

**THE SURIGAO DEVELOPMENT BANK, FELIPE PLAZA CHUA,
MELCHOR AVILA CHUA, LUCIA RAMA LIMCHIU, MARIANELLA G.
RAMA, CELERINA A. CHUA, EUFEMIO. V. DARUNDAY AND BENJAMIN
LOZADA, PETITION...**

G.R. No. L-23577. December 27, 1972

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This is an original petition for certiorari and prohibition with preliminary injunction to annul the order dated January 10, 1964 of the Court of First Instance of Surigao del Norte in its Civil Case No. 1582, granting ex parte the application for receivership of the Republic of the Philippines and the Central Bank of the Philippines, and appointing the herein respondent Superintendent of Banks as receiver pendente lite of the Surigao Development Bank; and to restrain the herein respondents Central Bank of the Philippines and Superintendent of Banks and/or their agents and employees from taking over the business, operations, properties and assets of the petitioner bank and from ousting the other petitioners herein from their rights and offices as directors and officers of said bank. The petitioners also seek the dismissal of Civil Case No. 1582 by reason of the pendency of Civil Case No. 52693[*] in the Court of First Instance of Manila.

In our resolution of October 20, 1964 We denied the motion of the petitioners for the issuance of a writ of preliminary injunction.

The record shows that the Surigao Development Bank (one of the petitioners herein) is a private development bank organized on March 24, 1961 under Section 8 of Republic Act No. 85, as amended by Republic Act No. 2081, in relation to the provisions of Republic Act No. 337 (The General Banking Act) on mortgage banks. Of the bank's capital stock of ONE MILLION PESOS (P1,000,000.00), fifty percent (50%) or P500,000.00, in the form of preferred shares, was subscribed and paid in full by the Development Bank of the Philippines, in accordance with Section 9 of Republic Act No. 85, as amended. The other fifty percent (50%) or P500,000.00, in common shares, was subscribed and paid in full by the following private stockholders (the other petitioners herein):

NAME

POSITION HELD

NO. OF SHARES SUBSCRIBED

AMOUNT PAID

Felipe Plaza Chua

Pres. & Director

400

P200,000.00

Celerina A. Chua

Vice-Pres. & Director

400

200,000.00

Lucia R. Limchiu

Secretary & Director

120

60,000.00

Melchor A. Chua

Treasurer & Director

40

20,000.00

Marianella G. Rama

Director

20

10,000.00

Eufemia V. Darunday

Director

10

5,000.00

Benjamin L. Lozada

Director

10

5,000.00

T O T A L

1,000

P500,000.00

Before the Surigao Development Bank started its operations on April 19, 1961 its paid-up capital of

P1,000,000.00 was deposited with the Pacific Banking Corporation in Manila, which deposit could be drawn upon by checks signed by the depositor's President and Treasurer.

On the other hand, the Central Bank of the Philippines (one of the respondents herein) is a government agency created under Republic Act No. 265 "to administer the monetary and banking system of the Republic," while the Superintendent of Banks (another respondent herein) is the chief of the Central Bank's Department of Supervision and Examination, which is charged with the supervision and periodic examination of all banking institutions operating in the Philippines, including all government credit institutions, in order to assure the observance of Republic Act No. 265 and of other pertinent laws, as well as the rules and regulations of the Monetary Board.

On January 9, 1963 the Development Bank of the Philippines, in its capacity as stockholder of the Surigao Development Bank, instituted in the Court of First Instance of Manila an action, docketed as Civil Case No. 52693, in the nature of a derivative suit against the Surigao Development Bank and the majority of the members of its Board of Directors. The complaint contained two principal causes of action, namely: (1) for accounting and restitution of unexplained shortage in the amount of P555,000.00; and (2) for injunction to stop specified acts of mismanagement or for mandamus to compel the doing of other acts, likewise specified. After making the proper allegations the plaintiff also prayed for the appointment of a receiver pendente lite of the defendant bank. The second cause of action, however, was dismissed upon motion of the defendants.

