

CENTRAL BANK OF THE PHILIPPINES, PETITIONER, VS. HONORABLE COURT OF APPEALS, ISIDRO E. FERNANDEZ, AND JESUS R. JAYME, RESPONDENTS.*G.R. Nos. L-50031-32. July 27, 1981*

Ponente: CONCEPCION JR., J.

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REVIEW on certiorari of the judgment of the respondent appellate court which affirmed the decision of the Court of First Instance of Manila in Sp. Proc. No. 88415, entitled: "Isidro Fernandez, et al., petitioners, versus Central Bank of the Philippines, et al., respondents;" and Sp. Proc. No. 89219, entitled: "In re: Liquidation of Provident Savings Bank, Central Bank of the Philippines, petitioner," setting aside Resolution No. 1766 of the Monetary Board of the Philippines, dated September 15, 1972, which forbade the Provident Savings Bank from doing business in the Philippines.

It is not disputed that the Provident Savings Bank, hereinafter referred to as PROVIDENT, for short, was incorporated after the Central Bank had approved its establishment under Monetary Board Resolution No. 572, dated May 3, 1963. Its Articles of Incorporation was registered with the Securities and Exchange Commission on October 31, 1963. PROVIDENT was granted authority to operate by the Monetary Board on December 4, 1963 and started business on December 9, 1963 with principal office at Villalobos St., Quiapo, Manila. Within four (4) years of operation, PROVIDENT had established six (6) extension offices within the greater Manila area.

PROVIDENT has an authorized capital of P10 million, divided into 100,000 shares of common stock with a par value of P100.00 each. At the time of its incorporation, 25% of the stock was subscribed and paid for by its incorporators. There were subsequent subscriptions received so that by the end of 1967 the total paid up capital of the bank amounted to P6.7 million out of the aggregate P7.5 million subscribed shares of stock. The herein private respondents, Isidro E. Fernandez and Jesus R. Jayme, are the majority and controlling stockholders thereof, holding 41% and 22%, respectively, of the total subscribed capital stock of the bank.

A major portion of PROVIDENT's loanable funds was granted to directors, officers and stockholders and their related interests and the bank was cautioned to avoid con-entration of credits and to adopt a policy where loans would be granted to a larger number of borrowers who had no financial interest in the bank.[1]

In September, 1968, a number of savings banks, PROVIDENT among others, experienced a bank run which was triggered off by adverse publicity in the newspapers, radio, and television of investigations conducted by Congress that some banks were unable to pay deposit withdrawals. In view of the unusually heavy withdrawals, PROVIDENT had no recourse but to request emergency loans from the Central Bank to meet the demands of the depositors. The Monetary Board, however, denied these requests for emergency loans. PROVIDENT, therefore, had to borrow from other banks, foremost of which is the Banco Filipino Mortgage and Savings Bank which granted PROVIDENT advances up to P8 million, on the security of real estate properties and a pledge of P4.074 million worth of shares of stock representing about 60% of the outstanding shares of stock of PROVIDENT

owned by Fernandez and Jayme. But, these loans were not enough to meet the demands of the depositors. As a result, PRO-VIDENT was forced to temporarily close its doors to the public on September 12, 1968.

Subsequently, however, the Central Bank extended emergency loans to PROVIDENT in order to stop the bank run and to prevent the bank run from eroding the confidence of the public in the banking system, thus enabling PROVIDENT to reopen on September 16, 1968. The Hon. Alfonso Calalang, then Governor of the Central Bank, together with other high officials of the Central Bank, visited the premises of PROVIDENT soon after its reopening and assured the public that PROVIDENT was sound and had the full backing of the Central Bank.

