

**EMERITO M. RAMOS, SUSANA B. RAMOS, EMERITO B. RAMOS, JR.,
JOSEFA RAMOS DE LA RAMA, HORACIO DE LA RAMA, ANTONIO B.
RAMOS, FILOMENA RAMOS LEDESMA, RODOLFO LEDESMA,
VICTORIA RAMOS ...**

G.R. No. L-29352. October 04, 1971

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

This is a petition for Certiorari, Prohibition and Mandamus with prayer for the issuance of a writ of preliminary injunction to restrain respondent Central Bank of the Philippines (hereinafter designated as the CB) from enforcing and implementing the Monetary Board Resolution No. 1263, adopted on 30 July 1968, excluding the Overseas Bank of Manila (hereinafter termed the OBM) from clearing with the Central Bank, that was ordered implemented on 31 July 1968 (Annex "11"), and Resolution No. 1290, adopted on 1 August 1968, granting authority to the OBM Board of Directors to suspend operations thereof, which was implemented on 2 August 1968 (Annex "13")

The herein petition is based on the following grounds:

- (a) That the aforesaid resolutions were not legally issued and were promulgated by respondent CB through the Monetary Board in excess of jurisdiction and with grave abuse of discretion;
- (b) That the said resolutions are prejudicial to the national interest and against public policy, as they would erode confidence in the banking system and undermine the integrity and stability thereof, contrary to the purpose and spirit of the Central Bank Act;
- (c) That said resolutions have caused and will cause further irreparable losses, damages and injuries to the depositors, creditors and stock-holders of the OBM;
- (d) That said resolutions were promulgated without due process of law, would constitute deprivation of property likewise without due process of law, and will amount to impairment of the obligations of contract and
- (e) That there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law.

From the pleadings and annexes, the following appears: The OBM is a commercial banking corporation duly organized and existing under the laws of the Philippines with principal office at Rosario Street, Manila. Petitioners are the majority and controlling stockholders thereof. The OBM was opened for business on 6 January 1964 with authorized capital of P30 million, P10 million subscribed and P8 million thereof paid, but had been suspended by respondent from clearing with the CB and from lending operations for various violations of the banking laws and implementing regulations. Petitioners charged that the OBM became financially distressed because of this suspension and the deprivation by the CB of all the usual credit facilities and accommodations accorded to the other banks. The alleged exactions of onerous fines and penalties by respondent was likewise blamed for the aggravated situation. For its deficiencies it was made subject to

penalties of 12% interest on overdrawings and 36% per annum on reserve deficiencies, which by 1968 amounted to several millions.

By April, 1967, the financial situation of the OBM had caused mounting concern in the CB. Petitioner Ramos and the OBM management finally met with respondent CB on the necessity and urgency of rehabilitating the OBM through the extension of necessary financial assistance.

The upshot of these conferences appears from the correspondence exchanged between the GB and the OBM.

On 2 May 1967, the Governor of the Central Bank, Andres Castillo, upon instructions of the Monetary Board, wrote a letter (Petition, Annex "B") stating:

"This is with reference to the conference had between Mr. Emerito Ramos, Sr., Chairman of your Board, and the undersigned, the Deputy Governor, the Acting Superintendent of Banks, and the Officer-in-Charge, Accounting Department of this Bank, last Friday evening on the present very precarious condition of the Over-seas Bank. In the conference, we described to Mr. Ramos at length the circumstances which led to the present precarious condition of the bank. We stressed the imminent danger of the bank's being thrown out of clearing, in accordance with existing Central Bank regulations, on account of its continuous adverse clearing balances, and of the immediate necessity of putting up additional capital in the amount of at least P3 million, which Mr. Ramos promised to put up when he last appeared before the Monetary Board.

I informed Mr. Ramos that if his bank is thrown out of clearing, the Central Bank will proceed in accordance with the existing policy under which he and other stockholders representing a majority will have to sign a trusteeship agreement with the Philippine National Bank pursuant to which the Overseas Bank will be managed by the Philippine National Bank. If the PNB takes over management in such eventuality, the Central Bank could also announce that it is ready to support the Philippine National Bank in order to allay the fears of depositors and creditors."

In view of the OBM stockholders' reluctance to execute the Voting Trust suggested, the Monetary Board adopted Resolution No. 2015 dated 16 October 1967, having the following terms (Petition, Annex "F"):

""(1) To require Mr. Emerito M. Ramos, Sr., the principal stockholder of the Overseas Bank of Manila, to submit a listing of his properties and to mortgage or assign the same to the Central Bank to cover the overdraft balance therewith of the Overseas Bank of Manila;

""(2) To require the stockholders of the Over-seas Bank of Manila to subscribe to an appropriate voting trust agreement so that the Central Bank may be able to effect a complete reorganization and/or transfer the management of the bank to a nominee of the Monetary Board;""

Further conference ensued, and on 30 October 1967 Governor Castillo of the CB wrote again (Petition, Annex "G"):

"I wish to refer to the conference had between your goodself and the members of the Monetary Board at Malacañang on 16 October 1967, relative to the financial condition and state of affairs of The Overseas Bank of Manila, of which the substantial majority of stock is owned by you and your family and corporations controlled by you.