On January 10, 1963, while the aforementioned Civil Case No. 52693 was still pending, the Central Bank of the Philippines and the Republic of the Philippines initiated the instant case by filing in the Court of First Instance of Surigao del Norte a verified petition denominated as "Proceedings under Sec. 34[*] of Rep. Act No. 265 and for Quo Warranto," and docketed as Civil Case No. 1582, against the Surigao Development Bank and seven (7) members of its Board of Directors, alleging inter alia: that through the petitioner bank's Department of Supervision and Examination an examination of the books and operations of the Surigao Development Bank was conducted as early as September 12, 1961; that in connection with said examination the Acting Superintendent of Banks wrote respondents Felipe Plaza Chua and Melchor Chua, President and Treasurer, respectively, of the Surigao Development Bank, and its Board of Directors, requesting them to authorize the Pacific Banking Corporation of Manila to furnish the Central Bank of the Philippines with a certified or photostatic copy of the demand deposit transaction of the Surigao Development Bank, but the respondents did not comply with the request; that on October 12, 1961 the Acting Superintendent of Banks again wrote respondents Felipe Plaza Chua, Melchor A. Chua and Lucia R. Limchui, requesting them to call at his office in connection with the examination of the books and operations of respondent bank, but nobody complied with the request; that after the examination the, Acting Superintendent of Banks wrote a letter, dated December 28, 1961, to the Board of Directors of the respondent bank, through its President, enumerating numerous violations and irregularities in the banking operations and activities of said bank and requesting comment on each of the findings and recommendations therein contained, but respondents completely ignored and disregarded the same; that the Superintendent of Banks wrote another letter dated March 6, 1962 to respondent Felipe Plaza Chua, calling attention to the serious and grave matters relative to the affairs and financial condition of the Surigao Development Bank and giving him up to March 25, 1962 to submit his comment and/or explanation on each of the matters treated therein;[*] that on March 16, 1962 respondent Felipe Plaza Chua wrote a letter to the Superintendent of Banks, purportedly a reply to the letter of March 6, 1962 but containing no comment and/or explanation with respect to the serious irregularities and anomalies pointed out in the letters of December 28, 1961 and March 6, 1962; that on July 3, 1962 the Superintendent of Banks sent a memorandum to the Monetary Board of the Central Bank of the Philippines, through the Governor, enumerating his findings concerning the irregularities and anomalies above referred to; that upon the recommendation of the Superintendent of Banks, the Monetary Board adopted Resolution No. 793;[*] that the respondents did not comply with paragraphs 1, 2 and 5 of said Resolution No. 793

but instead requested reconsideration thereof; that in his memorandum to the Monetary Board, dated October 15, 1962, the Superintendent of Banks recommended that the respondents' request for reconsideration be denied; that acting favorably upon said recommendation the Monetary Board adopted Resolution No. 1281[*] dated October 30, 1962; that said resolution was transmitted to the respondent Felipe Plaza Chua as President of the respondent bank in a letter dated November 15, 1962; that because of the numerous violations of respondent bank's charter and by-laws, of the laws as well as the Central Bank's orders, instructions, rules and regulations committed by respondent officials and directors, and of the unlawful and unsafe manner of conducting its business operations, the respondent bank had unnecessarily incurred risks and had in fact suffered losses tending to undermine the stability of its operations and even its solvency; that notwithstanding repeated demands made by the petitioner upon respondents, they had failed and refused to comply with the resolutions of the Monetary Board and to correct the irregularities discovered during the examination of respondent bank's books and operations, and instead had continued its banking operations in an unlawful and unsafe manner, all contrary to existing banking laws and regulations, particularly Section 34 of Republic Act No. 265 in relation to Sec. 2, Rule 66 of the Rules of Court; that in view of the said irregularities, especially the misappropriation of the sum of P555,000.00 which had been illegally withdrawn by respondents Felipe Chua and Melchor A. Chua, the respondent bank was insolvent or was in imminent danger of insolvency; and that although the operations and activities of the respondent bank were being overseered by the representatives of the petitioner the most convenient and practical manner whereby the property and/or funds of the respondent bank, which were in danger of being lost, removed, or materially wasted, might be gathered and preserved was the appointment of a receiver upon filing of the action. The petitioners, therefore, prayed that:

"I. Upon the filing of this petition appoint the Superintendent of Banks as receiver pendente lite in accordance with Rule 59 of the New Rules of Court, upon the filing of a nominal bond of P500.00; and

"II. After hearing and trial this Honorable Court render decision against the respondents -

"a. Compelling the respondent to comply with paragraphs 1, 2 and 5 of the Resolution of the Monetary Board (Annex H) as further reiterated in the subsequent resolution (Annex L), in accordance with the recommendation of the Superintendent of Banks in his Memorandum dated July 3, 1962 and October 15, 1962 (Annexes G and K hereof);

"b. Authorizing the Monetary Board of petitioner Central Bank of the Philippines to direct the Superintendent of Banks to liquidate all the business of Surigao Development Bank;

"c. That since the facts and circumstances alleged in the petition clearly prove that the respondent Surigao Development Bank has misused its rights, privileges and franchise in contravention of law, declaring that said respondent Bank be as it is hereby declared dissolved; and

"Adjudging respondents to pay costs."

