

THE OVERSEAS BANK OF MANILA, PETITIONERS, VS. COURT OF APPEALS AND TONY D. TAPIA, IN HIS CAPACITY AS ATTORNEY-IN-FACT OF ENRIQUETA MICHEL DE CHAMPOURCIN, RESPONDENTS.

G.R. No. L-49353. June 11, 1981

Ponente: BARREDO, J.

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BARREDO, J.:

Petition for review of the decision of the Court of Appeals in CA-G.R. No. 44766-R, Tony D. Tapia, etc. vs. The Overseas Bank of Manila and the denial of the motion for reconsideration thereof. That judgment affirmed in toto the decision of the Court of First Instance of Manila, Branch IV, in Civil Case No. 69876, for collection of money, reading thus:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff against the herein defendant ordering the latter (1) to pay plaintiff the sum of P100,000.00 representing the value of its time deposit together with interest thereon at 4-1/2% per annum from November 9, 1964 until the whole amount shall have been fully paid; (2) to pay attorney's fees in the amount of P1,000.00 it appearing that defendant's unjust and malicious refusal to pay has compelled plaintiff to litigate and secure services of counsel; and to pay costs." (Page 22, Record.)

Actually, this case is simple enough but of undoubtedly great interest and grave importance to the banking community. It was for this reason that after denying originally the herein petition, We found it proper to give the same due course after petitioner filed a forceful and well-reasoned second motion for reconsideration.

In petitioner's counsel's "Statement of the Case and of Matters Involved", it is stated that:

"Private respondent TONY D. TAPIA, in his capacity as attorney-in-fact of ENRIQUETA MICHEL DE CHAMPOURCIN (TAPIA), instituted the present action in the Court of First Instance of Manila against petitioner, The Overseas Bank of Manila (TOBM), to enforce collection of the proceeds of a time deposit for which TOBM had issued a certificate for P100,000.00, with an interest rate of 4-1/2% per annum (Exh. 'A').

"After trial, the trial court rendered judgment for TAPIA the dispositive portion of which reads:

'WHEREFORE, judgment is hereby rendered in favor of the plaintiff against the herein defendant ordering the latter (1) to pay plaintiff the sum of P100,000.00 representing the value of its time deposit together with interest thereon at 4-1/2% per annum from November 9, 1964 until the whole amount shall have been fully paid: x x x x x'

Not satisfied, TOBM interposed an appeal.

"In the meantime, during the pendency of this case, certain developments took place with respect to TOBM which were taken note of by the Court of Appeals in its resolution dated November 3, 1978, thus:

'This Court took note of the fact that on July 31, 1968, TOBM was excluded by the Central Bank under Monetary Board Resolution No. 1263 from inter-bank clearing; that on August 1, 1968, its operations were suspended under Central Bank Resolution No. 1290; and that on August 13, 1968, it was completely for-bidden by the Central Bank in its Resolu-tion No. 1333 to do business preparatory to its forcible liquidation. These Resolu-tions were, however, annulled and set aside by the Supreme Court in its decision in Ramos vs. Central Bank, L-29350, promulgated October 4, 1971. To assure maximum protection to its depositors, creditors and the public interest, the rehabilitation, normalization and stabilization thereof was also ordered by the Supreme Court in its resolution dated February 24, 1972. Pursuant thereto, both TOBM and the Central Bank submitted a Program of Reha-bilitation of TOBM which was approved by the Supreme Court in its Resolution in L-29353 October 23, 1974 (60 SCRA 278). (C.A. Resolution dated Nov. 3, 1978, Appendix 'B', p. XVII.)'

"It must be noted that the said resolutions of the Central Bank were held by this Honorable Supreme Court to have been 'adopted in abuse of discretion equivalent to excess of jurisdiction' (Ramos vs. Central Bank, 41 SCRA 565). Equally noteworthy, however, is that the CB resolution suspending TOBM's business operations had actually been implemented starting 2 August 1968, (id.) before it was annulled, and that as of this writing TOBM has yet to resume operations in accordance with the aforesaid program of rehabilitation approved by this Honorable Supreme Court.

