 21, 1986*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/18a1bf6f0adc/>

After considering the pleadings filed by the parties, the Court Resolved to DENY for lack of necessary votes the separate motions filed by the Solicitor General on behalf of respondent Central Bank of the Philippines (a) for Leave to file a second motion for reconsideration of the resolution of October 19, 1982; (b) motion to admit second motion for reconsideration; and (c) aforesaid second motion for reconsideration of the Resolution of October 19, 1982 and of the Resolution of July 22, 1985 denying with finality respondent Central Bank of the Philippines' first motion for reconsideration. The Court accordingly DIRECTED that entry of final judgment be made of the aforesaid Resolution of October 19, 1982. Teehankee, Concepcion, Jr., De La Fuente and Patajo, JJ. voted for denial of the aforesaid motions. Aquino, C.J. and Abad Santos, Melencio-Herrera, Plana and Gutierrez, Jr., JJ. voted for granting of the aforesaid motions. Escolin, Cuevas and Alampay, JJ., took no part.

C.J. Aquino filed a separate dissent.

I dissent. The second motion for reconsideration of the Solicitor General was filed on time. In the interest of justice, it should have been admitted and granted. The reasons for my dissent are found in the first motion for reconsideration dated December 28, 1982, filed by Solicitor General Estelito P. Mendoza, Assistant Solicitor General Eduardo G. Montenegro and Trial Attorney Jose P. Crisostomo, which is quoted thus:

"PRELIMINARY STATEMENT

This is a significant case. For one, it involves the payment of some P47M to Central Bank, comprising the interest of its cash advances to OBM (now COMBANK). For another, it involves the principle of inviolability of contracts since the payment of this interest was freely agreed upon by the parties, the Central Bank and the OBM (now COMBANK). And last but not the least, it involves the principle of equity - whether or not a private bank that is now making profits partly because of these loans from Central Bank should be allowed to renege on its obligation to pay interest on these advances.

It is our thesis that the resolution of this Honorable Court dated October 19, 1952 holding that COMBANK is not liable to the CB in the payment of P47M by way of interest on CB loans and advances is not in accord with our law and is also in discord with known tenets of equity and fairness. Indeed the Court's resolution did not resolve squarely the issues raised by the Central Bank.

We shall again hark back to the roots of the controversy.

STATEMENT OF FACTS

The material facts are documented. No legal legerdemain can distort the truth in this case.

IRREGULARITIES IN THE OBM

1. The OBM opened for business on January 6, 1964. The bank was a closed family corporation - E. Ramos, Sr. - with an authorized capital of P30 million. Its paid-in capital was P19.90 million and, of this amount, P13.93 million represented the paid-in capital of the Ramos Group.

2. In 1965, barely in its second year of business, OBM's lending operations were suspended four times, principally due to chronic deficiency in reserve requirements and chronic overdrawings on its clearing account with the Central Bank (CB). As of June 29, 1965, OBM's overdrawings on its clearing account with CB amounted to P22.185 million.

These overdrawings had to be funded by CB, through the grant to OBM of emergency loan, otherwise OBM would have been excluded from clearing. OBM's overdrawings nevertheless continued to mount and, by December, 1967, its emergency loans and overdrawings on its clearing account with CB amounted to P46.6 million.

3. OBM's financial difficulties from 1964 to 1967 were due to various irregularities committed under the Ramos Management. OBM funds, consisting substantially of the bank's paid-in capital and deposits, were utilized and diverted, mostly by way of loans, to the Ramoses and their interests. The total amount channeled to the Ramos Group and their interests from 1964 to 1967 reached P37.1 million as follows:

(P Million)

a. Loan to E.M. Ramos & Co., Inc. (EMRACO) by Sears-Roebuck guaranteed (and subsequently paid) by OBM thru L/C No. 64/1152 in excess of statutory limit.

15.6

b. Clean drafts of Ramos firms discounted by OBM prior to compliance of terms of Letter of Credit.

2.6

c. Acceptance of drafts of Ramos firms without approval by OBM Board and not recorded in books.

1.6

d. Loans granted to various Ramos firms in violation of Sec. 83, RA 337.

7.2

e. Unfunded checks issued by (and paid by OBM to payees) Ramos firms which remained under 'Checks and Other Cash Items' (COCI) for a long period of time.

2.3

f. Proceeds of call loan obtained by OBM from PNB but diverted to Current Account No. 1198 of EMRACO General Fund.

1.5

g. Collection from La Suerte Cigar diverted to the personal Current Account of E.M. Ramos, Jr. and Current Account No. 1198.

6.2

h. Unbooked bankers' acceptance (for which OBM was liable) signed by E.M. Ramos, Jr., OBM Executive Vice

President who was officially on leave.

0.1

T o t a l

P37.1

It will thus be noted that while OBM had a paid-in capital of only P19.90 million, of which P13.93 million represented the investment of the Ramos Group, the amount of OBM funds (which obviously included deposit accounts) lent out or channeled to the Ramos Group or their interests amounted to P37.1 million.