On the same day, January 10, 1963, the respondent Judge issued an order in open court giving due course to the petition. Said order reads as follows:

"This is a verified petition filed by the Republic of the Philippines and Central Bank of the Philippines against the Surigao Development Bank and Felipe Plaza Chua and Melchor Avila Chua, President and Treasurer, respectively of the said Bank, and the other members of the Board of Directors of the said Bank, as respondents, praying, among others, to authorize the Monetary Board of petitioner Central Bank of the Philippines to direct the Superintendent of Banks to liquidate all the business of the respondent Surigao Development Bank, if that should become imperative by the evidence to be adduced, because of serious violations of its Charter and by-laws committed by the said respondents, especially by respondent President and Treasurer of the said Bank, among which is the failure to refund the amount of P555,000.00 illegally

withdrawn by said respondent President and Treasurer of said respondent Surigao Development Bank from its depository, the Pacific Banking Corporation, despite repeated requirement made to that effect by the Superintendent of Banks of petitioner Central Bank of the Philippines; that the said respondent Surigao Development Bank has embarked in irregular, unlawful and unsafe banking operations and transactions which may lead to its insolvency or bankruptcy, and the consequent loss of Government money and that of the depositors in the said bank.

"It is alleged that the petitioner Central Bank of the Philippines has contributed P500,000.00 to the capitalization of respondent Surigao Development Bank, and that by law it has authority to administer the monetary and banking system of the Philippines, including supervision and periodic examination of all banking institutions in the country in order, among others, to assure observance by said banking institutions of pertinent laws, rules and regulations and compliance with correct banking practices.

"From the foregoing the court finds that the petition herein is sufficient in form and substance and should be, as it is hereby, given due course.

"* * * * *"

Also in open court, the respondent Judge issued another order appointing the Superintendent of Banks as receiver pendente lite of the Surigao Development Bank as follows:

"In a verified petition, the petitioners pray that this Court appoint the Superintendent of Banks of petitioner Central Bank of the Philippines as receiver pendente lite.

"As it appears in the verified petition that the petitioners have an interest in the funds, properties and assets of the respondent Surigao Development Bank, and that the said respondent Bank is in imminent danger of insolvency or bankruptcy because of its irregular, unlawful and unsafe banking operations and violations of its Charter and by-laws the said respondent Bank has forfeited, or stands to forfeit, its corporate rights, the petition should be, as it is hereby granted.

"WHEREFORE, pursuant to the provisions of Rule 59 of the New Rules of Court, the Court hereby names and appoints the Superintendent of Banks of the petitioner Central Bank of the Philippines as receiver of the respondent Surigao Development Bank during the pendency of this action.

"Upon posting a bond in the amount of P500.00 to be subscribed by sufficient and solvent sureties subject to the approval of this Court, conditioned that the petitioners will pay all damages that the respondents may sustain should it be finally determined that they were not entitled to this remedy in the first place, the receiver shall qualify by taking the corresponding oath of office and enter into the performance of his duties as such receiver, taking immediate possession of all offices and equipments of respondent Surigao Development Banks, its properties, moneys, bonds, and other assets, books of account and other papers of said bank, and the management and operation of same."

"* * * * *"

Upon being informed that a petition had been lodged against them and that the Superintendent of Banks had been appointed receiver pendente lite of the Surigao Development Bank, the respondents filed an urgent petition to dissolve the receivership, alleging, among other things, that: (1) the Superintendent of Banks of the Central Bank was not qualified and competent to be appointed and to act as receiver, being an officer of the Central Bank; (2) the application for receivership pendente lite was barred by the pending prior action (Civil Case No. 52693) in the Court of First Instance of Manila; and (3) the receivership was procured on the strength of certain false allegations and misrepresentations, as well as concealment of facts, in the verified petition, to wit: (a) that the petitioners had an interest in the funds, properties and assets of the Surigao Development Bank; (b) that the Surigao Development Bank was in imminent danger of insolvency or bankruptcy; and (c) that the Surigao Development Bank had

committed violations of its charter and by-laws. The petitioners filed their opposition on January 30, 1964. Instead of first acting on the motion to dissolve, the trial court, on February 3, 1964, ordered the immediate implementation of the order of receivership.