Then followed a series of emergency releases. But, the assistance given to PROVIDENT was not sufficient to meet and service the unusually heavy withdrawals of deposits. Fernandez and Jayme appealed to the Central Bank for continued assistance. At one time, Fernandez and Jayme were summoned to the Central Bank for a conference with the Governor and Deputy Governor and were introduced to representatives of the Iglesia Ni Kristo (INK) which had a sizeable deposit of P5.5 million with PROVIDENT and was having difficulty in withdrawing the same. Central Bank Deputy Governor Amado Briñas voiced the decision of the Central Bank that unless Fernandez and Jayme relinquished and turned over the management and control of PROVIDENT to the Iglesia Ni Kristo, the Central Bank would not further support and assist the distressed PROVIDENT. Governor Briñas, in turn, persuaded the representatives of the Iglesia Ni Kristo, headed by Rogelio Manalo, that the only way they could withdraw their deposit was to take control and management of PROVIDENT. Left with no other alternative, but to accede, and in order to protect their investment, Fernandez and Jayme reluctantly executed a Memorandum Agreement with the Eagle Broadcasting Corporation, a company identified with the Iglesia Ni Kristo, on December 6, 1968. The parties therein made the following commitments:

1. That the Iglesia Ni Kristo will convert its time deposit with the Bank in the amount of P5.5 million into voting preferred shares of stock;
2. That the stockholders will cause the amendment of the Articles of Incorporation to increase the capital stock by creating voting preferred shares of stock at a par value of P70.00 per shares;
3. That the Iglesia Ni Kristo shall purchase from Fernandez and Jayme group 53,000 shares of stock within the period of six months;
4. That the Fernandez and Jayme group shall execute a voting trust agreement in favor of the Iglesia Ni Kristo group to subsist only until the amendment to the Articles of Incorporation shall have been registered with the Securities and Exchange Commission; and
5. That the Iglesia Ni Kristo group shall not foreclose mortgages securing loans of various borrowers until after four years, provided that the schedule of payments on loans of the Fernandez and Jayme group shall be complied with.[2]

Immediately thereafter, a special meeting of the stockholders of PROVIDENT was convened and the Articles of Incorporation of the bank was amended to comply with the terms and stipulations contained in the Memorandum Agreement. A Voting Trust Agreement was, likewise, executed in favor of the Eagle Broadcasting Corporation on certain shares of stock owned by Reynaldo Panopio, a stockholder identified with the Fernandez and Jayme group, after which Fernandez and Jayme withdrew from the management of PROVIDENT in favor of the Iglesia Ni Kristo group effective December 1, 1968.

Following the transfer of management of PROVIDENT to the Iglesia Ni Kristo, the Central Bank forthwith released additional loans to PROVIDENT at a much reduced rate of interest of 10% instead of the 12% interest charged on previous loans. PROVIDENT was further allowed to resume its lending activities. At the time of the transfer of the management to the Iglesia Ni Kristo the net worth of PROVIDENT was P7.2 million.[3]

The Eagle Broadcasting Corporation, however, did not comply with its commitment to purchase 53,000 common shares of stock and to convert its deposits into equity. Instead, the new management of PROVIDENT caused the conversion of the deposits of Iglesia Ni Kristo into "bills payable" earning 12% interest, which were subsequently withdrawn.[4] PROVIDENT, under the new management, also failed to comply with the Monetary Board directives relative to the rehabilitation of the bank so that it restored the interest rate of 12% on outstanding loans.[5] Various irregularities detrimental to PROVIDENT were also perpetrated by the new management despite the presence of resident Central Bank examiners.[6] The Iglesia Ni Kristo likewise facilitated or caused the assignment and mortgage of PROVIDENT's various assets, receivables, and in-interests in favor of the Eagle Broadcasting Corporation.[7]