4. This is not all. In September, 1967, Mr. Martin Oliva (who became OBM's President in March, 1967) revealed to the then Superintendent of Banks certain transactions amounting to around P48 million, of which over P43 million were time deposits, at usurious rates of interest, which were not recorded in the books of the bank nor reported to the bank's Board of Directors. These were moneys of depositors and creditors received by the bank, not reflected in OBM's books as liabilities to said depositors and creditors, but instead credited to the current account of Commodity Financing Co. (COFICO), a Ramos family-owned company, subject to withdrawal by COFICO officers.

5. In the face of the abovementioned irregular transactions committed under the Ramos Management, the Monetary Board decided to place the management of OBM in the hands of more responsible persons. A Voting Trust Agreement (VTA) was executed between the Ramos Group and the then Superintendent of Banks, putting OBM management in the hands of CB nominees. This VTA came into effect on December 6, 1967, at which time, OBM was already indebted to the Central Bank due to persistent overdrawings by OBM on its clearing account with CB in the amount of P46.6 million.

6. Unfortunately, the change of OBM management under the VTA did not allay the apprehension of OBM's depositors who demanded payment of their deposits. Again, CB had to extend additional emergency advances to OBM totalling P15 million. In late July, 1968, OBM's insolvent condition was considered irretrievable. The Monetary Board ordered its closure on August 1, 1968. As of said date, OBM's total obligations to CB (from emergency loans and advances) amounted to P63.176 million.

7. The unretouched picture of OBM and the Ramos Group when OBM was closed on August 1, 1968 is therefore as follows:

(a) The P19.90 million capital of OBM had been completely wiped out (while under the Ramos management) and so with the P13.93 million equity of the Ramos Group.

(b) However, OBM funds totalling P37.1 million had already been channeled to the Ramos Group. Another P48 million received from OBM depositors and creditors were not recorded in OBM's books but credited instead to the COFICO account, a Ramos interest.

(c) Of the P63.176 million obligation of OBM to CB, the unpaid emergency advances totalling P52.0 million (obtained by OBM from CB on account of its overdrawings) were subject to interest rate of 12% per annum; whereas the unpaid balance of OBM's emergency loans in the total amount of P9.6 million were subject to the

interest rates of 6% p.a. and 9% p.a. (viz., 6% p.a. on P6.984 million and 9% p.a. on P2.631 million). Other OBM payables to CB amounting to P1.5 million were, however, not subject to any interest.

(d) As required under Section 90 of the Central Bank Act (RA 265), emergency loans and advances extended by CB to banking institutions must be secured; in the case of OBM, its emergency loans and advances from CB were secured mostly by real estate mortgages on Ramos' properties.

At the time of OBM closure, therefore, the shares of the Ramoses were worthless. The only linkages which the Ramoses had with OBM to speak of were the obligations they had to pay to OBM and the properties mortgaged to CB to secure the loans and advances which OBM had to obtain from CB.

REHABILITATION PLAN OF OBM

8. In a resolution dated February 24, 1974, this Honorable Court directed the Central Bank to seek practical solutions in all good faith for the rehabilitation of the OBM.

9. In compliance with this resolution, the CB and the OBM submitted to this Honorable Court, a Rehabilitation Plan on October 9, 1974. In their Joint Motion and Compliance, the parties stated:

'x x x x x x x x.

'2. Pursuant to this resolution, petitioners (i.e., OBM) submitted to the Central Bank the attached 'Rehabilitation Plan of the Overseas Bank of Manila' in the preparation of which they have taken into account what was essential to rehabilitate the Bank and at the same time assure maximum protection to its depositors, creditors and the public interests. The Central Bank agrees to the implementation of this rehabilitation plan, which is attached as Annex 'A' hereof, to be effective only upon approval by this Court, in complete satisfaction of the decision dated October 4, 1971 and the resolution of February 4, 1972.'

Said Rehabilitation Plan was approved by this Honorable Court in its Resolution dated October 23, 1974. Par. 1.6 of the Rehabilitation Plan as approved by the Court reads:

'x x x x x x x x.

'1.6. OBM's liabilities to CB shall be restructured over a period of fifteen (15) years and shall bear interest of not less than six per cent (6%) per annum.'

10. Unfortunately, the Rehabilitation Plan of OBM failed to materialize in view of the inability of the Ramos group to comply with their commitments. On December 18, 1977, a few days before the Plan expired on December 31, 1977, the Ramos group submitted to the CB an alternative plan for OBM's rehabilitation involving the participation of some foreign investors. Once more, the CB gave the Ramos group another chance by approving in principle the alternative plan. After the lapse of many months, the Ramos group could not push thru their plan. Consequently, on September 8, 1978 the CB finally declared that the stockholders and management of OBM have failed to rehabilitate the bank. The action was in accord with Par. 3.7 of the Rehabilitation Plan which provides:

'x x x x x x x x.