"Among other things, the Monetary Board, having in mind the overdrawn in your deposit account with the Central Bank which, on that date, stood at P22.3 million, together with the balance of your past due emergency loan with the Central Bank amounting to P10.3 million exclusive of accumulated interest, decided that, as a measure to stave off liquidation, a voting trust agreement should be executed by you and your family and the corporations controlled by you in favor of the Superintendent of Banks, in an instrument similar to the one

executed by stockholders of the Republic Bank in favor of the Philippine National Bank. On 23 October 1967, the Legal Counsel of this Bank submitted to you a draft of such "Voting Trust Agreement" desired by the Monetary Board. However, on 25 October 1967, you handed the Legal Counsel your own draft of a "Trust Agreement" which, in essence, is not a voting trust agreement as desired by the Monetary Board and reiterated in its Resolution No. 2020 dated 20 October, 1967 and confirmed on 24 October 1967,"

This was followed up by another letter of 8 November 1967 (Petition, Annex "H"):

"In line with the conference this morning between your goodself and the under-signed, the Deputy Governor, the Acting Super-intendent of Banks, and the Central Bank Legal Counsel, and your manifestation of readiness to abide by the decisions of the Monetary Board on all matters involving the Overseas Bank of Manila, it is requested that the voting trust agreement prepared by the Legal Counsel of this Bank be now signed by you and other members of your family and by the proper of-ficials of the corporations which are stock-holders of the bank and which are controlled by you and your family.

"It is also requested that the execution of the mortgages on the properties you offered as security for the obligations of the Overseas Bank of Manila to the Central Bank be finalized, and the shares of stock belonging to you and your family in your corporations and enterprises be endorsed in favor of the Central Bank and de-livered to us as soon as possible."

Finally, on 20 November 1967, the petitioners herein executed the Voting Trust Agreement prepared by attorneys of the CB (Petition, Annex "A") with petitioners as Cestuis Que Trust[1] and respondent CB's Superintendent of Banks as the Trustee. The Trustee entered into the agreement pursuant to the authority given by respondent's Monetary Board under M. B. Resolution No. 2017, dated 17 October 1967. The salient features of the said Voting Trust Agreement are the following:

- (a) Objectives. The objectives are stated in the "Whereas Clauses", the pertinent portions of which read: " the above-named stockholders of the Overseas Bank of Manila believe that it is for and/or the interest and benefit of the bank depositors, creditors and stockholders that this trust agreement should be entered into by them for the rehabilitation, normalization and stabilization of the Overseas Bank of Manila;" and "..... TRUSTEE has likewise signified his willingness to accept such trust in pursuance of the objectives above-mentioned;" (Underscoring supplied)
- (b) Term. The life of the trust shall be for three (3) years from 20 November 1967, but the Trustee at its option, may relinquish the trust upon approval of the Monetary Board. It is provided further that if, at the expiration of the three-year period the purposes for which the trust has been constituted have not as yet been fully achieved, the trust agreement shall be considered automatically extended for such period to be determined by the Monetary Board, similarly terminable within such further period at the discretion of the Monetary Board;
- (c) Powers and authority. The trustee is given all and full authority, subject to the limitations set forth in the law and other con-ditions in the contract to: (1) direct the management of the affairs and accounts and properties of the OBM; (2) vote its directors and choose the officers and employees; (3) improve, modify, reorganize its opera-tion policies, standards, systems, methods, structure, organization, personnel, staffing pattern, etc.; (4) hold and vote on the shares of stocks transferred to him as trustee; (5) safeguard the interests of deposi-tors, creditors and stockholders; and (6) in general, to exercise all such powers and discharge all such functions as inherently pertain to the cestui que trust as owers, and/or for the sound management of a banking institution;
- (d) Consideration. The cestui que trust bound themselves, among others, to pay the trustee during the life of the trust an annual honorarium, subject to certain conditions.

Petitioners likewise conveyed by way of mortgage to the CB all their private properties and holdings to secure the obligations of the OBM to the CB, but there is no agreement as to the value of these properties, petitioners contending that they are worth over 141 million, but the CB appraised them at around 67 million (Petition, Annexes "B" and "C").

But as early as 25 September 1967, Mr. Martin Oliva, who had become president of OBM only since 13 March 1967, had written to the Superintendent of Banks that transactions worth around P48 million, of which over P43 million were time deposits, at usurious rates of interest, had not been incorporated in the Bank's books nor reported to the Board of Directors. It was explained³ that the OBM management had resorted to these unrecorded transactions because the suspension of its lending activities after 14 months of operation reduced OBM to virtual inactivity, and it had to agree to pay high premiums or interests on such deposits because this high costs is comparatively cheaper than the Central Bank's interests on overdrawings at the rate of 12% per annum and a penalty of 36% per annum on reserve deficiencies.