In view of the deteriorating financial condition of PROVIDENT, the Deputy Governor of the Central Bank separately met with the representatives of the Iglesia Ni Kristo and the majority stockholders of the bank to discuss with them the urgency of finding a solution to PROVIDENT's financial difficulties. Both parties were requested to submit their proposals pertaining to the continued operation and management of the bank. In his letter dated October 15, 1971, Rogelio W. Manalo, President and Chairman of the Board of Directors of PROVIDENT submitted a set of proposals consisting of three (3) courses of action, namely: conversion of the P4 million "bills payable" of the Iglesia Ni Kristo to equity; staggered payment to the Iglesia Ni Kristo of the balance of its deposits; and pre-payment of borrowings of majority stockholders at the rate of P300,000.00 monthly. But, these proposals were rejected by the Monetary Board on January 7, 1972 (Res. No. 6).[8]

On August 22, 1972, Rogelio W. Manalo resigned as Chairman and President of PROVIDENT, giving rise to large withdrawals from its big depositors which the bank could not readily meet. PROVIDENT had to seek assistance from other banks, the Savings Bankers Association of the Philippines, and other sources to prevent the recurrence of another bank run.[9] But, the financial condition of PROVIDENT continued to worsen, so that on September 15, 1972, the Monetary Board, after "considering further that the principal stockholders and/or the Iglesia Ni Kristo/Eagle Broadcasting Corporation group have not come up with concrete and substantial proposals towards the rehabilitation of the Provident Savings Bank, which proposals were required of them in the conference held in September of 1971; and in pursuance of Section 29 of Republic Act No. 265, decided as follows:

- "a) To forbid the Provident Savings Bank to do business in the Philippines;
- b) To instruct the Superintendent of Banks to take charge, in the name of the Monetary Board, of the assets of the Provident Savings Bank;
- c) To instruct the Superintendent of Banks to take such further action as may be necessary pursuant to Section 29 of Republic Act No. 265; and
- d) To refer the subject memoranda of the Superintendent of Banks and all pertinent reports of the examiners of the Department of Supervision and Examination to the Central Bank Legal Counsel for appropriate legal action(s)."[10]

Pursuant thereto, the Central Bank instructed its Legal Counsel on September 25, 1972:

- "1) To request the Solicitor General to file, pursuant to the last paragraph of Section 29 of Republic Act No. 265, 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 Provident Savings Bank; and
- 2) To take such other action as may be appropriate and legal to safeguard the interests of the Bank's creditors."[11]

Consequently, on September 28, 1972, Fernandez and Jayme filed a petition for certiorari, prohibition and mandamus and/or specific performance, with preliminary injunction, against the Central Bank and Eagle Broadcasting Corporation, with the Court of First Instance of Manila, docketed therein as Sp. Proc. No. 88415, to annul and set aside the said Monetary Board Resolution No. 1766, dated September 15, 1972 and to restrain the Central Bank from liquidating PROVIDENT, and, instead, to order the Central Bank to comply with its commitments to the petitioners and reorganize and rehabilitate PROVIDENT in the manner it did to the Overseas Bank of Manila, as well as for damages and costs.[12]

The Central Bank answered that PROVIDENT was insolvent and its condition warranted closure under Sec. 29 of Republic Act No. 265.

Eagle Broadcasting Corporation, upon the other hand, blames both the Central Bank and Fernandez and Jayme for the failure of PROVIDENT.

On December 11, 1972, the Central Bank filed a Petition for Assistance and Supervision in Liquidation of the Provident Savings Bank with the Court of First Instance of Manila, docketed therein as Sp. Proc. No. 89219, entitled: "In re: Liquidation of the Provident Savings Bank; Central Bank of the Philippines, petitioner." [13]

Upon motion, the two cases were heard jointly,[14] and on February 20, 1974, judgment was rendered, as follows:

WHEREFORE, the writs prayed for in the amended petition, except the writ of mandamus, are hereby granted, and Resolution No. 1766 dated September 15, 1972 of the Monetary Board of respondent Central Bank - as well as any and all resolutions issued in pursuance thereof, are hereby annulled and set aside; and said respondent Central Bank is ordered to desist from liquidating PROVIDENT and is ordered to specifically perform its obligation to reorganize and rehabilitate the Provident Savings Bank, following the precedent set in the case of the reorganization or rehabilitation of the Republic Bank and the course of action expected to be taken in the implementation of the final decision of the Supreme Court in the case of RAMOS vs. CENTRAL BANK, 41 SCRA 565, with respect to the Overseas Bank of Manila, within two (2) years from finality of this decision.