'Petitioners also agree not to impede or oppose in any way such action which CB may deem appropriate to take in accordance with law, or to transfer voting control in OBM in accordance with the above paragraph, if, at the end of the rehabilitation phase, CB finds that petitioners have not complied substantially with all their commitments under the plan or that OBM's condition is such that it cannot resume business with safety to its creditors.'

Well to note the Ramos Group did not contest this action of the Central Bank knowing as it did that they were

responsible for the non implementation of the OBM Rehabilitation Plan.

THE RECAPITALIZATION AND REORGANIZATION OF OBM UNDER A NEW CONTRACT

11. At this point, CB could have liquidated the OBM but did not. Instead, CB made another attempt to revive OBM. It accepted sealed proposals for the reorganization and recapitalization of OBM from other parties. The Ramos Group was completely out of the picture at this time. Seven sealed proposals were actually received by CB, but the proposal made by the Investment and Underwriting Corporation of the Philippines (IUCP), now Atrium Capital Corporation, was found to be the most viable. On May 25, 1979, in its Resolution No. 1026, the Monetary Board approved the IUCP proposal subject to certain conditions, among which were:

- (a) Infusion of additional equity of P180 million before the reopening of the bank and P20 million after reopening;
- (b) Restructuring of Central Bank advances of P63 million into a ten (10) year loan with a one (1) year grace period on principal, with interest at 9-1/2% per annum and secured by the collateral presently held by the Central Bank;
- (c) The accrued interest on Central Bank advances shall be at 6% per annum, computed up to the day before the reopening into cumulative, non-participating, non-convertible preferred shares of the bank earning 6% dividend per annum redeemable lump sum after ten (10) years for which a sinking fund reserve shall be established;
- (d) The remaining obligations of Mr. Emerito M. Ramos, Sr. and his interest shall be paid by him quarterly over a five (5) year period with 1-1/2% per annum and shall be fully secured.

12. These conditions under M.B. Res. No. 1026 were conveyed to the IUCP Group in a letter dated May 30, 1979. The IUCP Group and the Ramos Group then negotiated the terms under which the former was to acquire the shares of the latter in OBM. The negotiation culminated in an agreement dated April 28, 1980 between the two groups. The total consideration for the sale of OBM shares of the Ramos Group to the IUCP Group was not disclosed in said Agreement of April 28, 1980. This was the subject of another agreement not made known to CB.

It is again stressed that at this point, the OBM shares of the Ramos Group were worthless. The main interest of the IUCP Group in acquiring the Ramos Group shares was the 'commercial banking license' of OBM. It was their only way to start a commercial bank as no new commercial banks are being licensed by CB. Under such circumstances, therefore, the Ramos Group was succeeding in selling its worthless OBM shares at a substantial consideration.

13. In a reply-letter dated July 10, 1979, the IUCP Group accepted said terms and conditions. Similarly, in a letter dated February 21, 1980 to the CB, Mr. Emerito Ramos, Sr. gave his conformity on above-mentioned subparagraph (d) of M.B. Res. No. 1026 which related to his obligations to OBM.

14. Thereafter, Atrium Capital sought to amend condition (c) of Resolution No. 1026. This resulted in the adoption by the Central Bank of Resolution No. 1007 dated May 30, 1980 which reads as follows:

ACTION TAKEN:

'The Board decided as follows:

'1. To amend Resolution No. 1026 dated May 25, 1979 approving the proposal of the Investment and Underwriting Corporation of the Philippines (IUCP) for the reorganization and recapitalization of the Overseas Bank of Manila (TOBM) so as to:

'(a) Add the following provision under Item 5:

'It is understood, however that in the event the Supreme Court of the Philippines renders a definitive ruling that, consequential to OBM's cessation of full banking operations since August, 1968, OBM is not liable for the payment of accrued interests on its obligations to its secured creditors, OBM shall effect the non-accrual of interests conformably with such definitive ruling, as well as the consequent cancellation of its preferred shares issued to the nominees of the Central Bank, and the latter shall reimburse OBM for any amount which they may have received arising from the declaration of cash dividends on such preferred shares.'

15. On December 12, 1980, however, the Central Bank was advised by the Commission on Audit of a ruling by the Ministry of Justice that a settled liability in favor of the government or its agencies cannot be condoned without approval of the legislative authorities if the amount involved is over P10,000.00. Since the obligation of OBM to pay interest on the Central Bank advances was a settled liability of OBM, the Central Bank negotiated with the new stockholders of OBM if they could agree on the deletion of Item 5 of Resolution 1026. On January 5, 1981, Atrium Capital Corporation, thru its President, agreed to the said suggestion of Central Bank. The letter sent to the Central Bank reads:

'As per our discussions, therefore, we agree to the deletion of the provision which reads as follows as contained in the letter of June 9, 1980:

'It is understood, however, that in the event the Supreme Court of the Philippines renders a definitive ruling that, consequential to OBM's cessation of full banking operations since August 1968, OBM is not liable for the payment of accrued interests on its obligations to its secured creditors, OBM shall effect the non-accrual of interests conformably with such definitive ruling, as well as the consequent cancellation of its preferred shares issued to the nominees of the Central Bank, and the latter shall reimburse OBM for any amount which they may have received from the declaration of cash dividends on such preferred shares.'

