

**FRANCISCO S. HERNANDEZ and JOSEFA U. ATIENZA.
plaintiffs-appellees, vs. RURAL BANK OF LUCENA, INC., CENTRAL BANK
OF THE PHILIPPINES, in its capacity as Liquidator of Rural Bank ...**

G.R. No. L-29791. January 10, 1978

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the propriety of a separate action to compel a distressed rural bank, which is under judicial liquidation, to accept a check in payment of a mortgage debt. The facts are as follows:

On March 21, 1961 the spouses Francisco S. Hernandez and Josefa U. Atienza obtained from the Rural Bank of Lucena, Inc. a loan of P6,000 which was payable on March 21, 1962. The loan was secured by a mortgage on their two lots situated in Cubao, Quezon City with a total area of 600 square meters. The interest for one year was paid in advance.

About three months after that loan was obtained, the Lucena bank became a distressed bank. In a letter dated June 16, 1961 the Acting Governor of the Central Bank apprised the stockholders of the Lucena bank that the Monetary Board in its Resolution No. 928, which was approved on June 13, 1961 allegedly after hearing the Lucena bank, found that its officers, directors and employees had committed certain anomalies or had resorted to unsound and unsafe banking practices which were prejudicial to the government, its depositors and creditors.

The Monetary Board advised the stockholders to reorganize the Lucena bank by electing a new board of directors and it directed that bank (a) not to grant new loans or renewals; (b) not to accept deposits from new depositors; (c) to service only the existing deposit accounts and (d) not to issue drafts or make any disbursements without the prior approval of Central Bank examiners.

The Monetary Board gave the warning that, if its directives were not obeyed, the Central Bank would take over the management of the Lucena bank.

The Central Bank Governor informed the Lucena bank that the chief examiner of the department of rural banks would oversee the operations of the Lucena bank.

That letter of the Central Bank Governor was construed as a directive to the Lucena bank to suspend operations. The Manila Times in its issue of June 21, 1961 carried a news story with the heading "Bank told to suspend operations." The story was accompanied by a picture of depositors who jammed the lobby of the bank trying to withdraw their money.

Instead of bowing to the will of the Monetary Board, the Lucena bank and its board of directors filed with the Court of First Instance of Manila a complaint dated June 21, 1961 seeking to restrain the implementation of Resolution No. 928 (Civil Case No. 47345).

Before the expiration of the one-year term of the loan, or on August 22, 1961, Hernandez went to the Lucena bank

and offered to pay the loan by means of a check for P6,000 dated August 8, 1961 which was drawn against the bank by a depositor, the San Pablo Colleges, and which was payable to Hernandez. As the bank's executive vice-president was not available, the payment was not consummated.

At the time that the check was issued, the San Pablo Colleges had a deposit in the Lucena bank amounting to P11,890.16 (27 tsn, April 25, 1966). Instead of withdrawing P6,000 from that deposit, the San Pablo Colleges chose to issue a check for that amount to Hernandez. It is not clear whether in August, 1961 the San Pablo Colleges could make a withdrawal from its deposit-in the Lucena bank.

On the following day, August 23, Hernandez sent to the bank by registered mail a photostat of the check and a letter inquiring whether the bank would honor the check and when he could go personally to the bank for that purpose. That letter was received by the bank on August 29.

On August 30, the executive vice-president wrote to Hernandez and informed him that the check could not be honored for the time being because of adverse events that had disrupted the bank's operations. What the vice-president meant was that by-reason of the letter of the Central Bank Governor dated June 16, 1961 the operations of the Lucena bank were suspended (6 tsn, August 15, 1966).

The vice-president explained that because there was a run on the bank its assets were exhausted, and so the check sent by Hernandez, which check was drawn against the Lucena bank, could not be accepted (16, 21-24 tsn, August 15, 1966).