Oliva's letter prompted a further investigation of OBM records by the CB examiners that revealed allegedly unrecorded deposits and transactions (which is disputed by Petitioners) amounting to 48,007,211 as of 13 September 1967 (reduced to P35 million when petition was filed); diversion of deposits to accounts controlled by certain OBM officials (so-called COFICO and EMRACO accounts) and loans to the Ramos family and firms controlled by them.⁴ Petitioners contend that these transactions were recorded in subsidiary ledger accounts that were linked to the general ledger accounts of the Bank under the so-called EMRACO and COFICO accounts, and finally incorporated in OBM's regular books in September, 1967 upon instructions of President Martin Oliva.⁵ And as to the loans to the Ramos family and firms, the same had been written off when around 31 July 1967 the Ramoses conveyed to the OBM properties worth P54.096 million.

On 27 October 1967, the Superintendent of Banks reported that the condition of the OBM was one of insolvency, calling for application of Section 29 of the Central Bank Act and liquidation of OBM. However, with the listing of Ramos properties worth 100 million, it was added, a new possibility emerged to recapitalize the OBM in 100 million.⁶

"2. However, with the letter dated October 26, 1967 of Mr. Martin R. Oliva, President of the Overseas Bank of Manila, giving a list of the Ramos properties worth P100 million (?), a radically different possibility has emerged.

"If the valuation of the P100 million (net of encumbrances to the parties other than the CB and TOBM) to the properties is true, or substantially true, then the new 'possibility' may be briefly stated thus:

"A Recapitalization of the Overseas Bank of Manila on the amount of P100 million will save the bank, because -- as a general proposition, subject of course to corroborative quantification -- such a magnitude of capital can make good the bad loans as well as the funds that cannot be legitimately accounted for, and can absorb the losses in bad debts, can provide it with funds for viable operations, and thus ultimately give adequate protection to depositors and creditors.

In the same memorandum report, considering the need for liquid funds, the Superintendent of Banks suggested the following alternatives:

"(1) The OBM be required to acquire the properties in payment for frozen or bad loans or for unaccountable funds, and then mortgage the properties to CB for emergency advances, or

(2) The owners be required to mortgage the properties to the CB directly, and for CB to extend loans to OBM depending on the needs."

Three days later, 30 October 1967, the Central Bank governor wrote to the petitioner, Emerito Ramos, reiterating the need for the OBM stockholders to execute a voting trust agreement" to stave off liquidation",

which letter was followed by another of 8 November 1967, requiring the execution of the Voting Trust Agreement by the OBM stockholders and of the mortgage of their properties to secure OBM obligations to the Central Bank and the endorsement of the shares of stock held by them in their corporations and enterprises (Petition, Annexes "G" and "H", quoted pre-viously). Petitioners duly complied (Annexes "A", "C" and "S") in November, 1967.

On 5 December 1967, new directors and officers drafted from the CB itself, the PNB and DBP were elected and installed and they took over the management and control of the Overseas bank.

On 14 June 1968, the CB announced that only P10 million were available as emergency loan to OBM and requested the management of the latter (appointed under the Voting Trust Agreement to replace the old Board elected by the stockholders) to project how it could help bail out OBM.

OBM president, Mr. Orosa, submitted a "Projected Cash Flow Statement"⁷ concluding -

"It is pointed out here that with the P10 million loan from the CB, the extremely distressed financial condition of TOBM will continue to prevail. At best, the P10 million loan will enable TOBM to resume limited lending operations on a highly selected basis and diminish its estimated loss by some P492.5 thousand assuming that the loans to be extended have a high turnover rate and a 100% repayment ratio. Thus, with the P10 million CB loan, the annual loss has been estimated to be P8.9 million. To be able to breakdown in operations, therefore, TOBM needs loanable funds estimated at P196 million, placing the cost of such funds at 1-1/2%."

In a memorandum submitted to Governor Calalang 12 days later, 22 July, Mr. Orosa unburdened himself and deplored CB for hemming and hawing. This caused, he said, the loss of "psychological advantage" initially gained by PNB's take over of the OBM management. He reminded the CB Governor about the OBM management's request on 6 January 1968 for a P20 million loan to enable OBM to get on its feet. "At that time", he said, "the aid we are recommending, properly used, would have staved off panic and restored some confidence."

"Eight months of indecision has made de-positors lose faith and as a result, we are faced with more court suits and withdrawals than ever before and more obligations have matured."⁸

The next day, 23 July 1968, the Superintendent of Banks recommended to the Monetary Board that OBM be liquidated under Section 29, Republic Act 265, if its "capital structure cannot be strengthened to meet the requirements of Section 22 of RA 337"⁹, and if "massive financing cannot be given to enable the bank to expand its risk assets". He concluded that:

".....The bank's continuance in business under its present extremely pre-carious financial condition, without the necessary capital injection and financial aid, will involve not merely probable, but certain further losses to its depositors and other creditors and may have further adverse effects on the banking system."

Thereafter, on 13 August 1968, as heretofore stated, the CB Monetary Board adopted Resolution No. 1333, ordering the Superintendent of Banks to proceed to the liquidation of the OBM, under Section 29 of the Central Bank Act. As already noted, implementation of this resolution was restrained by this Court.