Consequently, Central Bank revoked the disputed amendment under Resolution No. 1007 dated May 30, 1980.

16. On January 8, 1981 the OBM reopened under its new corporate name Commercial Bank of Manila (COMBANK). It had a new set of controlling stockholders and a different team of management.

17. On April 13, 1981, the COMBANK paid to the Central Bank P96,786.70 representing partial interest from August 1, 1968 to January 7, 1981 on the P63M advances of Central Bank to the OBM.

THE TAPIA CASE

18. On June 11, 1981 the Honorable Supreme Court decided the case of OBM vs. Court of Appeals and Tony Tapia, G. R. No. L-49353. It was therein held that OBM was not liable for the payment of interest on the time deposit of Mr. Tapia during the period of its closure. Central Bank was not a party in the Tapia case.

19. In the light of the Tapia case, COMBANK refused to make any further interest payment on the P63 Million advances of Central Bank to the OBM. To resolve the impasse, the Central Bank and COMBANK agreed to have a clarificatory ruling. Thus the letter, dated November 12, 1981, of Central Bank Governor Jaime C. Laya to Mr. Antonio P. Gatmaitan, Chairman of the Board of COMBANK reads:

'This is with reference to your request, under your letter of July 1, 1981, that the 'accrued interest during the closure period on CB advances to OBM be now recognized as non-existent by CB pursuant to the ruling by the Supreme Court in SC-G. R. No. L-49353.

While the same has been the subject of a meeting between the Central Bank and Combank officers and lawyers, we are formally reiterating the position of the Central Bank that the Supreme Court ruling above adverted to is not applicable to the accrued interest in question. Such accrued interest was the subject of agreement by and between the Central Bank and the new stockholders of OBM, and this agreement was, in fact, entered into in pursuance of

specific provisions in the Rehabilitation Program of OBM which was approved by the Supreme Court itself under its Resolution dated October 23, 1974. (It may be noted that the decision of the Supreme Court in SC-G.R. No. L-49353 contemplates of cases where said Rehabilitation Program did not provide or otherwise give any indication that interest could be collected from OBM by the depositor or creditor.) More importantly, it may be emphasized that the Central Bank is a secured creditor of OBM and, therefore, its rights under the law cannot be compared to those of unsecured creditors.

As agreed upon in the recent meeting, the Central Bank and Combank shall abide by any clarificatory ruling which the Supreme Court may render on the matter. We, therefore, suggest that Combank seek such clarificatory ruling from the Supreme Court.' (Underscoring supplied for emphasis)

Well to note that it was not agreed that such clarification should be sought in G. R. No. L-29352 or in any particular case, more so because the decision (In the Tapia Case) sought to be clarified was rendered in G. R. No. L-49353. Instead of seeking clarification, however, in an appropriate case, COMBANK filed an intervention in G. R. No. L-29352 which has long been terminated.

20. On October 19, 1982, the Honorable Court en banc, issued a resolution holding that OBM is not liable for interest on the Central Bank loans and advances during the period of its closure from August 2, 1968 to January 8, 1981.

A R G U M E N T S No Jurisdiction

G. R. No. L-29352 has long been terminated. It is beyond the power of this Honorable Court to reopen it by entertaining COMBANK's Motion for Clarificatory Ruling.

To begin with, COMBANK is not a party in G. R. No. L-29352. Its intervention in the case which has long been closed is thus improper. Moreover, COMBANK's action is predicated on an alleged understanding with CB not to pay interest on previous OBM loans and advances which it assumed. This alleged agreement happened after the termination of G. R. No. L-29352. Consequently, any action premised on such an agreement should be ventilated in a new case. More so when such a case would involve factual questions which can only be resolved by presentation of evidence.

The contract between Central Bank and OBM (COMBANK) should be respected

(a) P63M loans and
advances were
voluntarily contracted by
OBM from CB

Central to the case is the principle of privity of contract. There is no question that OBM voluntarily contracted these P63M loans and advances from Central Bank. They were incurred at various times before OBM was placed under the management of the CB. Nor is there any doubt that it agreed to pay interest on these loans and advances. Indeed these loans and advances substantially helped OBM during the days when it was suffering from problems of financial liquidity. And hence up to this day, OBM has not complained that these loans and advances were involuntary on its part. If this were so, then the relationship between the parties should be governed by their contract and nothing more. So does Article 1159 of the Civil Code provide -

'ART. 1159. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.'