The vice-president said that when Hernandez presented the check, the Lucena bank was no longer in a position to honor withdrawals and that had Hernandez paid cash, his payment would have been accepted. To honor the check would have been tantamount to allowing a depositor (San Pablo Colleges) to make a withdrawal but the Lucena bank could not entertain withdrawals without the consent of the Central Bank examiners (26-28 tsn). Payment by check was a disbursement (31 tsn).

Apparently, the vice-president did not take the trouble of asking the Central Bank examiners whether the payment by check made by Hernandez could be accepted. Hernandez himself, who should have known that the bank was a distressed bank which had suspended operations and which was under the supervision of Central Bank examiners, did not bother to take up his problem with the said examiners.

Hernandez, in his letter of October 18, 1961, again asked the bank when he could deliver the check. The executive vice-president, in his reply of October 24, told Hernandez that the bank could not yet honor the check because it had not resumed its banking operations; that it was awaiting the outcome of a case filed by the bank against the Central Bank; that it might reopen in January, 1962, and that, anyway, the loan would not be due until March 21, 1962.

Hernandez sent another letter dated February 1, 1962. Finally, he enclosed the original check (duly endorsed) with his letter to the bank dated March 7, 1962, which was sent by registered mail and special delivery. That letter of March 7, together with the check, was returned to Hernandez because the bank's manager was allegedly in Manila. Undeterred, Hernandez again mailed the check to the bank on April 25, with the request that his mortgage be cancelled.

In the meantime, the Monetary Board had decided to liquidate the Lucena bank. The Governor of the Central Bank in a letter dated February 8, 1962 enjoined the Lucena bank from transacting business and advised it to turn over its assets, documents and records to the chief bank examiner. The bank building was sealed.

The following notice was posted at the entrance of the building:

"This bank is temporarily closed pending final decision of the courts as to its status. Payments of loans will be accepted; meanwhile, no payments of withdrawals against deposits can be made. Please transact business with the Central Bank's representatives only."

To head off the liquidation, the Lucena bank filed with the Court of First Instance of Lucena City a complaint dated February 12, 1962, praying that the Central Bank be enjoined from liquidating the said bank. On February 14, the court issued an ex parte preliminary injunction which it dissolved ten days later (Civil Case No. 6471; Rural Bank of Lucena, Inc. vs. Arca, L-21146, September 20, 1965. 15 SCRA 66).

On February 14, 1962 the Manila court rendered a decision in Civil Case No. 47345, restraining the enforcement of the Monetary Board resolution, which required the Lucena bank to undertake a reorganization and to curtail its operations. The Central Bank appealed. (This Court reversed that decision and the complaint for injunction. Rural Bank of Lucena, Inc. vs. Central Bank, L-19621, November 29, 1969, 30 SCRA 628).

To implement the resolution of the Monetary Board for the Liquidation of the Lucena bank, the Central Bank, pursuant to Section 29 of its charter and on the assumption that the Lucena bank was insolvent, filed with the Court of First Instance of Manila a petition dated March 27, 1962 for assistance and supervision in the liquidation of the Lucena bank (Civil Case No. 50019).

Acting on that petition, the Court of First Instance of Manila issued an order dated March 28, 1963, directing the Lucena bank to turn over its assets to the Central Bank's authorized representative.

The Monetary Board in its Resolution No. 426 dated April 2, 1963 designated the Superintendent of Banks or his duly authorized representative to take charge of the assets of the Lucena bank.

The Board in its resolution of November 27, 1963 ordered the Superintendent of Banks to convert the assets of the Lucena bank to money. The Lucena bank, by means of certiorari sought to annul the liquidation proceeding. This Court denied its petition (Rural Bank of Lucena, Inc. vs. Arca, L-21146, September 20, 1965. 15 SCRA 66).

Among the accounts receivable of the Lucena bank inventoried by the Central Bank's representative was the account of Hernandez. In a letter dated October 29, 1963 Hernandez informed the Central Bank that he had sent to the Lucena bank on April 25, 1962 the check for P6,000. He again requested that his mortgage be cancelled.