"Respondent Central Bank and Eagle Broadcasting Corporation are hereby ordered to pay the petitioners, jointly and severally:

1. The amount of P600,000.00 as actual damages;
2. The amount of P50,000.00 as moral damages;
3. The amount of P25,000.00 as exemplary damages; and
4. The amount of P50,000.00 as attorney's fees plus costs." [15]

The Central Bank and the Eagle Broadcasting Corporation appealed,[16] and after appropriate proceedings, the herein respondent Court of Appeals rendered the disputed decision on January 22, 1979, the dispositive portion of which reads, as follows:

"WHEREFORE, the decision appealed from is hereby affirmed, but modified to exclude the award of damages and attorney's fees. Costs de officio.[17]

Hence, the present recourse.

1. The petitioner claims that the respondent Court of Appeals erred in not applying Presidential Decree No. 1007, dated September 22, 1976, which amended Section 29 of Republic Act No. 265 during the pendency of the appeal and should have dismissed the petition of Fernandez and Jayme in view of the findings of the said appellate court that there is no clear proof of gross and evident bad faith on the part of the petitioner and the Eagle Broadcasting

Corporation. In support of its contention, the petitioner invokes the case of *Lucas Ramirez vs. The Hon. Court of Appeals, et al.*[18]

Indeed, the appellate court, in reviewing a judgment on appeal, should dispose of a question according to the law prevailing at the time of such disposition and not according to the law prevailing at the time of the rendition of the appealed judgment. Accordingly, Section 29 of Republic Act No. 265, as amended by Presidential Decree No. 1007, should be applied.

Under this section, as amended, the action of the Monetary Board in ordering the closure and liquidation of an insolvent bank is final and executory and can be set aside only if there is convincing proof that the action is plainly arbitrary and made in bad faith.

The petition filed, however, should not be dismissed for while there may not be gross and evident bad faith on the part of the Central Bank and Eagle Broadcasting Corporation to sustain the award of damages to Fernandez and Jayme, as ordered by the trial court, the action of the Monetary Board in forbidding PROVIDENT from doing business in the Philippines and ordering its liquidation is clearly arbitrary and was made in bad faith.

The arbitrariness and bad faith of the petitioner is evident from the fact that it pressured Fernandez and Jayme into relinquishing the management and control of PROVIDENT to the Iglesia Ni Kristo (INK) which did not have any intention of restoring the bank into its former sound financial condition but whose interest was merely to recover its deposits from PROVIDENT, and, thereafter, allowing the Iglesia Ni Kristo to mismanage PROVIDENT until the bank's financial deterioration and subsequent closure. As the trial court said:

"Having decided in 1968 that PROVIDENT was salvageable and could be permitted to continue in business with its support, provided there is change in management and introduction of reforms, the CB should have been vigilant in its overseeing of the faithful compliance by the parties of the terms of the Memorandum Agreement, as well as in supervising and controlling the operations of the bank under the management of EAGLE. The persuasive, nay, compulsory, powers of the CB to accomplish these cannot be doubted. The CB exercises such control of private banks under its broad powers that it can decree life or death of any bank by simply withholding from it the facilitates that it normally accords banks. It was in the exercise of these powers by the CB that the Fernandez/Jayme group was constrained to give up the management and control of PROVIDENT in 1968 because the CB threatened to discontinue support of the bank unless management is transferred to EAGLE.

"To recapitulate, the CB:

1. Failed to exact compliance by EAGLE of its obligations under the Memorandum Agreement.
2. Failed to exercise the necessary supervision over EAGLE'S management which could have checked EAGLE's excuses or abuses.
3. Failed to enforce other reforms necessary to restore PROVIDENT to its former sound financial condition.
4. Failed to extend the support and assistance necessary to make reorganization and rehabilitation of PROVIDENT a reality.