The fact that these loans and advances did not enable the OBM to stabilize its banking business is not material to

their validity. The contract between OBM and CB was not conditioned on this contingency. OBM never contemplated non payment on account of this contingency. Otherwise, OBM would have included that stipulation in the contract. Indeed, during the long years it could not pay, OBM did not invoke this justification.

(b) Payment of these
P63M loans and
advances plus 6%
interest was also
freely negotiated
by COMBANK from
CB

After the collapse of OBM and its Rehabilitation Plan failed, the Central Bank called on interested parties to submit bids to recapitalize and reorganize OBM. The Ramos Group did not participate in the bids. Those who submitted bids carefully examined the assets and liabilities of OBM. A major portion of these liabilities is the P63M loans and advances plus interest from the CB. Hence when IUCP made its successful bid, it agreed to the following terms and conditions as reflected in Resolution 1026 of the Central Bank, to wit:

'x x x x x x x x

'(b). Restructuring of Central Bank advances of P63M into a ten (10) year loan with a one (1) year grace period on principal, with interest at 9-1/2% per annum and secured by the collateral presently held by Central Bank.

'(c). The accrued interest on Central Bank advances shall be at 6% per annum, computed up to the day before the reopening into cumulative, non participating, non convertible preferred shares of the bank earning 6% dividend per annum redeemable lump sum after ten (10) years for which a sinking fund reserve shall be established.

As a consequence of its successful bid, IUCP was able to reorganize the OBM and to engage in commercial banking.

After the conclusion of this agreement, IUCP which became Atrium Capital Corporation, still negotiated for the modification of this obligation with the CB. And to a certain extent, it succeeded when on May 30, 1980, CB approved Resolution No. 1007 subjecting the obligation to a certain contingency, thus:

ACTION TAKEN

The Board decided as follows:

1. To amend Resolution No. 1026 dated May 25, 1979 approving the proposal of the Investment and Underwriting Corporation of the Philippines (IUCP) for the reorganization and recapitalization of the Overseas Bank of Manila (TOBM) so as to:

(a) Add the following provision under Item 5:

'It is understood however that in the event the Supreme Court of the Philippines renders a definitive ruling that, consequential to OBM's cessation of full banking operations since August 1968, OBM is not liable for the payment of accrued interests on its obligations to its secured creditors, OBM shall effect the non accrual of interests conformably with such definitive ruling as well as the consequent cancellation of its preferred shares issued to the nominees of the Central Bank, and the latter shall reimburse OBM for any amount which they may have received arising from the declaration of cash dividend on such preferred shares.

Subsequently however the Commission on Audit informed the Central Bank of a ruling of the Ministry of Justice that a settled liability of the government in excess of P10,000.00 cannot be condoned without legislative approval. Hence, the Central Bank asked Atrium Capital Corporation if it were willing to delete the provision making payment of accrued interest contingent on a definitive ruling of the Honorable Supreme Court on the matter. Atrium agreed to the deletion of the provision. The agreement was contained in a letter dated January 5, 1981 sent to the Central Bank by the President of Atrium Capital Corporation. The necessary effect of the agreement was the restoration of the provision that Atrium would pay 6% interest on the CB loans and advances without any condition whatsoever.

(c) In Assuming OBM obligations under different terms and conditions, COMBANK became new debtor under the rule of novation

Under Article 1291 of the Civil Code, obligations may be modified by:

- (1) Changing their object or principal conditions;
- (2) Substituting the person of the debtor;
- (3) Subrogating a third person in the rights of the creditor.

Indeed, it was pursuant to its assumed obligation under a new contract (recapitalization and reorganization) and as new debtor that on April 13, 1981 COMBANK paid to Central Bank the sum of P96,786.70 as partial interest from August 1, 1968 to January 7, 1981 of the P63M advances of Central Bank to OBM. All these show that it is the intention of the parties to regulate their relationship by the terms and conditions of their contract. COMBANK cannot renege on its contractual commitment on the basis of a court decision which was never contemplated by the parties and whose applicability is dubious.

(d) Contract to pay 6% interest is not against public policy and hence should be respected

It is absurd for COMBANK even to suggest that its obligation to pay 6% interest on the Central Bank loans and advances is against public policy and morals. What is illegal and immoral is for private parties to seek loans and advances from government without intention of paying interest. More so when the loans and advances were used to cover up their own financial mismanagement. For Central Bank officials to extend loans and advances without collaterals and without interest is violation of the graft law.

Well to note, even this Honorable Court approved the legality of the obligation of OBM to pay CB 6% interest on the latter's loans and advances. For this obligation was included in the Rehabilitation Plan of OBM, thus -

1.6. OBM's liabilities to CB shall be restructured over a period of fifteen (15) years and shall bear interest of not less than

six per cent (6%) per annum.

and in its resolution dated October 23, 1974, the Honorable Court approved the same. This is the same obligation assumed by IUCP, which became Atrium Capital Corporation, and by COMBANK. And if the obligation bears the sanction of the Supreme Court it is inconceivable how it can now be attacked as against public policy.