After hearing the petition to dissolve the receivership, the trial court denied it in an order dated February 5, 1964 which reads as follows:

"In the motions of respondents it is alleged, among others, that the Superintendent of Banks is disqualified to be appointed as receiver because he is an employee of the petitioner Central Bank, and that the Central Bank has no pecuniary interest in the case because it has not contributed even one-half of a centavo to its capital, but that all the P500,000.00 of the capital of said bank belonged to and subscribed by the Development Bank of the Philippines.

"But when asked if the P500,000.00 was not the money of the Republic of the Philippines, the counsel hedged and finally said he did not know. This answer was made because if said counsel did give the correct answer, which the Court knows he is not ignorant of, the fallacy of his argument on this point would be at once shown.

"By its charter, the Central Bank is authorized to supervise all banking institutions in the Philippines by its Department of Supervision and Examination headed by the Superintendent of Banks who, therefore, by the nature of his position cannot be said to ban an interested party. But if the Superintendent of Banks has any interest at all, it is an interest to see to it that private depositors should not be pecuniarily prejudiced.

"It is the opinion of the Court that no other person is better qualified to act as receiver in the present case.

"It is further argued that this suit is in effect to liquidate the business of respondent bank, and is, therefore, premature or improper because as yet no evidence has been presented that it is in imminent danger of bankruptcy.

"In the petition several serious violations of its charter and of the rules, regulations and good banking have been alleged to have been committed by the respondent Surigao Development Bank. To dismiss this case would be to freeze the evidence to prove such allegations.

* * * * *

WHEREFORE, for absolute lack of merit, the motions to dissolve receivership and to file a counterbond are denied.

* * * * *."

Supplementing the aforequoted order, the trial court issued another order which reads as follows:

"Pursuant to the order of the Court dated today, the Provincial Commander is hereby directed to immediately detail guards on the building housing the office of the Surigao Development Bank in Surigao, Surigao del Norte, 24 hours every day, to close its doors and to permit nobody to come in or to get anything therefrom unless he should be an official of the bank and ready to deliver all properties of the said respondent, Surigao Development Bank, to the representative of the receiver in the person of Mr. Guillermo Reyes, Jr., pursuant to the order of this Court of February 4, 1964."

Thereupon the respondents below filed with the Court of Appeals a petition for certiorari and prohibition with preliminary injunction (CA-G.R. No. 33515-R) against the presiding Judge of the Court of First Instance of Surigao del Norte, the Central Bank of the Philippines, the Republic of the Philippines and the Superintendent of Banks. As prayed for in the petition a writ of preliminary injunction was issued, "restraining the respondents and/or their agents and employees from taking over the business, operations, properties and assets of the Surigao Development Bank, and from ousting the petitioners from their rights and offices as directors and officers of the

said bank." On August 13, 1964 the appellate court rendered its decision dismissing the petition and dissolving the writ of preliminary injunction previously issued for lack of jurisdiction, since "the value in controversy exceeds two hundred thousand pesos, exclusive of interest and costs."

Acting on the motion of the petitioners to direct Mr. Felix Chua, Assistant Manager-Cashier of the respondent Surigao Development Bank, to deposit with the local agency of the Philippine National Bank whatever cash balance there was of said respondent bank, the trial court on September 7, 1964 issued an order which reads in part as follows:

"* * * * *"

"By virtue of the dismissal of the petition for certiorari and prohibition filed by the respondents with the Court of Appeals against the presiding judge of this Court and the petitioners in this case, there is now no longer any impediment for the receiver to enter into the discharge of his duties. And as a corollary there is no more need to resolve the motion of the petitioners to direct the Assistant Manager-Cashier, Mr. Felix Chua, to deposit the funds of the respondent Surigao Development Bank with the local agency of the Philippine National Bank.

"The order of the Court setting aside the order for the receiver thru his representative to take over the properties and all other assets of the respondent Surigao Development Bank and the order for the Provincial Commander to place guards in the premises of the Bank in order to effect a full compliance with the order of the Court to the respondents to deliver all the properties of the said respondent Bank are now in effect revived by the dismissal of the action in the Court of Appeals by reason of which the undersigned Judge was temporarily prohibited from enforcing his aforementioned order.