Petitioners aver that no adequate financial assistance was granted to the OBM after the execution of the Voting Trust Agreement. They further claim that the said agreement is not only bilateral, imposing reciprocal obligations for valuable consideration, but was also entered into by respondent CB in the performance of its duties under the law; and that under said agreement the obligation of the CB was to act and work for the "rehabilitation, normalization and stabilization" of the OBM, through the extension of adequate and necessary financial assistance to stave off liquidation, is legally demandable, as well as a duty specifically enjoined and imposed by law. And that in violation of its obligations, the CB, "after eight months of delay", adopted the questioned resolutions, without notice to or hearing the petitioners.

By resolution of this Court, the respondents were required to answer the petition and set for hearing the petition for a writ of injunction. However, on 13 August 1968, the CB adopted Resolution No. 1333 (Annex "12", Answer) forbidding the OBM from doing business and instructing the Superintendent of Banks to take charge of the Bank's assets and to take action under Section 29 of the Central Bank Act (Republic Act 265), which amounted to a directive for the liquidation of the OBM. Implementation of the resolution was, upon petitioners' motion, restrained by the Court on 14 August 1968.

Justifying Resolutions 1263 and 1290, CB in its answer cited specific instances of OBM's "unusual and irregular transactions" discovered by examiners or "revealed by OBM officials themselves". By way of affirmative defenses, CB averred that:

1. The CB is not a party to the Voting Trust agreement, and therefore cannot be compelled to implement it.
2. Assuming that CB is obliged to rehabilitate OBM, it cannot give more loans to the latter than that already given to it as of 30 July 1968, without violating Section 90 of the Central Bank Act since neither OBM nor its stockholders could put up additional capital and additional collaterals to secure CB's future advances.
3. It would be illegal and contrary to public interest to construe the voting trust agreement as imposing upon CB the duty to rescue OBM at all cost.
4. No bank has an absolute right to take part in interbank clearing, because Section 100, Republic Act 265, requires a bank as a condition to such participation to keep deposit reserves, which the OBM does not have -- in fact it had overdrawn its reserve account with the CB beyond the maximum fixed by law.

Several petitions for intervention were denied by the Court.

The issues involved appear to be:

- (a) Whether or not this Supreme Court has jurisdiction to restrain the implementation of CB Resolution No. 1333;
- (b) Whether or not the CB had agreed to rehabilitate, normalize and stabilize OBM;
- (c) Whether or not CB Resolutions Nos. 1263, 1290 and 1333 were adopted in abuse of discretion.

On the first issue of jurisdiction, the respondent Central Bank defines its position in its Rejoinder Memorandum, pages 3-5, as follows:

"We respectfully maintain,"....., "that even as this Honorable Court had ample jurisdiction over the said petition, any action based on the approval and implementation of the third resolution, Res. 1333 on 13 August 1968 comes already within the exclusive original jurisdiction of the Court of First Instance, in accordance with the provisions itself of Section 29 of the Central Bank Act, Rep. Act 265, under which said resolution was promulgated.

xxxxx xxxxx xxxxx

"The point is that the situation has changed entirely because of the approval of Res. 1333 on August 13, 1968, after the main petition had already been filed and given due course. This resolution has made the two previous questioned resolutions academic and the main petition pointless."

The CB stand is that to assail Resolution 1333 of the Monetary Board ordering the liquidation of the Overseas Bank, an action must be filed in the Court of First Instance of Manila by the Bank itself, and not by petitioning stockholders, allegedly in view of the provisions of Section 29, Republic Act No. 265, paragraph 3, reading:

"At any time within ten days after the Monetary Board has taken charge of the assets of any banking institution,

such institution may apply to the Court of First Instance for an order requiring the Monetary Board to show cause why it should not be enjoined from continuing such charge of its assets, and the court may direct the Board to refrain from further proceedings and to surrender charge of its assets."

This argument must be rejected, for it overlooks the fact that before the Central Bank adopted said Resolution No. 1333 on 13 August 1968 this Court had already taken cognizance of the petition herein, assailing Resolutions Nos. 1263 and 1290 of the Monetary Board as "patent acts of liquidation", violative of its alleged commitment to rehabilitate the Overseas Bank; and the Court, in fact, already had required the Central Bank to answer the petition on 12 August 1962, prior to the adoption of Resolution No. 1333. The latter resolution is clearly an act in pursuance of the policy outlined in the previous resolutions (1263 and 1290) enjoined by this Court hence, if jurisdiction was already acquired to delve into the validity of Resolutions 1263 and 1290 (and this the Central Bank admits), there is no cogent reason why, after such jurisdiction had been acquired, the Court should be deprived thereof by the subsequent adoption of Resolution 1333, particularly because the latter, in relation to the antecedent facts, appears to be no more than a deliberate effort to evade the jurisdiction of this Court, and have the case thrown back to the Court of First Instance.