TAPIA case
is inapplicable

(a) The Central Bank is a
secured creditor, differently
situated as the depositor
in the Tapia case

It cannot be disputed that the loans and advances which were extended by the Central Bank to the then OBM were all secured by mortgages of real properties. These securities were required by law since under the Central Bank Charter (RA 265), as amended, the Central Bank is not allowed nor authorized to extend loans and advances without any security. More particularly, said loans and advances were in the form of emergency loans and advances under Sec. 90 of the Central Bank Act which, prior to its amendment and at the time said loans and advances were extended by the Central Bank to OBM, provided as follows:

'SEC. 90. Emergency loans and advances. -- In period of emergency or of imminent financial panic which directly threaten monetary and banking stability, the Central Bank may grant banking institutions extraordinary advances secured by any assets which are defined as acceptable security by a concurrent vote of at least five (5) members of the Monetary Board. While such advances are outstanding, the debtor institution may not expand the total volume of its loans or investments without the prior authorization of the Monetary Board.'

As a secured creditor, the rights of the Central Bank are different as compared to the rights of a creditor who is unsecured. Jurisprudence, both foreign and local, supports this view; and even under the pertinent provisions of the Civil Code of the Philippines governing preference of credits (Art. 2236, et. seq.), secured credits are treated differently from unsecured credits in terms of preference over properties of a debtor. Similar provisions exist in the Insolvency Law under which creditors having a mortgage over real properties of the debtor are granted certain rights not extended to unsecured creditors. Under Sec. 59 of said Insolvency Law, as amended, the right of a creditor to go against the security or mortgage for purposes of obtaining satisfaction on the obligation of the debtor secured thereby is expressly recognized.

The foregoing provisions of law thus expressly recognize the difference which exists between the rights of a secured creditor as against an unsecured one; for, it goes without saying, the entire system of law governing pledge, mortgage and other collateral transactions would become meaningless if, after all, the pledgee, mortgagee or secured creditor would have no better rights as compared to an unsecured creditor.

The relevance of all the foregoing to the present question brought before this Honorable Court may be seen from its statement in the Tapia case where it stated that:

'Parenthetically, x x x the same formula that exempts petitioner from the payment of interest to its depositors during the whole period of factual stoppage of its operations x x x should be, as a matter of consistency, applicable or followed in respect to all other obligations of petitioners which could not be paid during the period of its actual complete closure.' (Italics ours)

It is respectfully submitted that since respondent Central Bank was (and still is) a secured creditor of OBM, said respondent can not really be classified nor included among the creditors of OBM (referred to in aforequoted

ruling) 'which could not be paid during the period of OBM's actual closure.' Like other secured creditors, CB could have foreclosed on the mortgages and thereby obtained payment not only of the principal of the loans and advances obtained by OBM, but also of interests which have accrued thereon. These mortgages were in fact executed pursuant to aforementioned Section 90 of the Central Bank Act precisely to secure payment of CB advances to OBM.

(b). Payment of interest on CB
loans and advances stipulated
in OBM Rehabilitation Program

One of the premises considered by this Honorable Court in the Tapia case in ruling that OBM depositors are not entitled to interest on their deposits during OBM's closure, was that there was nothing in the Rehabilitation Program of OBM which indicated anything to this effect. The pertinent portion of the Tapia ruling reads as follows:

'Nowhere in the above Program is there anything indicating that depositors are entitled to interest. Paragraph 3.4 of the same refers to deposits exclusively. If the Central Bank or the Supreme Court had in mind the payment also of interest on such deposits, either of those authorities would have required clear language to such effect be included in the program. x x x'

Taking this premise into account, and considering further the express stipulations in the Rehabilitation Program of OBM showing the clear intention of the parties therein that interest shall be paid on CB advances which accrued from 1968, it is again very clear that the Tapia ruling should not be held to apply to the case of said CB advances to OBM. Be it emphasized that the Rehabilitation Program of OBM was approved not only by the parties to this case but by the Honorable Court itself.

(c). Tapia involves deposit
and not loans and
advances

The Tapia case involves time deposit. The financial catastrophe that befell OBM was considered by the Court as analogous to a fortuitous event. It was not foreseen by the parties. It was in this light that it was held:

'... 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 case at bar is different. It involves loans and not deposits. Lest it be forgotten, OBM had its own loans to various debtors and these loans were allowed to gain interest. It is thus inequitable to exempt it when it comes to its loans obtained from CB. The Tapia case never contemplated that the OBM should reap two bonanzas - no interest payment on its obligations but with right to collect interest from its debtors. Moreover, it cannot be argued that OBM should be relieved of its obligation to pay interest on its loans because an unforeseen event prevented it from complying with its commitment. At the very most, that may be true in the years 1967 up to 1974. But in October 1974, OBM itself submitted a Rehabilitation Plan to the Central Bank and under the Plan as emphasized it agreed to pay 6% interest per annum on its liabilities to Central Bank (par. 1.6 of the Plan). The Plan was approved by this Court although it failed to materialize. The point however is that even OBM, after a study of its position, agreed to pay this obligation.