"Illustrative of how PROVIDENT was being treated unfairly by the CB, one needs take note only of the discrepancy in the interest rates on emergency loans being exacted by the CB. Under the Fernandez/Jayme management of PROVIDENT, it was 12% per annum. When management was transferred to EAGLE, the medium chosen by the CB for purposes of reorganization, interest was reduced to 10% per annum. When the conditions at PROVIDENT continued to deteriorate under EAGLE's management, interest rates were again raised to 12%. And yet, the CB proposed to extend to Banco Filipino, a solid and non-distressed bank which was a creditor of PROVIDENT, an emergency loan under Sec. 90 of the CB Act of up to P7,000,000.00 'if it so

desires at an interest rate to be determined by Management but in no case lower than 4 per cent p.a.' (Par. a-1, p. 3, Exh. '9 CBP'), which is the Memorandum dated September 14, 1972 of Governor Gregorio Licaros to the Monetary Board." [19]

The trial court further said:

"The penalties paid by PROVIDENT in its deficiency plus the 12% interests in its emergency loan greatly contributed to the deterioration of PROVIDENT's net worth. The CB is supposed to help a distressed bank, but in the case of PROVIDENT, the CB imposed an interest of 12% on its emergency loans. In so doing, the CB, instead of helping improve the situation of PROVIDENT, actually aggravated further its financial position. And what is most amazing, while this is being done to a bank in distress, the CB was willing to give loans to a well-off bank, the Banco Filipino, loans at an interest of only 4%." [20]

Besides, the Central Bank has already rehabilitated similarly distressed banks, the Republic Bank and the Overseas Bank of Manila, among several others, so that it would be unjust to PROVIDENT to be deprived of the Central Bank's continued support.

2. The petitioner next claims that the Court of Appeals erred in not holding that there can be no estoppel against the petitioner in view of the latter's valid exercise of police power by its lawful overseeing of Provident Savings Bank.

The contention is without merit. While the closure and liquidation of a bank may be considered an exercise of police power, the validity of such exercise of police power is subject to judicial inquiry and could be set aside if it is either capricious, discriminatory, whimsical, arbitrary, unjust, or a denial of the due process and equal protection clauses of the Constitution. In the cases under consideration, it is not disputed that the Central Bank had committed itself to support PROVIDENT and restore it to its former sound financial position provided that Fernandez and Jayme should relinquish and give up its control and management of the bank to the Iglesia Ni Kristo, and thereafter, whimsically withdrew such support to the detriment of PROVIDENT. In the case of *Ramos vs. Central Bank*, [21] where the Central Bank committed itself to the continued operation of, and rehabilitation of the Overseas Bank of Manila, and later on reneged on that promise, the Court therein ruled:

"Even in the absence of contract, the record plainly shows that the CB made express representations to petitioners herein that it would support the OBM and avoid its liquidation if the petitioners would execute (a) the Voting Trust Agreement turning over the management of OBM to the CB or its nominees, and (b) mortgage or assign their properties to the Central Bank to cover the overdraft balance of OBM. The petitioners having complied with these conditions and parted with value to the profit of the CB (which thus acquired additional security for its own advances), the CB may not now renege on its representations and liquidate the OBM, to the detriment of its stockholders, depositors and other creditors, under the rule of promissory estoppel. (19 Am. Jur., pp. 657-658, 28 Am. Jur. 2d, 656-657; Ed. Note. 115 ALR, 157).