In *People vs. Pagarum*, this Court quoted with approval the rule that:

"..... the jurisdiction of a court depends upon the state of facts existing at the time it is invoked, and if the jurisdiction once attaches to the person and subject matter of the litigation, the subsequent happening of events, although they are of such a character as would have prevented jurisdiction from attaching in the first instance, will not operate to oust jurisdiction already attached."

This rule coincides with well-established principles of American law¹⁰ to the same effect.

The basic guidelines in the exercise of this Court's original jurisdiction to issue prerogative writs were expressed in *Dimayuga vs. Fernandez*, 43 Phil. 306-307, thus:

"..... It is true, as respondents contend, that as a general rule, a court of equity will not restrain the authorities of either a state or municipality from the enforcement of a criminal law, and among the earlier decisions, there was no exception to that rule. By the modern authorities, an exception is sometimes made, and the writ is granted, where it is necessary for the orderly administration of justice, or to prevent the use of the strong arm of the law in an oppressive or vindictive manner, or a multiplicity of actions.

"In legal effect, that was the decision of this court in *Kwong Sing vs. City of Manila*. (41 Phil. 103)

"The writ of prohibition is somewhat *sui generis*, and is more or less in the sound legal discretion of the court and is intended to prevent the unlawful and oppressive exercise of legal authority, and to bring about the orderly administration of justice."

Nor would it serve the interest of justice to dismiss the case at this stage and let a new petition be filed in another court. In *Bay View vs. Manila Hotel Worker's Union* (G.R. No. L-21803, 17 December 1966), this Court, through Mr. Justice Conrad V. Sanchez, pointed out the evils attending split jurisdictions, saying:

"To draw a tenuous jurisdictional line is to undermine stability in litigations. A piece meal resort to one Court and another gives rise to multiplicity of suits The time to be lost, effort wasted, anxiety augmented, additional expense incurred ----- these are considerations which weigh heavily against split jurisdiction. Indeed it is more in keeping with orderly administration of justice that all the causes of action here be cognizable and heard by only one court." (Cas. cit., 18 SCRA 953).

On previous occasions, this Court has overruled the defense of jurisdiction in the interest of public welfare and for the advancement of public policy, where, as in this case, an extraordinary situation existed.¹¹ There is no denying that creditors, depositors and the banking community are all interested in a quick determination

whether the Overseas Bank may, under the circumstances, be closed or allowed to continue operating at the exclusive discretion of respondent Central Bank.

The plea that the Overseas Bank is not a party to the case at bar need not give concern. The petitioners are the controlling stockholders of that Bank, and are qualified to represent its interests, so that a judgment may be enforced for or against it, although it is not impleaded by name in the suit (v. Albert vs. Court of First Instance, G.R. No. L-26361, 29 May 1968, 23 SCRA 946, 964). This is particularly true considering that the present management of the OBM (Overseas Bank of Manila) is at present composed of respondent's nominees, pursuant to the Trust Agreement, and they can hardly be expected to resist the plans and actions of respondent Central Bank (CB).

On the second issue, whether or not the respondent CB agreed to rehabilitate the OBM, of which petitioners are the majority stockholders, it is believed that a review of the letters from the CB to the petitioners (hereinbefore quoted), considered together with the terms of the Voting Trust Agreement, leaves no doubt that the CB did agree and commit itself to the continued operation of, and rehabilitation of, the OBM. As early as 2 May 1967, the respondent CB, through its Monetary Board, caused then Governor Castillo to advise petitioners that -

"he and other stockholders representing a majority will have to sign a trusteeship agreement with the Philippine National Bank pursuant to which the Overseas Bank will be managed by the Philippine National Bank. If the PNB takes over management in such eventuality, the Central Bank could also announce that it is ready to support the Philippine National Bank in order to allay the fears of depositors and creditors." (Pet., Annex "B") (Emphasis supplied)

CB Resolution No. 2015 of 16 October 1967 (Petition, Annex "F"), in addition to requiring a mortgage or assignment of petitioners' personal properties to CB, confirmed the quoted memorandum by requiring the stockholders of OBM to subscribe to an appropriate trust agreement, with the only difference that instead of the Philippine National Bank, the trust would be executed in favor of the CB as trustee "to enable it to reorganize and transfer management to a nominee of the Monetary Board". Two weeks later, on 30 October 1967, after a conference at Malacañang, the CB governor once more wrote to Ramos that the Monetary Board

"decided that, as a measure to stave off liquidation, a voting trust agreement should be executed by you and your family and the corporations controlled by you in favor of the Superintendent of Banks, in an instrument similar to the one executed by stockholders of the Republic Bank in favor of the Philippine National Bank" (Petition, Annex "G") (Emphasis supplied)

The reference to the case of the Republic Bank clarifies the purpose and scope of the demand for a voting trust agreement "as a measure to stave off liquidation": for it is well-known, and it is not denied, that when the Republic Bank previously became distressed, the CB had advanced funds to rehabilitate it and allow it to resume operating.