"In the decision it rendered in the instant case, (C.A. Decision, Appendix 'A', p. V.) the Court of Appeals affirmed in toto the trial court's judgment, which, as aforesaid, orders TOBM, among other things, 'to pay plaintiff the sum of P100,000.00 representing the value of its time deposit together with interest thereon at 4-1/2% per annum until the whole amount shall have been fully paid.'

"TOBM moved respondent Court of Appeals to reconsider its judgment on two grounds, namely, (a) the suspension of operations of TOBM by the Central Bank likewise suspends payment of accrued interest, and (b) respondent Court's judgment must conform to the program of rehabilitation of TOBM approved by this Supreme Court. The Court of Appeals, acting on the motion for reconsideration, issued its resolution (Appendix 'B' hereof) dated November 3, 1978, declaring:

'Inasmuch as a Program of Rehabilitation of the TOBM has been approved by the Suprerme Court as above-mentioned, the execution of the decision in question should be made in accordance with the provision thereof, especially paragraph 3, sub-paragraph 4, Phase 1 -- Rehabilitation.

WHEREFORE, the motion for reconsideration is granted, and the dispositive portion of the decision, dated September 19, 1978, is hereby amended, so as to read as follows:

'WHEREFORE, the judgment appealed from is hereby affirmed in toto, but the execution thereof should be in accordance with the provision of the Program of Rehabilitation of TOBM as approved by the Supreme Court in its reso-lution in G.R. No. L-29352 dated October 23, 1974 (60 SCRA 278) especially paragraph 3, Sub--paragraph 4, Phase 1, Rehabilita-tion, to quote:

'3.4. Petitioners shall effect an agreement with OBM's depositors and creditors, singly or collectively, for the conver-sion of their deposits and claims into bills payable under plans mutually acceptable to the parties concerned, with the end in view that payments of all depo-sits and claims against OBM may be made after a period three (3) years from date of suspension of normal banking operations.'

'However, in the event that said program of rehabilitation is revoked or failed to materialize, the execution of the judgment is further subject to any subsequent development or charge that will be taken and considered by the Supreme Court and/or Central Bank in the premises, regarding the payments of deposits and claims against the Overseas Bank of Manila.' (pp. XX, Court of Appeals' Resolution dated Nov. 3, 1978, Appendix 'B' hereof).

"Thus, while the resolution purports to grant TOBM's motion for reconsideration, actually it reiterates its affirmance of the trial court's judgment in toto and rejects TOBM's prayer to be declared exempt from liability for interest on the deposit during the suspension of its business operations by the Central Bank, declaring:

'Appellant TOBM has not been declared insolvent. The suspension of its operations in 1968 was merely temporary. Its assets and properties were intact including its various investments, the management of which was taken over by the Central Bank to protect its depositors and creditors. Hence, there could be no justifiable reason to suspend the payment of the accrued interests on the appellee's time deposit of P100,000.00 which has been long overdue. The payment of interest thereon at 4-1/2% per annum from November 9, 1964 ordered by the lower court as well as this Court upon the appellant is in accordance with the agreement embodied in the certificate of deposit, Exhibit 'A', issued by the bank in favor of the appellee. Such agreement is the law between the parties and it should be complied with (Art. 1159, NCC). The mere suspension of its operation which was temporary could not excuse the appellant from complying with its obligation. The effect of the suspension and declared insolvency of a bank is to make its deposits due and actionable and a depositor then is entitled to interest on his deposits from the date of such suspension (10 Am. Jr. 2d. p. 389).

'The cases cited by the appellant in its motion has no application in this case for these refer to instances where the bank has been declared insolvent. This is not the situation prevailing in the case at bar.'

"Moreover, while the resolution also purports to declare that the execution of the judgment of the trial court should be in accordance with the Program of Rehabilitation of TOBM as approved by the Supreme Court, this is negated by its aforesaid re-affirmance in toto of the trial court's judgment, which holds TOBM totally liable to TAPIA."

On the other hand, private respondent's brief begins thus:

"Herein respondents respectfully beg leave of Court to adopt as their own the Statement of the Case and of Matters Involved in the petitioner's Brief, the same being in consonance with the records of the case.