"WHEREFORE, the Court hereby declares that the order appointing the receiver and the order directing the respondents to deliver to the receiver or his representative the properties of whatever nature of the said respondent Surigao Development Bank are hereby reinstated in their full force and effect, directing the receiver, thru his representative, to immediately enter into the performance of his duties. The order directing the Provincial Commander to station guards in the premises of the respondent Bank to prevent any further effort of the respondents to defy the orders of the Court by preventing the representative of the receiver from taking possession of the said Bank is also hereby declared revived and reinstated in its full force and effect, and may be availed of by the receiver's representative any time should he see a necessity for such action."

Upon receipt of the aforequoted order the Superintendent of Banks, through his authorized representatives, took over the assets of the Surigao Development Bank. On their part the respondents (herein petitioners) instituted the instant petition on September 28, 1964.

It is well settled that the appointment and discharge of receivers are matters primarily addressed to, and resting largely on, the discretion of the trial court, not being a matter of strict right, and a reviewing court will not interfere with the exercise of such discretion unless convinced that the same has been abused.[1] Accordingly, the main issue to be determined here is whether the respondent Judge acted in the exercise of a sound discretion or with clear and grave abuse thereof in appointing the Superintendent of Banks as receiver pendente lite of the Surigao Development Bank on an ex parte application.

The petitioners contend that respondent Judge gravely abused his discretion since under the facts and circumstances of the case there was "no emergency, no imperative necessity, no extreme urgency for a receivership as to dispense with the requisite notice and hearing." They claim that all that the respondents wanted was for Felipe Plaza Chua and Melchor A. Chua to explain the alleged shortage of P555,000.00, to resign as President and Treasurer, respectively, of the bank and to furnish the Central Bank of the Philippines with copies of the statement relating to the petitioner bank's account with the Pacific Banking Corporation, which three acts could have been ordered done after proper hearing and without placing the bank under receivership.

Evidently the petitioners overlook the fact that the cause of action of respondents Republic of the Philippines and Central Bank of the Philippines in their petition in the lower court was ultimately to liquidate and dissolve the Surigao Development Bank under Section 34 of Republic Act No. 265 in relation to the provision of Rule 66 of the Rules of Court. In support of said cause of action numerous violations of the charter and by-laws of the Surigao Development Bank, and of the law as well as orders and regulations of the Central Bank of the Philippines, were alleged, to wit:

"(1) Violation of its charter:

By granting unsecured loans contrary to the provisions of paragraph 2 of its articles of incorporation in connection with Section 31, Republic Act No. 337, commonly known as the General Banking Act.

(2) Violation of its By-laws:

- a. By failing to call the annual stockholders meeting in 1961 and 1962.
- b. By failing to give proper notice of its meetings to Mr. Anatalio Viray, the director representing the interest of the Development Bank of the Philippines in the Board of Directors of respondent Bank.
- c. By failing to keep an accurate record of receipts and disbursements and other commercial transactions of the Bank.
- d. By amending the by-laws of the Bank without the majority vote required by Article X of its By-laws.
- e. By failing to accurately keep and carefully preserve the minutes of the meetings of the Board of Directors.

(3) Violation of law, orders, instructions, rules and regulations.

- a. By refusing to authorize the Superintendent of Banks to secure statements of balance of deposit with the depositary Pacific Banking Corporation as per instructions or orders of the Monetary Board.
- b. By refusing to return the unaccounted shortage of P555,000 as of December 31, 1961, of the demand deposit of the Surigao Development Bank with its depositary, the Pacific Banking Corporation, also as per instructions and orders of the Monetary Board.
- c. By refusing to cause the permanent separation from the Bank of Felipe Plaza Chua and Melchor A. Chua, President and Treasurer, respectively, as such officials and as directors and thereafter not to hold any position where they may exercise influence over the management and operations of the bank, again as ordered by the Monetary Board.
- d. By failing to have its by-laws approved by the Monetary Board and registered with the Securities and Exchange Commission.
- e. By implementing Resolution No. 38 Series of 1961, amending the original by-laws of Surigao Development Bank by changing the holding of the regular meeting of the board from once a month to once every four (4) months, before the same has been approved by the Monetary Board and registered with the Securities and Exchange Commission.
- f. By implementing Resolution No. 43, Series of 1961, further amending Article 3 of the by-laws by authorizing the President to call a special meeting on one day's notice to each director, either personally or in writing, and by increasing the directors who may call a special meeting from two (2), as originally provided for to four (4), also before the said resolution has been approved by the Monetary Board and registered with the Securities and Exchange Commission."