The Associate Superintendent of Banks in his answer dated December 9, 1963 returned the check to Hernandez and informed him that, according to the Lucena bank's executive vice-president, the check could not be applied to the payment of Hernandez' loan because the bank was already closed when he received the check. Moreover, the check was drawn against the current deposits of the San Pablo Colleges in the Lucena bank which was in the process of liquidation. Hernandez was advised to settle his account by paying cash or by means of a check drawn against a bank other than the Lucena bank.

Disregarding that suggestion, Hernandez announced to the Associate Superintendent of Banks in his letter of December 16, 1963 that he was going to deposit the said check in the Court of First Instance of Lipa City on or before December 26, 1963.

Instead of filing a consignment complaint Hernandez enclosed the check with his letter dated January 2, 1964 to the clerk of court of the Court of First Instance at Lipa City. That letter was received in court on January 6, 1964. Hernandez wrote a letter dated January 11, 1964 informing the Associate Superintendent of Banks of the judicial deposit of the check. Copies of that letter were furnished the Lucena bank and the San Pablo Colleges.

It was only on October 12, 1964 when Hernandez and his wife filed an action in the Court of First Instance at Lipa City to compel the Rural Bank of Lucena, Inc., the Central Bank as liquidator, and Jose S. Martinez as

receiver, to accept the check and to execute the cancellation of the real estate mortgage. The Flerandez spouses also asked for moral damages in the amount of P10,000 and attorney's fees of P3,000 (Civil Case No. 1615).

On October 20, 1964 the Central Bank filed a motion to dismiss. It contended that there was improper venue because, as the action allegedly involved title to real property, it should have been instituted in Quezon City where the encumbered lots are situated. It further contended that since the Lucena bank is under liquidation and is in the hands of a receiver, its properties and assets are in custodia legis and may, therefore, be reached only by motion or petition in Civil Case No. 50019 of the Court of First Instance of Manila. The motion was denied.

To complete the facts, it should be stated that the counsel for the Lucena bank on January 30, 1967 offered to compromise the case by stipulating that the Central Bank would apply the check in question to the mortgage debt of Hernandez if the balance of the deposit of the San Pablo Colleges would be enough to cover the amount of the check of P6,000 and that, by virtue of that compromise, the complaint and counterclaim" would be dismissed.

That conditional and equivocal compromise offer fizzled out because the lawyers of Hernandez and the Central Bank did not assent to it.

After trial, the lower court rendered an amended decision dated October 31, 1967, ordering the Lucena bank or the Central Bank, as liquidator, to accept and honor the check, to cancel the mortgage, and to pay the Hernandez spouse P25,000 as moral damages (not P10,000 as prayed for in the complaint) plus P1,000 as attorney's fees.

The Lucena bank, the Central Bank and its employee, the receiver, appealed to this Court.

The Central Bank contends that the trial court erred (1) in not holding that the venue was improperly laid; (2) in not holding that it had no jurisdiction because the Hernandez spouses should have ventilated their claim in the liquidation proceeding pending in the Court of First Instance of Manila, instead of filing a separate action in the Court of First Instance at Lipa City; (3) in not holding that there was no valid consignment; (4) in awarding moral damages and attorney's fees, and (5) in ordering execution pending appeal in spite of the fact that the assets of the Lucena bank are in custodia legis or in the custody of the liquidation court and the receiver appointed by it.

On the issue of venue, defendants-appellants contend that the action of the Hernandez spouses to compel them to honor the check in question and to cancel the mortgage on their two lots is a real action affecting title to real property which should have been filed in the Court of First Instance of Rizal at Quezon City where the mortgaged lots are situated.

Section 2(a), Rule 4 of the Rules of Court provides that "actions affecting title to, or for recovery of possession, or for partition or condemnation of, or foreclosure of mortgage on, real property, shall be commenced and tried in the province where the property or any part thereof lies."

Note that the rule mentions an action for foreclosure of a real estate mortgage but does not mention an action for the cancellation of a real mortgage. In the instant case, the action is primarily to compel the mortgagee to accept payment of the mortgage debt and to release the mortgage.