"To begin with, we wish to call the attention of this Honorable Tribunal that the only ground upon which the present petition is predicated reads as follows:

'The suspension of operations of the Overseas Bank of Manila on August 1, 1968 by the Monetary Board likewise suspends payment of accrued interest contrary to the decision of this Honorable Court affirming in toto the decision of the Court of First Instance ordering defendant-appellant to pay plaintiff-appellee the sum of P100,000.00 representing the value of its time deposit together with interest thereon at 4-1/2% per annum from November 9, 1964 until the whole amount shall have been fully paid despite the suspension of operations and closing of the Bank by the Monetary Board on August 1, 1968 and August 13, 1968, respectively (Petition, p. 10).'

"Apparently, the only issue in this case is whether or not the petitioner is exempt from the payment of interest on the private respondent's time deposit of P100,000.00 for the period that its business operations were suspended by the Central Bank. We respectfully submit that under the facts of the case, the petitioner should be required to pay the accrued interest. And since the payment of the principal time deposit of P100,000.00 by the petitioner to the private respondent is no longer at issue, we shall focus our discussion on the subject of accrued interests as raised by the petitioner in its Assignment of Errors. " (Pages 1-2)

Briefly then, the general and main issue submitted for Our resolution is: When a bank is excluded by the Central Bank from inter-bank clearing, and a day later further suspended from operation, and thirteen days afterwards completely forbidden by the same (Central Bank) to do business preparatory to its forcible liquidation, but

subsequently, the Supreme Court temporarily restrains the mentioned Central Bank's orders and ultimately renders a decision nullifying the same, (41 SCRA 565) with subsequent directives for the rehabilitation, normalization and stabilization thereof, under a formula approved by the Court, (60 SCRA 276) and the process of such rehabilitation, normalization and stabilization is considerably delayed, thru no fault of the bank, but due to usually difficult and lengthy procedures and transactions directed towards such end, is a person who has deposited money in said bank before the Central Bank's orders were issued, entitled to the payment of interest on his deposit that accrues during all the period from the bank's factual closure to its actual reopening for normal business? To make this statement of the issue more complete, it may be added that although private respondent does not dispute that there was complete paralization of the bank from August 13, 1968, he insists that since technically the bank was not placed under liquidation because of the decision of the Supreme Court, its obligation, contractual in nature, to pay him interest may not be deemed excused and should be enforced. Private respondent admits though that in cases of actual liquidation of a bank, it is justifiable for it not to pay interest of the nature here in dispute.

Thus, Our task is narrowed down to the resolution of the legal problem of whether or not, for purposes of the payment of the interest here in question, stoppage of the operations of a bank by a legal order of liquidation may be equated with actual cessation of the bank's operation, not different factually speaking, in its effects, from legal liquidation, the factual cessation having been ordered by the Central Bank.

In the case of *Chinese Grocer's Association, et al. vs. American Apothecaries*, 65 Phil. 395, this Court held:

"As to the second assignment of error, this court, in G.R. No. 43682, *In re Liquidation of the Mercantile Bank of China, Tan Tiong Tick, claimant and appellant, vs. American Apothecaries, C., et al., claimants and appellees*, through Justice Imperial, held the following:

'4. The court held that the appellant is not entitled to charge interest on the amounts of his claims, and this is the object of the second assignment of error.

Upon this point a distinction must be made between the interest which the deposits should earn from their existence until the bank ceased to operate, and that which they may earn from the time the bank's operations were stopped until the date of payment of the deposits. As to the first class, we hold that it should be paid because such interest has been earned in the ordinary course of the bank's business and before the latter has been declared in a state of liquidation. Moreover, the bank being authorized by law to make use of the deposits, with the limitation stated, to invest the same in its business and other operations, it may be presumed that it bound itself to pay interest to the depositors as in fact it paid interest prior to the dates of the said claims. As to the interest which may be charged from the date the bank ceased to do business because it was declared in a state of liquidation, we hold that the said interest should not be paid."