In addition, the following unsafe and unlawful practices of the Surigao Development Bank were also alleged, to

wit:

- "(1) Officials and employees have no written appointments, hence, have no fixed delimitation of duties.
- (2) Accountable officials and employees are not properly bonded.
- (3) Land Tax Declarations submitted by borrowers as security for loans are not properly mortgaged to the bank.
- (4) Accepting, deeds of sales in favor of borrowers as securities for loan before the same have been registered in the names of said borrowers.
- (5) Accepting second mortgage on real properties as securities for loans.
- (6) Failing to secure a proper deed of conveyance over the building and furniture in favor of the Surigao Development Bank despite the fact that the latter had already reimbursed the costs of the same amounting to P131,037.43 to the alleged owner – The Chua Construction Company.
- (7) Failure to reform ineffective internal control over assets of the bank and to adopt procedures suggested by the bank examiners.
- (8) Unwarrantedly giving the President an allowance of P1,000.00 a month starting from the date when the Surigao Development Bank began its operations.
- (9) Unwarrantedly authorizing the President to purchase a vehicle for the bank costing not more than P12,000.00 and an electric generator costing P8,000.00."

With the exception of the alleged irregularity in connection with the authority given to the petitioner bank's President to purchase a vehicle and an electric generator, the foregoing allegations were based on the annexes consisting of the official communications of the Superintendent of Banks to the President and the Board of Directors of the Surigao Development Bank and to the Monetary Board regarding the findings of the bank examiners who conducted the examination of the operations of said bank. Inasmuch as the facts contained therein were gathered in the course of a regular banking examination undertaken by the government office which is expressly "charged with the supervision and periodic examinations of all banking institutions operating in the Philippines", the respondent Judge was justified in placing full reliance on said annexes to the extent of not requiring the Central Bank to present additional proofs of the alleged violations and irregularities.

While it is true that the Superintendent of Banks, in his letter dated March 6, 1962 to the President of the Surigao Development Bank, adverted to "confidential information" as the basis of his charge with respect to the shortage of P555,000.00 in the funds of the bank, it is evident that the sources of said "confidential information" were actually the records of the Pacific Banking Corporation and the Surigao Development Bank. Thus, in his memorandum to the Monetary Board, dated July 3, 1962, he stated:

"1. There is a shortage of an unexplained difference of P480,000.00 as of September 12, 1961 (date of examination) between the P580,000.00 balance of the "Due from Other Banks (Pacific Banking Corporation)" account as shown in the books of the depositor bank (Surigao Development Bank) and the P100,000.00 balance shown by the records of the depository bank (Pacific Banking Corporation). This difference was further increased to P555,000.00 as of December 31, 1961 when the Bank's deposit balance with the Pacific Banking Corporation on the same date as shown in the depository bank's books amounted to only P5,000.00 as against what is shown in the Surigao Development Bank's published statement and report of condition as of December 31, 1961 of P560,000.00."

Considering (1) the failure of the President and the Treasurer of the petitioner Surigao Development Bank to

return or to account for the sum of P555,000.00 despite repeated demands from the Central Bank; (2) the operational losses incurred by the petitioner bank, excluding the P1,000.00 monthly allowance of its President which he had not collected, as stated, in the memorandum of the Superintendent of Banks to the Monetary Board and quoted in Paragraph 12 of the basic petition filed in the lower court; and (3) the numerous irregularities and unlawful and unsafe banking practices discovered in the operation of said bank, respondent Judge had sufficient basis in finding that the petitioner bank was in imminent danger of insolvency. And since fraud and mismanagement were involved, there was an imperative necessity for the appointment of a receiver to prevent further loss of funds and to preserve the assets still existing.

With respect to the claim of the petitioners that the appointment of the Superintendent of Banks as receiver pendente lite of the Surigao Development Bank was improper since he is an officer of the Central Bank of the Philippines, we find the same to be without merit. It is true that in the cases[2] cited by them this Court ruled that a subordinate of the applicant for the appointment of a receiver should not be appointed without the other party's consent because a receiver ought to be an indifferent, impartial and disinterested person. However, the prohibition does not apply in the instant case. There is no showing that the Central Bank has any property or money claim against the Surigao Development Bank. Neither is there any showing that the Superintendent of Banks has a personal pecuniary interest in the assets of said petitioner bank. Consequently no conflict would ever arise between any personal interest on the part of the Superintendent or that of his employer and the performance of his duties as receiver. The court, therefore, could expect him to be impartial in his actuations. Moreover, as receiver pendente lite he would be merely performing the duties and functions specifically vested upon him under Sections 29 and 34 of Republic Act No. 265.[3]

As regards the contention of the petitioners that Civil Case No. 1582 should be dismissed by reason of the pendency of Civil Case No. 5263 of the Court of First Instance of Manila, we likewise find the same to be devoid of merit.