That action, which is not expressly included in the enumeration found in Section 2(a) of Rule 4, does not involve the title to the mortgage lots. It is a personal action and not a real action. The mortgagee has not foreclosed the mortgage. Plaintiffs' title is not in question. They are in possession of the mortgaged lots.

Hence, the venue of plaintiffs' personal action is the place where the defendant or any of the defendants resides or may be found, or where the plaintiff or any of the plaintiffs resides, at the election of the plaintiff (Sec. 2[b], Rule 4).

The plaintiffs in their brief confound a real action with an action in rem and a personal action with an action in

personam. They argue that their action is not an action in rem and, therefore, it could be brought in a place other than the place where the mortgaged lots are located.

A real action is not the same as an action in rem and a personal action is not the same as an action in personam.

In a personal action, the plaintiff seeks the recovery of personal property, the enforcement of a contract or the recovery of damages. In a real action, the plaintiff seeks the recovery of real property, or, as indicated in Section 2(a) of Rule 4, a real action is an action affecting title to real property or for the recovery of possession, or for partition or condemnation of, or foreclosure of a mortgage on, real property.

An action in personam is an action against a person on the basis of his personal liability, while an action in rem is an action against the thing itself, instead of against the person (1 C. J. S. 943-4). Hence, a real action may at the same time be an action, in personam and not necessarily an action in rem.

In this case, the plaintiffs alleged in their complaint that they were residents of San Juan, Batangas, which in their brief they characterize as their legal residence and which appears to be their domicile of origin.

On the other hand, it is indicated in the promissory note and mortgage signed by them and in the Torrens title covering the mortgaged lots that their residence is at 11 Chicago Street, Cubao, Quezon City, which apparently is the place where the said lots are located. The plaintiffs did not testify during the trial. So, they have no testimony in the record as to their actual residence.

We hold that the trial court should have dismissed the action because the venue thereof was improperly laid in Batangas. The term "resides" in Section 2[b] of Rule 4 refers to the place of actual residence or the place of abode and not necessarily to the legal residence or domicile (*Dangwa Transportation Co., Inc. vs. Sarmiento*, L-22795, January 31, 1977, 75 SCRA 124, 128). (Of course, the actual residence may also in some cases be the legal residence or domicile.)

San Juan, Batangas might be the place where the plaintiffs have their domicile or legal residence but there is no question that 11 Chicago Street, Cubao, Quezon City is their place of abode or the place where they actually reside. So, the action in this case, which is a personal action to compel the defendants to honor the check in question and to cancel the mortgage, should have been filed in Quezon City if the plaintiffs intended to use their residence as the basis for their choice of venue.

Thus, it was held that venue was improperly laid in a case where plaintiff Jose Coloma filed a complaint in the Court of First Instance of Ilocos Norte, because he was allegedly a resident of San Nicolas, Ilocos Norte, where he was born and reared, but his actual residence was at 57 K-6th Kamias, Quezon City or at 486 Barangka Drive, Mandaluyong, Rizal (*Koh vs. Court of Appeals*, L-40428, December 17, 1975, 70 SCRA 298).

In *Garcia Fule vs. Court of Appeals*, L-40502, November 29, 1976, 74 SCRA 189, it was held that an intestate proceeding for the settlement of the estate of the deceased Amado G. Garcia was improperly filed in the Court of First Instance of Laguna. The deceased was allegedly domiciled in Calamba, Laguna. He was a delegate of the first district of Laguna to the constitutional convention. However, at the time of his death, he was actually a resident of Quezon City. Hence, the proper venue of the intestate proceeding was Quezon City.

In the foregoing discussion, it is assumed that the plaintiffs could bring a separate action to compel the defendants to honor the check in question in spite of the fact that the Lucena bank is under liquidation in Civil Case No. 50019 of the Court of First Instance of Manila.

The Central Bank contends that such a separate action was not maintainable and that the Hernandez spouses should have ventilated in the liquidation proceeding their claim that they had already paid their mortgage debt by

means of the check issued by the San Pablo Colleges and that their mortgage should be cancelled.