When the Rehabilitation Plan of OBM failed, the IUCP entered the picture. It bided to reorganize and recapitalize OBM. It also agreed to assume OBM's obligation to CB, including payment of its interest. This

obligation was also embraced by COMBANK. In other words, neither OBM, IUCP, nor COMBANK can complain of any unforeseen event which would excuse them from turning their backs on their contractual commitments. For when they assumed this obligation, OBM was no longer operating. But they knew that if OBM were infused with fresh capital, and with its huge assets, its reactivation would still be viable and they could profit from the venture. And they were right for COMBANK now is posting profits from its operation.

(d). Tapia is premised on
the assumption that
OBM cannot pay
interest on deposit even
on the foreseeable future

In Tapia, the Court emphasized that ' . . . it is almost vain to expect that within the foreseeable future, it would be in a position to pay in full even at least the deposits themselves, not to mention the interest therein.'

The case at bar is entirely different. There has been a change in the position and predicament of the parties, especially the new party debtors. The old, financially burdened OBM is no longer the obligor. It has been changed by new set of controlling stockholders. Indeed OBM is now COMBANK, led by a different management team and directed by a new set of stockholders. And it cannot be said that COMBANK is not in a position to pay the interest of the loans and advances from Central Bank. On the contrary, it has already started to pay the same as aforestated. Verily, as early as December 31, 1981, or barely a year after operation, COMBANK already posted a net income of P10,256,018.45. After raking this net income, the soundness of COMBANK's posture in refusing to pay interest to the CB is doubtful.

(e). Tapia case does not
prohibit parties from
entering into contract
which will govern their
obligations

The Tapia case was decided more on the basis of equity. But there is nothing in the Tapia decision which forbids parties from freely contracting with each other in order to settle their obligations under mutually acceptable terms and conditions. Otherwise, we shall be obliterating our laws on obligations and contract which simply implement the protection given by our Constitution on the sanctity of property rights.

The case at bar simply involves the sanctity of contract between Central Bank and COMBANK. Primarily as consideration for reorganizing OBM, COMBANK promised to pay Central Bank 6% interest on its previous loans and advances to OBM. The payment of this obligation was unconditional. Precisely, COMBANK agreed to the deletion of the condition that payment should depend on any forthcoming court ruling. All that Central Bank prays in this case is for the Court to recognize the principle of the inviolability of contract. He who freely assumes an obligation should not be allowed to repudiate his promise. *Commodum ex injuria sua nemo habere debet* or no one ought to be a gainer by his own wrong.

(f). The Tapia ruling is
not a definitive ruling
decisive of the rights
of CB and the obligation
of COMBANK

It is stated in the Resolution of this Honorable Court that MB Resolution No. 1007 was adopted on May 30, 1980 with the following provision:

'It is understood, however, that in the event the Supreme Court of the Philippines renders a definitive ruling that, consequential to OBM's cessation of full banking operations since August, 1968, OBM is not liable for the payment of accrued interest on its obligations to its secured creditors, OBM shall effect the non-accrual of interests conformably with such definitive ruling, as well as the consequent cancellation of its preferred shares issued to the nominees of the Central Bank, and the latter shall reimburse OBM for any amount which they may have re-ceived arising from the declaration of cash dividends on such preferred shares.'

It was also mentioned that said MB Res. No. 1007 (which was by way of amendment to MB Res. No. 1026 where the reorganization and recapitalization of OBM was approved) was 'deleted on January 5, 1981, a few days before the scheduled reopening of the bank'; and that COMBANK has maintained that this deletion 'amounted to a waiver merely of the automatic application by the Central Bank in its favor of the favorable definitive ruling x x x, as against the Central Bank's contention in its Comment that the effect of the deletion of the abovequoted Resolution No. 1007 was to restore the condition contained in the previous Central Bank Resolution No. 1026 dated May 25, 1979 provided for the payment of 6% interest on Central Bank advances'.