Accordingly, the voting trust agreement that was finally executed (Annex "A"), and which was admittedly prepared by the Legal Counsel of the Central Bank, recited in its preamble as an objective of the voting trust agreement, that:

"..... the above named stockholders of the Overseas Bank of Manila believe that it is for and/or interest and benefit of the bank depositors, creditors, and stockholders, that this trust agreement should be entered into by them for the rehabilitation, normalization and stabilization of the Overseas Bank of Manila."

and that the Superintendent of Banks as

"..... Trustee has likewise signified his willingness to accept such trust in pursuance of the objectives above

mentioned....." (Emphasis supplied)

While the trust agreement on its face creates obligations only for the Superintendent of Banks as trustee, his commitments were undeniably those of the Central Bank itself, since it was the latter that had from the very beginning insisted upon such voting trust being executed. For the Superintendent of Banks was an officer of the CB, the chief of its Department of Supervision and Examination of all banking institutions operating in the country, subject to the instructions of the Monetary Board at all times, pursuant to Section 25 of the CB charter, Republic Act No. 265; and it is not credible that he should have understood that he was entering into the trust agreement in his personal capacity.

Bearing in mind that the communications, Annexes "B" and "G", as well as the voting trust agreement, Annex "A", had been prepared by the CB, and the well-known rule that ambiguities therein are to be construed against the party that caused them¹², the record becomes clear that, in consideration of the execution of the voting trust agreement by the petitioner stockholders of OBM, and of the mortgage or assignment of their personal properties to the CB (Res. No. 2015, 16 October 1967, Annex "F", Petition), the CB had agreed to announce its readiness to support the new management "in order to allay the fears of depositors and creditors" (Annex "B"), and to "stave off liquidation" by providing adequate funds for "the rehabilitation, normalization and stabilization" of the OBM, in a manner similar to what the CB had previously done with the Republic Bank (Petition, Annex "G", ante). While no express terms in the documents refer to the provision of funds by CB for the purpose, the same is necessarily implied, for in no other way could it rehabilitate, normalize and stabilize a distressed bank.

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., pages 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 conduct. 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 or 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.)

Disingenuously, the CB pleaded that the Voting Trust agreement was binding only upon the trustee, the Superintendent of Banks. But as already pointed out, this position is unacceptable since the trustee could have no private interest in the matter. Not only that, but CB subsequently caused its own team of nominees to take over the direction and management of the OBM, through the voting of the shares conveyed to the trustee. Even more, in August, 1970, the CB gave notice that it would not extend or renew the voting trust, and attempted to turn back the shares covered by it to the petitioners, thereby recognizing the obligations under the agreement as its own, and repudiating its original disclaimer thereof.

How did the CB subsequently treat its commitments?

After execution of the Voting Trust Agreement, on 20 November 1967, the CB elected and installed new directors and officers drafted from the Central Bank itself, the Philippine National Bank and the Development Bank of the Philippines. The new team assumed the management and control of the OBM and elected Augusto E. Orosa as bank president. On 6 January 1968, the new management requested for a thirty million peso loan to enable the OBM to get on its feet. How this request for aid was treated appears in a memorandum to the new DB governor, dated 22 July 1968 (Petitioner's Reply Memorandum, Annex "X", Record, pages 526-527). Mr. Orosa stated:

MEMORANDUM TO:

Governor Alfonso Calalang

SUBJECT: - POSITION PAPER OF THE OVERSEAS BANK OF MANILA

BACKGROUND

A selected PNB team formally took over the management of the Overseas Bank of Manila on December 7, 1967.

On January 16, 1968 we completed a report on the financial standing of the Bank, the original of which is in your possession. In that report, we re-commended that the balance of the unpaid capital stock of P11 million be fully paid and P20 million be advanced by the Central Bank to enable the Bank to resume normal operations. At that time, we gathered from the books of account that the Bank faced obligations to be im-mediately met amounting to about P30 million as against liquid assets of more than P12 million or an immediate cash requirement of about P17 million. Nevertheless, and this is a very important point, our feeling was that at that time the aid we are recommending, proper-ly used, would have staved off panic and restored some confidence.

The entrance of the PNB team actually was a great initial psychological advantage; we have used that advantage to full extent: the advantage has faded.

PRESENT POSITION

Eight months of indecision has made de-positors lose faith and as a result, we are faced with more court suits and withdrawals than ever before and more obligations have matured.

We are made to understand that an advance of p19 million has been approved for the Bank and that an initial release of P10 million is under study. Last July 10, 1968, we wrote the Superintendent of Banks complying with his request to render a projection of what we can do with P10 million.

There is a great leeway with what we can do with P10 million depending on the conditions which will accompany its grant. Even under the most lib-eral conditions that we can imagine, P10 million will not save the Bank. We are, however, not aware whether this proposed P10 million will be the start of a series of advances nor as to how much ultimate-ly the Central Bank will be willing to finance the re-habilitation.

We are faced with both internal and external problems that are daily increasing in difficulty. If we are requested to make a projection which we believe is a reasonable request, the present manage-ment should be made privy to the following:

- (1) What is the real policy of the Central Bank regarding the future of TOBM;
- (2) What is the policy of the Central Bank regarding present rates of interest and pen-alties on prevailing

deficiencies;

- (3) What is the rate of interest to be charged on the fresh advances;
- (4) What are the conditions to be meted out regarding leeway and operations of TOBM;
- (5) Any other strings that may be attached.
- (6) What is the policy of Central Banking regarding unrecorded time deposits.