The Central Bank points out that the redemption action of the Hernandez spouses would ultimately affect the funds and properly of the Lucena Bank. Hence, the liquidation court is the competent tribunal to pass upon the issue as to whether the Hernandez spouses could validly pay their mortgage debt by means of the check of the San Pablo Colleges.

On the other hand, the Hernandez spouses argue that their action in the Court of First Instance at Lipa City "deals with a sum of money which is still not in the possession, custody and administration" of the Central Bank and the receiver; that their action had "nothing to do with the funds and property" held by the receiver; that the Lucena bank had not lost its juridical personality after it was placed under liquidation, and that the issue as to whether the Lucena bank should have accepted the check in question was "not in anyway connected with the causes and grounds under which the liquidation proceedings were instituted nor with the administration of the properly and funds under liquidation."

Those contentions of the Hernandez spouses are untenable. The trial court did not rule squarely on the jurisdictional issue raised by the Central Bank and the receiver.

We hold that the liquidation court or the Manila court has exclusive jurisdiction to entertain the claim of the Hernandez spouses that their mortgage obligation had already been extinguished by means of their tender of the check issued by the San Pablo Colleges.

At the time the Hernandez spouses filed in 1964 their consignment complaint the Lucena bank was already under liquidation. The Manila court in its order of March 28, 1963 had ordered the officers of the Lucena bank to turn over to the Central Bank or to the receiver, the Superintendent of Banks, all of its assets, properties and papers. Among the assets turned over to the receiver was the outstanding or unpaid account of the Hernandez spouses which appears in the inventory as: "393. Hernandez, Francisco S., 11 Chicago St., Cubao, Q. C., TCT-34262 - 3/21/61, P6,000.00" (Lxh. 4-CB).

And among the papers or obligations turned over to the receiver was Ledger No. 056 evidencing the deposit of the San Pablo Colleges in the Lucena bank in the sum of P11,890.16, against which the check for P6,000 was drawn. It was that check which the Hernandez spouses had issued to pay their mortgage debt to the Lucena bank.

Under Section 29 of the Central Bank Act, Republic Act No. 265, when the Monetary Board, upon information submitted by the Superintendent of Banks, finds a bank to be insolvent, it shall forbid the bank to do business and it shall take care of its assets according to law.

In that case, if the Monetary Board finds out that the insolvent bank cannot resume business with safety to its creditors, it shall, through the Solicitor General, file a petition in the Court of First Instance, praying for the assistance and supervision of the court in the liquidation of the bank's affairs. Thereafter, the Superintendent of Banks, upon order of the Monetary Board and under the supervision of the court, shall convert to money the bank's assets. "Sabido es que uno de los deberes primordiales de un depositario es hacerse cargo inmediatamente de todo el activo y pasivo de un banco" (Luy Lam & Co. vs. Mercantile Bank of China, 71 Phil. 573, 576).

The fact that the insolvent bank is forbidden to do business, that its assets are turned over to the Superintendent of Banks, as a receiver, for conversion into cash, and that its liquidation is undertaken with judicial intervention means that, as far as lawful and practicable, all claims against the insolvent bank should be filed in the liquidation proceeding.

The judicial liquidation is intended to prevent multiplicity of actions against the insolvent bank. 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 control his operations.

In the course of the liquidation, contentious cases might arise wherein a full-dress hearing would be required and legal issues would have to be resolved. Hence, it would be necessary in justice to all concerned that a Court of First Instance should assist and supervise the liquidation and should act as umpire and arbitrator in the allowance and disallowance of claims.

The judicial liquidation 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.