The Court of Appeals considered this ruling inapplicable to the instant case, precisely because, as contended by private respondent, the said *Apothecaries* case had in fact in contemplation a valid order of liquidation of the bank concerned, whereas here, the order of the Central Bank of August 13, 1968 completely forbidding herein petitioner to do business preparatory to its liquidation was first restrained and then nullified by this Supreme Court. In other words, as far as private respondent is concerned, it is the legal reason for cessation of operations, not the actual cessation thereof, that matters and is decisive insofar as his right to the continued payment of the interest on his deposit during the period of cessation is concerned.

In the light of the peculiar circumstances of this particular case, We disagree. It is Our considered view, after mature deliberation, that it is utterly unfair to award private respondent his prayer for payment of interest on his deposit during the period that petitioner bank was not allowed by the Central Bank to operate.

It is a matter of common knowledge, which We take judicial notice of, that what enables a bank to pay stipulated interest on money deposited with it is that thru the other aspects of its operation it is able to generate funds to cover the payment of such interest. Unless a bank can lend money, engage in international transactions acquire foreclosed mortgaged properties or their proceeds and generally engage in other banking and financing activities from which it can derive income, it is inconceivable how it can carry on as a depository obligated to pay stipulated interest. Conventional wisdom dictates this inexorable fair and just conclusion. And it can be said that all who deposit money in banks are aware of such a simple economic proposition. Consequently, it should be deemed read into every contract of deposit with a bank that the obligation to pay interest on the deposit ceases the moment the operation of the bank is completely suspended by the duly consti-tuted authority, the Central Bank.

We consider it of trivial consequence that the stoppage of the bank's operation by the Central Bank has been subsequently declared illegal by the Supreme Court, for before the Court's order, the bank had no alternative under the law than to obey the orders of the Central Bank. Whatever be the juridical significance of the subsequent action of the Supreme Court, the stubborn fact remained that the petitioner was totally crippled from then on from earning the income needed to meet its obligations to its depositors. If such a situation cannot, strictly speaking, be legally denominated as "force majeure", as maintained by private respondent, We hold it is a matter of simple equity that it be treated as such.

What is more, private respondent overlooks the fact that as noted in the very resolution of the Court of Appeals of Novem-ber 3, 1978 granting petitioner's motion for reconsideration, said Court could not but take into account that petitioner's manner or mode of rehabilitation, normalization and stabilization was placed by the resolution of the Supreme Court of February 24, 1972 in the hands of the Central Bank, for it "to seek practical solutions in all good faith for such rehabilitation." Pursuant to said reso-lution, a "Program of Rehabilitation of TOBM (herein petitioner)" was submitted to this Court and We approved said program only on October 23, 1974. But that approval did not yet put petitioner back on its feet. The Central Bank, evidently in accordance with law, continued to refuse to allow it to operate until the program approved by the Court could materialize. Thus, after October 23, 1976, steps were continuously taken along that direction, and, as it is now of public knowledge, it was only this year 1981, that petitioner, with another name and another management has been allowed to reopen.

In the aforementioned resolution of the Court of Appeals of November 3, 1978, it revised the dispositive portion of its original decision in the following manner:

"WHEREFORE, the motion for reconsideration is granted, and the dispositive portion of the decision dated September 19, 1978, is hereby amended, so as to read, as follows:

'WHEREFORE, the judgment appealed from is hereby affirmed in toto, but the execution thereof should be in accordance with the provision of the Program of Reha-bilitation of TOBM as approved by the Supreme Court in its resolution in G.R. No. L-29352 dated Octo-ber 23, 1974 (60 SCRA 278) especially paragraph 3, sub-paragraph 4, Phase I, Rehabilitation, to quote:

'3.4. Petitioners shall effect an agreement with OBM's depositors and creditors, singly or collectively, for the conversion of their deposits and claims into bills payable under plans mutually acceptable to the parties concerned, with the end in view that payments of all deposits and claims against OBM may be made after a period of three (3) years from date of resumption of normal banking opera-tions.'

"However, in the event that said program of rehabilitation is revoked or failed to materialize, the execution of the judgment is further subject to any subsequent development or change that will be taken and considered by the Supreme Court and/or Central Bank in the premises, regarding the pay-ments of deposits and claims against the Overseas Bank of Manila." (Pp. 33-34, Record.)