All these points will greatly affect any projection.

REQUEST:

That the PNB management team be withdrawn from TOBM.

It is obvious from this memorandum that far from heeding the request of its own team for an advance of P30 million (or P17 million in cash) to enable the OBM to resume normal operations, the Central Bank did nothing to support the OBM between 6 January to 14 June, for almost six months, and kept even its own management team largely in the dark as to what to expect. On 14 June, CB advised that only P10 million were to be made available (i.e., one third of the requirements estimated necessary by its own representatives). This amount was naturally considered insufficient to normalize, much less re-habilitate, the OBM. And yet all this while, the CB was holding petitioners' mortgages on their private properties worth at least P67 million in 1967 by the CB's own appraisal. Petitioners claimed they were worth P100 million, which can not be very far from the truth, considering the continual rise in real estate values.

Not content with procrastinating for 6 months, without taking positive steps to normalize OBM as it had agreed to do, nor even announcing its support of its own management team or disclosing its policy regarding the future of OBM, the CB finally adopted the resolutions now attacked by herein petitioner stockholders. On 30 July 1968, it excluded the OBM from clearing with the CB (Resol. No. 1263) the contingency that the Voting Trust and the mortgage of the petitioners' private properties were to guard against. On 1 August 1968, CB authorized (and virtually directed) its nominee Board of Directors to suspend operations (Resol. No. 1290); and thirteen days thereafter (13 August 1968), the CB directed its Superintendent of Banks to proceed to liquidate OBM (Resol. No. 1333) under Section 29 of Republic Act No. 265 (Central Bank Charter), providing that -

"SEC. 29. Proceedings upon insolvency. --Whenever, upon examination by the Superintendent or his examiners or agents into the condition of any banking institution, it shall be disclosed that the condition of the same is one of insolvency, or that its continuance in business would involve probable loss to its depositors or creditors, it shall be the duty of the Superintendent forthwith, in writing, to inform the Monetary Board of the facts, and the Board, upon finding the statements of the Superintendent to be true, shall forthwith forbid the institution to do business in the Philippines and shall take charge of its assets and proceeds according to law.

"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 to money."

We are constrained to agree with petitioners that the conduct of the CB from and after January, 1968, reveals a calculated attempt to evade rehabilitating OBM despite its promises. What is more aggravating is that by the ordered liquidation, depositors and other creditors would have to share in the assets of the OBM, while the CB's own credits for advances were secured by the new mortgages it had obtained from the petitioners, thereby

gaining for it what amounts to an illegal preference. To cap it all, the CB disregarded its representations and promises to rehabilitate and normalize the financial condition of OBM, as it had previously done with the Re-public Bank, without even offering to discharge the mortgages, given by petitioners in consideration for its promises, or notifying petitioners that it desired to rescind its contract, or bringing action in court for the purpose. And all the while CB knew that the situation of the OBM was deteriorating daily, with penalties at 3% per month continually accumulating, while its creditors, depositors and stock-holders awaited the promised aid that never came, and which apparently CB never intended to give.

The deception practiced by the Central Bank, not only on petitioners but on its own management team, was in violation of Articles 1159 and 1315 of the Civil Code of the Philippines:

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

"ART. 1315. Contracts are perfected by mere consent, and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law." (Emphasis supplied)

This Supreme Court expounded the import of these legal provisions in *Abelarde vs. Lopez*, 74 Phil. 344, 348, stating:

Cleverness should never take the place of the loyal, upright and straightforward observance of plighted undertakings."

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 carried in the books and had not been reported to the OBM directors.¹³ In fact, on 29 September 1967, the CB had already ordered its examiners to investigate the Bank's records and determine the parties responsible.¹⁴ 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.

Respondent CB likewise urges in its defense that the rehabilitation of the OBM has become impossible, and points out to the reports of the Superintendent of Banks and of Mr. Augusto Orosa (the President of OBM elected by the CB nominees under the Voting Trust) that the Bank's loanable funds had to be expanded to P136 million to break even.¹⁵ It is to be borne in mind, however, that these reports were made in July, 1968, after six months of inaction on the part of the CB, without positive action on its part to comply with its previous commitments. Furthermore, while the stabilization of the OBM required injections of capital, it would be erroneous to assume that such capital would have to reach P130 million, or that it would have to be advanced all at once. For had the CB furnished the original aid of 30 million asked by the Orosa team early in January, 1968, and the OBM allowed to resume operations with CB support, the restored confidence would have stimulated new deposits, which, as is well-known, become in turn a source of loanable funds. It thus becomes apparent that most of the difficulties invoked now by the CB are of its own making, and are not a lawful excuse for its refusal to comply with its commitments. Finally, in the computations by the CB examiners, there are included a total of P16.994 million for estimated losses, interests and penalties¹⁶ that did not represent amounts to be disbursed. More concretely, even in July, 1968, after six months of CB dilly-dallying, the actual