Respondent maintains its position that the deletion of abovequoted Resolution No. 1007 brought back the parties (CB and the IUCP Group) to the original terms and conditions which existed under MB Res. No. 1026 dated May 25, 1979. However, even if it were to be assumed, for the sake of argument, that said deletion amounted to a mere waiver 'of the automatic application by the Central Bank' of the ruling, on OBM's non-liability for payment of interest during the period of its closure, it is respectfully submitted that the Tapia case is not, nor should it be considered to be, the definitive ruling contemplated under aforequoted MB Res. No. 1007. It may be noted that aforequoted MB Res. No. 1007 explicitly refers to and mentions a 'definitive ruling that, consequential to OBM's cessation of full banking operation since August, 1968, OBM is not liable for the payment of accrued interest on its obligations to its secured creditors x x x'. The Tapia case did not involve an obligation of OBM to a secured creditor, nor was there any categorical ruling therein that OBM shall not be liable for interest on its obligations to secured creditors which accrue during the period of its closure. Under such circumstances, therefore, there would be no basis to say that, even on the basis of MB Res. No. 1007, CB and COMBANK are bound by the Tapia ruling.

A FINAL WORD

Equity belongs
to Central Bank

The IUCP/Herdis Group representing the controlling interest in COMBANK, has recently sold or transferred the ownership of COMBANK to the GSIS. Again, the interest on CB advances was the subject of their agreement. In the contract of such sale, the IUCP/Herdis Group agreed to place in escrow at Interbank the amount of P47.2 million purposely to insulate GSIS from any liability with respect to payment of such amount by way of interest on CB advances. Factually, therefore, if the Supreme Court rules that COMBANK is liable for such interest, said amount placed in escrow will ultimately be used for the payment of said interest.

On the other hand, if the Supreme Court finally rules that COMBANK is not liable to pay accrued interest on its obligations, said amount will simply go to the IUCP/Herdis Group. The Ramos Group will also be benefited because it had agreed with the IUCP/Herdis Group to shoulder 50% of the total accrued interest payable to CB and PNB. Such a ruling would, therefore, release the Ramos Group from reimbursing P23.5 million to the IUCP/Herdis Group. (If the accrued interest on the loans of the Ramos Group from PNB is similarly decided, the Ramos Group will likewise be released from paying P13.75 million to the Herdis Group).

In a nutshell, the Ramos Group was directly responsible for the downfall of OBM; and yet, it would seem that the Ramos Group has benefited at every turn while the depositors and creditors of OBM have suffered.

Point One: The Ramos Group was able to utilize since the late '60s a considerable sum in the amount of P37.1 million irregularly channeled from OBM to the Ramos interests. The bulk of this amount represented the depositors' money. This amount has not been paid by the Ramoses.

Point Two: The Ramos Group was also able to utilize another considerable sum in millions from the unrecorded deposits diverted to the COFICO account and withdrawn by COFICO officers (Ramos people). Again, this money came from innocent depositors and creditors of OBM.

Point Three: The Ramos Group was able to sell what evidently were worthless OBM shares (shares which became worthless because of irregularities committed by the Ramos Group itself).

Point Four: The Ramos Group was not only able to restructure payment of their long overdue obligations to OBM, but also obtained a commitment from the IUCP Group for the waiver from COMBANK of all interests which accrued thereon during the period of OBM closure. This amounted to around P45.59 million.

Point Five: The Ramos Group which apart from the price of its OBM shares, made it a condition to be appointed as the exclusive selling agent of the bank's acquired assets, was able to realize P1.175 million from COMBANK (as well as release from its guaranty to sell the bank's acquired assets for P138 million), when COMBANK decided to cancel the selling agency appointment.

Point Six: The Ramos Group, as part of the terms of the sale of its OBM shares, was able to obtain a P16 million loan from COMBANK, subject to CB approval.

Point Seven: The Ramos Group, notwithstanding all the foregoing, have retained all their mortgaged properties which have since then skyrocketed in value.

Point Eight: If this Honorable Court decides finally that COMBANK is not liable for interest on CB advances, the Ramos Group would still be further benefited to a further amount of P23.5 million which it had committed to pay in relation to the interest in question.

Ironically, the principal losers in all the foregoing are the innocent depositors of OBM (whose deposits were siphoned off to the Ramos interests) who were not able to use their money for more than a decade -- and more ironically, appear to have lost the earnings on their deposits. In the same boat as the depositors are the creditors of OBM whose only mistake was to extend credit to, or invest in, OBM at the time OBM needed funds.

But no matter how anyone looks at it, the CB did extend financial assistance to OBM. This cannot be denied. The funds used were public funds. This also cannot be denied. The borrower has recognized its obligation and is ready to pay interest as in fact it has already partially paid the same. Indeed, there would have been no COMBANK to speak of if the CB had decided to liquidate OBM, which it could have legally done after the Rehabilitation Plan failed. OBM creditors could have garnered all the bank's assets. And yet, these creditors, just like the depositors, seemingly get penalized instead, while the persons responsible for OBM downfall gain and profit.

P R A Y E R

WHEREFORE, it is respectfully prayed that the Resolution of this Honorable Court dated October 19, 1982 be reconsidered and set aside. Movant reiterates its prayer in its Comment dated May 25, 1982 and prays for such other reliefs as may be proper under the pre-mises."

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