"The broad general rule to the effect that a promise to do or not to do something in the future does not work an estoppel must be qualified, since there are numerous cases in which an estoppel has been predicated on promises or assurances as to future contract. The doctrine of 'promissory estoppel' is by no means new, although the name has been adopted only in comparatively recent years. According to that doctrine, an estoppel may arise from the making of a promise, even though without consideration, if it was intended that the promise should be relied upon and in fact it was relied upon, and if a refusal to enforce it would be virtually to sanction the perpetration of fraud or would result in other injustice. In this respect, the reliance by the promisee is generally evidenced by action or forbearance on his part, and the idea has been expressed that such action of forbearance would reasonably have been expected by the promisor. Mere omission by the promisee to do whatever the promisor promised to do has been held insufficient 'forbearance' to give rise to a promissory estoppel.' (19 Am Jur. loc cit.)."

3. Finally, the petitioner claims that the Court of Appeals erred in not appreciating certain facts, mainly PROVIDENT's anomalous grant of substantial loans to its own directors, officers, stockholders, and related interests, which caused its insolvency, thereby rendering the remedy of liquidation proper and rehabilitation improper.

The contention is without merit. We believe that the judgment complained of is based upon substantial evidence and that the trial court had not overlooked, nor misinterpreted certain facts and circumstances of weight in making its findings, so that the respondent appellate court did not commit any error in affirming the said judgment. Besides, the issue of whether or not certain alleged facts should be appreciated is a question of fact, not properly cognizable on appeal, since it involves an examination of the probative value of the evidence presented by the parties.

At any rate, the fact that the directors, officers, and stockholders of PROVIDENT had been extended loans by the bank which may have caused its insolvency, is of little importance since these loans were already known to and taken into consideration by the Central Bank when it decided in 1968 to allow PROVIDENT to continue in business. In the case of *Ramos vs. Central Bank*,^[22] the Court said:

"The CB excuses itself by pleading that the OBM officers had resorted to non-recording of time deposits in the Bank's books and diverting such deposits to accounts controlled by certain bank officials, and other irregularities. It is well to note, however, that these 'unrecorded' deposits were revealed to the CB as early as 25 September 1967 by the then President of the OBM, Mr. Martin Oliva, who had no hand in such irregularities and who informed the Superintendent of Banks that time deposits worth P43,188,009.29 had not been reported to the OBM directors. In fact, on 29 September 1967, the CB had already ordered its examiners to investigate the Bank's records and determine the parties responsible. Notwithstanding knowledge of these irregularities, the CB did not withdraw its promised support, and insisted on the execution of the Voting Trust Agreement on 20 November 1967. Such attitude imports that, in its opinion, the irregularities disclosed were not to be blamed on the OBM itself or its depositors and creditors, but on the officials responsible; and further, that the OBM could still be saved by adequate aid and management reform, which was required by CB's duty to maintain the stability of the banking system and the preservation of public confidence in it."

WHEREFORE, the decision of the Court of Appeals is hereby AFFIRMED. Without pronouncement as to costs.

SO ORDERED.

Barredo, (Chairman), Fernandez, Abad Santos, and De Castro, JJ., concur.

[1] Record on Appeal, pp. 463-466.

[2] *Id.*, p. 317.

[3] *Id.*, p. 68, par. 8(d) of Answer of Central Bank.

[4] *Id.*, p. 257.

[5] *Id.*, pp. 251-253.

[6] *Id.*, pp. 869-870; 871-877.

[7] *Id.*, p. 486.

[8] *Id.*, pp. 499-501.

[9] *Id.*, pp. 256-257.

[10] Id., pp. 291-292.

[11] Id., p. 294.

[12] Id., pp. 2-24.

[13] Id., pp. 393-418.

[14] Id., pp. 640-641.

[15] Id., pp. 815-906.

[16] Id., pp. 907, 909.

[17] Rollo, pp. 33-64.

[18] G.R. No. L-23587, June 10, 1976, 71 SCRA 231.

[19] Record on Appeal, pp. 894-896.

[20] Id., p. 901.

[21] G.R. No. L-29352, Oct. 4, 1971, 41 SCRA 565.

[22] Supra.

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