Evidently the petitioners' contention is predicated upon Section 1(e), Rule 16 of the Rules of Court, which authorizes the dismissal of an action where "there is another action pending between the same parties for the same cause." The requisites of said rule are as follows: (1) Identity of parties, or at least such as represent the same interest in both actions; (2) Identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (3) Identity in both instances in the sense that the judgment that may be rendered in the pending case would, regardless of which party is successful, amount to res judicata in the other.[4] These requirements are not present in the instant case. Firstly, the Central Bank of the Philippines and the Republic of the Philippines are not parties in Civil Case No. 52693 pending in the Court of First Instance of Manila; on the other hand, the Development Bank of the Philippines is not a party in Civil Case No. 1582. Secondly, Civil Case No. 52693 is for accounting and restitution of unexplained shortage in the amount of P555,000.00, while Civil Case No. 1582 is ultimately for the dissolution and liquidation of the Surigao Development Bank. Lastly, any judgment that may be rendered in Civil Case No. 52693, regardless of which party is successful, will not amount to res judicata, in Civil Case No. 1582.

In view of the foregoing, We hold that the respondent Judge, did not abuse his discretion in issuing the Order dated July 10, 1964, appointing the Superintendent of Banks as receiver pendente lite and the Order dated February 5, 1964, denying the urgent petition to dissolve the receivership.

WHEREFORE, the petition is hereby dismissed, with costs against the petitioners.

Concepcion, C.J., Zaldivar, Castro, Fernando, Teehankee, Barredo, Makasiar, Antonio, and Esguerra, JJ., concur.

[*] Development Bank of the Philippines vs. Felipe Plaza Chua, Melchor A. Chua, Lucia R. Limchiu, Marianella C. Rama, Celerina A. Chua, and the Surigao Development Bank.

[*] SEC. 34. Proceeding upon violation of laws and regulations. – Whenever any person or entity willfully violates this Act or any order, instruction, rule or regulation legally issued by the Monetary Board, the person or persons responsible for such violation shall be punished by a fine of not more than twenty thousand pesos and by imprisonment of not more than five years.

Whenever a banking institution persists in violating its charter or by-laws or any law, or orders, instructions, rules or regulations legally issued by the Monetary Board, or whenever a banking institution persists in carrying on its business in an unlawful or unsafe manner, the Board shall, by the Solicitor General, and without prejudice to the penalties provided in the preceding paragraph of this section, file a petition in the Court of First Instance praying the assistance of the court to compel the banking institution to discontinue the violations or practices objected to in the petition of the Board. The Monetary Board may, with the approval of the court, take such action as the court may deem necessary to compel the banking institution complained against to discontinue the violations or practices set forth in the Board's petition, and, if necessary, the Board may, under order of the court, direct the Superintendent of Banks to liquidate the business of the institution.

[*] One of the irregularities taken up in the letter of the Superintendent of Banks, dated March 6, 1962, was the alleged shortage in the amount of P555,000.00, thus:

"1. This Department has received confidential information to the effect that there is a shortage or an unaccounted for difference in the amount of P480,000.00 as of September 12, 1961 between the balance of that 'Due from other Banks (Pacific Banking Corporation)' account as shown in the books of the depositor bank (Surigao Development Bank) and that as shown by the records of the depository bank (Pacific Banking Corporation). The amount appearing in the Surigao Development Bank's books was P580,000.00 as of September 12, 1961, the date of our examination, while our source of information alleged that the corresponding balance shown by the records of the Pacific Banking Corporation was only P100,000.00 as of the same date. We also received information that the balance of your deposit account with the Pacific Banking Corporation as of December 31, 1961 amounted to only P5,000.00 as against what is shown in your Bank's published statement and report of condition as of the same date in the amount of P560,000.00, or a difference of P555,000.00. We have also noted that in accordance with the Bank's by-laws and pertinent resolution of the Bank's Board of Directors, the President and the Treasurer of the Bank are the only persons duly authorized in the Bank to withdraw funds from the Bank's deposit account with the Pacific Banking Corporation."

[*] 793. Surigao Development Bank – Report on certain irregularities committed by two officer-members of its Board of Directors.