Peculiarly, however, while the Appellate Court resolved to "grant" petitioner's motion for reconsideration, it still maintained its judgment affirming in toto the decision of the trial court, albeit it made the execution thereof subject to the conditions aforequoted. Naturally, petitioner could not be contented with such modification, hence the present petition before Us asking, in effect, for the reversal of the foregoing resolution of the Court of Appeals which left it with the obligation to pay the interest private respondent is demanding, as if it were legally possible for the Court of Appeals to ignore or modify the "Program of Rehabilitation" approved by this Court, which provides inter alia that:

"3.4 Petitioners shall effect an agreement with OBM's depositors and creditors, singly or collectively, for the conversion of their deposits and claims into bills payable under plans mutually acceptable to the parties concerned, with the end in view that payments of all deposits and claims against OBM may be made after a period of three (3) years from date of resumption of normal banking operations.[1]

x x x

"PHASE II

NORMALIZATION AND STABILIZATION

"This phase shall be undertaken only when all the conditions for rehabilitation of OBM as specified in Phase I have been fulfilled and/or complied with by petitioners. Banking operations and transactions which OBM may be allowed to perform shall be in accordance with such authority as the Monetary Board, upon recommendation of the Director, Department of Commercial & Savings Banks, may deem proper to extend OBM.

"OBM may be allowed to resume normal banking operations only when, in addition to standard conditions prevailing in normal banking institutions:

"1. It has reduced its loans/accounts receivable by at least 75% of the aggregate amount outstanding as of the start of the rehabilitation phase;

"2. A program of paying depositors and creditors has been accepted singly or collectively by all such depositors and creditors, including Government instrumentalities and the Philippine National Bank;

"3. The issues relative to penalties and interests mentioned in paragraph 3.8 hereof have been resolved either judicially or extrajudicially.

"The Comptroller-designate and the committee-of-three mentioned in paragraph 2.7 herein shall continue to function for as long as OBM has not been allowed to resume normal banking operations." (Pp. 283-285, 60 SCRA.)

Nowhere in the above program is there anything indicating that depositors are entitled to interest. Paragraph 3.4 of the same refers to deposits exclusively. If the Central Bank authorities or the Supreme Court had in mind the payment also of interest on such deposits, either of those authorities would have required clear language to such effect be included in the program. It is understandable why nothing of that sort was required. As We have explained earlier, the complete factual suspension of petitioner's operation as a bank disabled it to commit itself to the payment of such interest. Hopefully, petitioner may be able to resume operations and recover its standing as a normal bank. But it is almost vain to expect that within the foreseeable future, it would be in a position to pay in full even at least the deposits themselves, not to mention the interest thereon. In justice and equity, having been subjected to what the Supreme Court has found to be an unfortunate excess or abuse by the Central Bank of the exercise of its authority under the law, it would be, to put it tritely, "squeezing blood out of turnip" for Us to grant private respondent's demand.

Parenthetically, We may add for the guidance of those who might be concerned, and so that unnecessary litigations may be avoided from further clogging the dockets of the courts, that in the light of the considerations expounded in the above opinion, the same formula that exempts petitioner from the payment of interest to its depositors during the whole period of factual stoppage of its operations by orders of the Central Bank, modified in effect by the decision as well as the approval of a formula of rehabilitation by this Court, should be, as a matter of consistency, applicable or followed in respect to all other obligations of petitioner which could not be paid during the period of its actual complete closure.

PREMISES CONSIDERED, judgment is hereby rendered modifying the decision of the Court of Appeals under review in the sense that the judgment of the trial court requiring petitioner to pay interest on private respondent's deposit from August 13, 1968 up to the reopening for normal operations of petitioner is reversed, and petitioner is declared free from any liability therefor, and that with regard to his deposit of P100,000.00, it is Our judgment that he secure payment thereof by negotiating with petitioner in accordance with the terms of the Rehabilitation Program of TOBM approved by this Court on October 23, 1974.

No costs.

Abad Santos and De Castro, JJ., concur.

Fernandez and Guerrero, JJ., concur and members of the First Division, designated to sit in the Second Division.

Aquino, J., did not take part.

Concepcion, Jr., J., on official leave of absence.

[1] Notably, the Appellate Court did quote this paragraph in its amendatory resolution but evidently failed to grasp its full import.

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