Thus, in the liquidation before the war of the insolvent Mercantile Bank of China, various claims were adjudicated by the liquidation court, which was the Court of First Instance of Manila, pursuant to Section 1639 of the Revised Administrative Code, from which Section 29 of the Central Bank Law was taken. (See *In re Liquidation of Mercantile Bank of China: Tan Tiong Tick vs. American Apothecaries Co.*, 65 Phil. 414; *Pacific Coast Biscuit Co. vs. Chinese Grocers Association*, 65 Phil. 375; *Fletcher American National Bank vs. Ang Cheng Lian*, 65 Phil. 385; *Pacific Commercial Co. vs. American Apothecaries Co.*, 65 Phil. 429; *Gopoco Grocery vs. Pacific Coast Biscuit Co.*, 65 Phil. 443; *Chinese Grocers' Association vs. American Apothecaries Co.*, 65 Phil. 395; and *Yu Ping Kun*, 65 Phil. 410).

There is a ruling that, although the taking over of a bank by state officials for liquidation does not dissolve the bank, a court has no jurisdiction (after such takeover) to entertain an action or to render a judgment against the bank (9 C.J.S. 852, note 38 citing *Bushnell vs. F. W. Woolworth Co.*, 241 Pac. 738 12 Okl. 297; *Slate vs. Quigley*, 220 Pac. 918, 93 Okl. 296).

It has been held that an insolvent bank, which was under the control of the finance commissioner for liquidation, was without power or capacity to sue or be sued, prosecute or defend, or to otherwise function except through the finance commissioner or liquidator (*Wauer vs. Bank of Pendleton*, 65 S. W. 2nd 167, 228 Mo. App. 1 150).

Suits brought against a bank after the issuance of a notice that the finance commissioner has taken possession of the bank should be dismissed or are barred for want of jurisdiction (*Rouse vs. Bank of Darlington*, 41 S. W. 2nd 159; *Bartlett vs. McCallister*, 289 S. W. 814. 316 Mo. 129).

This Court has already held that after a savings bank was declared insolvent by the Monetary Board, a depositor could not bring a separate action against it for the recovery of his time deposit. His remedy is to intervene in the liquidation proceeding (*Centra! Bank of the Philippines vs. Morfe*, L-38427, March 12, 1975, 63 SCRA 144).[*]

In the instant case, the Hernandez spouses, after having become cognizant of the fact that the Lucena bank was under liquidation, chose to file a separate action against that bank for redemption and damages. Although residents of Cubao, Quezon City, where the mortgaged lots are located and which was the address used by them in dealing with the Lucena bank, they chose Lipa City as the venue of their action.

They ignored the liquidation court. Evidently, one of their objectives was to obtain against the Lucena bank a judgment for moral damages which they surmised would not be granted by the Manila liquidation court. They attained more than what they had originally desired because, instead of the moral damages of P10,000 indicated in their complaint, the trial court generously awarded them P25,000.

Not only that. The trial court granted execution pending appeal although it was aware that eventually the claim of the Hernandez spouses would have to be submitted to the liquidation court for allowance. The sheriff could not enforce the writ of execution because the Lucena bank was under liquidation (p. 92, Rollo). Hence, the Hernandez

spouses had to file a claim with the liquidation court. That claim has been pending since September, 1968.

Thus, much time, money and effort would have been saved if at the outset the Hernandez spouses filed their claim in the liquidation court.

WHEREFORE, the trial court's judgment is reversed and set aside. The case is dismissed without prejudice to the right of the Hernandez spouses to take up with the liquidation court the settlement of their mortgage obligation. Costs against the plaintiffs-appellees.

SO ORDERED.

Fernando (Chairman), Barredo, Antonio, and Concepcion Jr., JJ., concur.

Santos, J., is on leave.

[*] On the other hand, the receiver of an insolvent bank under judicial liquidation may in proper cases file separate actions to recover the assets of the bank, such as foreclosure of mortgage or collection cases (De Jesus vs. Go Quiolay, 65 Phil. 476; Garcia vs. Khu Yek Chiong, 65 Phil. 466; Mercantile Bank of China vs. Go Map, 65 Phil. 469; Garcia vs. Ty Cameo Sobrino, 67 Phil. 384; De Jesus vs. Cuan Bee Co. Inc., 72 Phil. 464).

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