Upon motion duly seconded, the Board, by unanimous vote, decided as follows:

- 1) To direct Messrs. Felipe Plaza Chua and Melchor A. Chua, President and Treasurer, respectively, of the Surigao Development Bank located at Surigao, Surigao del Norte, to refund and deposit with the Pacific Banking Corporation, Manila, within a period of thirty (30) days from receipt of notice, the amount of P555,000.00 illegally withdrawn by them from the Pacific Banking Corporation;
- 2) To require the permanent separation of Messrs. Felipe Plaza Chua and Melchor A. Chua from the Surigao Development Bank in their present positions as President and Treasurer, respectively; and, thereafter, to disqualify them from being Directors thereof and/or holders of such other positions therein as will enable them again to exercise influence over the management of the affairs and operations of the said bank;
- 3) Until the replacements of Messrs. Felipe Plaza Chua and Melchor A. Chua shall have been elected or appointed, to limit the activities of the Surigao Development Bank to the following:

- a) Accepting loan repayments; and
 - b) Servicing of its deposit liabilities;
- 4) To instruct the Department of Supervision and Examination to assign Bank examiners thereof to supervise directly the operations of the Surigao Development Bank until such time as the Monetary Board may deem proper to lift such supervision - the said examiners being hereby authorized (a) to have control over all the cash and securities of the subject bank, and (b) to see to it that all disbursements of the bank are subject to their (examiners') prior approval; and
- 5) To request the Board of Directors of the Surigao Development Bank to authorize the Superintendent of Banks to secure monthly statements, transcript of records, and other information/documents related to the subject bank's deposit account with the Pacific Banking Corporation.

The Board likewise decided to refer the subject report of the Acting Superintendent of Banks, dated July 3, 1962, to the Special Assistant to the Governor (Legal Counsel) for study with the view of instituting such legal action as he may deem proper to take against the Surigao Development Bank and/or its officers, as well as against the Pacific Banking Corporation; and, incidentally, the Board authorized the said Special Assistant to the Governor to collaborate with the Legal Counsel of the Development Bank of the Philippines for the purpose of taking joint action on the matter.

[*] 1281. Surigao Development Bank - (a) Its compliance with Resolution No. 793 dated July 10, 1962; and (b) requests that it be allowed to retain Messrs. Felipe Plaza Chua and Melchor Avila Chua as its President and Treasurer, respectively, and to resume its lending operations

ACTION TAKEN:

The Board decided as follows:

- 1) To disapprove the requests of Mr. Felipe Plaza Chua and the board of directors of the Surigao Development Bank that the said bank be allowed (a) to retain Mr. Felipe Plaza Chua and Mr. Melchor Avila Chua as President and Treasurer, respectively, of the bank; and (b) to resume its lending operations; and
- 2) To refer the case to the Special Assistant to the Governor (Legal Counsel), with instructions (a) to institute such legal action and remedies (whether civil or criminal, including the liquidation of the bank, if necessary as may be warranted against the Surigao Development Bank, Mr. Felipe Plaza Chua, Mr. Melchor Avila Chua and/or other directors/officers of the bank; and (b) to collaborate with the Legal Counsel of the Development Bank of the Philippines for purposes of taking joint action on the matter.

[1] Duquevs. Court of First Instance of Manila, L-18359, March 26, 1965 (13 SCRA 420); Normandy vs. Arca, L-28754, March 26, 1965 (13 SCRA 420) and the cases cited.

[2] Hibberdvs. Headwaters Mining Company, 32 Phil. 565; Calderon vs. Aquino, G.R. No. L-4119, January 31, 1962 (Unreported).

[3] Sec. 29. Proceeding upon insolvency. - * * *.

If the Monetary Board shall determine that the banking institution cannot resume business with safety to its creditors, it shall, by the Solicitor General, file a petition in the Court of First Instance reciting the proceedings which have been taken and praying the assistance and supervision of the court in the liquidation of the affairs of the same. The Superintendent shall thereafter, upon order of the Monetary Board and under the supervision of the court and with all convenient speed, convert the assets of the banking institution of money.

Sec. 34. Proceeding upon violation of laws and regulations. * * * * *.

* * *. The Monetary Board may, with the approval of the court take such action as the court may deem necessary to compel the banking institution complained against to discontinue the violations or practices set forth in the Board's petition, and if necessary, the Board may, under order of the court, direct the Superintendent of Banks to liquidate the business of the institution.

[4] Alarconvs. Torres, L-21656, March 31, 1967 (19 SCRA 706, 709) and the cases cited.

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