amount needed to be loaned to the OBM for capital requirements "to support the necessary expansion in risk assets of P126.334 million in order to break even in its operations" was estimated by the Superintendent of Banks at no more than P40.730 million.¹⁷ This amount tallies with Mr. A. Orosa's estimate that an advance of P30 million in January, 1968 would have saved OBM.¹⁸ There is no showing that these amounts were beyond the capacity of CB to make¹⁹, nor is it proved that they exceeded the amounts supplied for the rehabilitation of the Republic Bank (the CB, for reasons of its own, refused to disclose the latter amounts despite requests from the court). Certainly, the ten million increase in advance capital requirements between January and July of 1968 can not be blamed on the petitioners herein, and was not of their own making.

The respondent CB cites American cases to the effect that the courts can not interfere with CB's discretion in determining whether or not a distressed bank should be supported or liquidated. In none of the cases cited, however, does it appear that the CB engaged to support the distressed bank in exchange for control of its management and additional mortgages its favor, and, therefore, the authorities cited are not in point. Discretion has its limits and has never been held to include arbitrariness, discrimination or bad faith.

We conclude that having induced the petitioners to part with additional security in reliance upon its (CB's) promises and commitments to avert liquidation and to support, normalize and rehabilitate the OBM, the respondent CB is duty bound to comply in good faith with such promises. Consequently, being contrary thereto, CB Resolutions Nos. 1263, 1290 and 1333 should be annulled and set aside for having been adopted in abuse of discretion, equivalent to excess of jurisdiction. And never having attempted to comply, nor even to begin compliance, with its commitments and promises, the respondent CB is precluded to invoke the expiration of the period specified for the duration of its obligations under the Voting Trust Agreement. Such period should, in justice and equity, be deemed to start running from and after the CB begins due performance of its commitments, promises and representations in good faith.

WHEREFORE, the writs prayed for in the petition are hereby granted, and respondent Central Bank's resolutions Nos. 1263, 1290 and 1333 (that prohibit the Overseas Bank of Manila to participate in clearing, direct the suspension of its operations, and ordering liquidation of said bank) are hereby annulled and set aside; and said respondent Central Bank of the Philippines is directed to comply with its obligations under the Voting Trust Agreement, and to desist from taking action in violation thereof. Costs against respondent Central Bank of the Philippines.

Concepcion, C.J., took no part.

Dizon, Teehankee, and Villamor, JJ., concur.

Makalintal, J., dissents in a separate opinion.

Zaldivar, J., concur in the result.

Castro, J., reserves his right to file dissenting opinion.

Fernando, J., concurs in the result primarily on the ground that respondent's arbitrary and improvident exercise of its asserted power in the premises is violative of due process.

Barredo and Makasiar, JJ., did not take part.

[1] This designation was legally erroneous, for the terms of the document clearly show that petitioners were the Trustors with the OBM creditors and depositors and stockholders as cestuis que trustent.

3 Annex "M", Petitioners' Reply Memorandum.

4 Annexes "21-A", "22-A", "22-C", "23".

5 Annexes "S", "T", "U", "O" and "P", Petition.

6 Annex "21", Answer.

7 Annex "10-A", Answer.

8 Annex "X", Reply Memorandum.

9 Which provides that "the combined capital accounts of each commercial bank shall not be less than an amount equal to fifteen percent (15%) of its total assets", i.e., risk assets or investments.

The Bank superintendent estimated that OBM needed P21.7 million (to replenish OEM's capital account which was wiped out because of losses) to support risk assets as of 30 June 1968; plus P18.9 million to support expansion of risk assets in the amount of P126 million. In other words, it needed an additional P40 million fresh capital. Annex "10", Answer.

10 20 Am. Jur. 2d, Courts, Section 148; 21 C. J. S., Courts, Section 93.

11 Cf. Yu Cong Eng vs. Trinidad, 47 Phil. 385; People vs. Zulueta, 89 Phil. 752; Botelho Shipping Corp. vs. Leuterio, L-20420, 30 May 1963, 8 SCRA 121).

12 Civil Code, Article 1377; Halili vs. Lloret, 95 Phil. 78; Gonzales vs. La Previsora Filipina, 74 Phil. 165; Asturias Sugar Central vs. Pure Cane Molasses Co., 57 Phil. 519; Calanoc vs. Court of Appeals, 98 Phil. 79.

13 Reply Memo, Annex "L", page 483, Record; Annex "20", page 248.

14 Answer, Annex "5".

15 Annex "10" and "10-A".

16 Report of Superintendent of Banks Ignacio, 23 July 1968. Answer, Annex "10", page 4 (Record, page 150).

17 Ibid.

18 Annex "X", Reply Memo, previously quoted.

19 The CB's assets in 1968 were reported by it at P4,516, 469, 275.97 with surplus of P269,712.295.59 (20th Annual Report)

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DISSENTING OPINION

MAKALINTAL, J.:

I fail to see, either from the record of this case or from the opinion of the majority, just how and where respondent Central Bank acted without or in excess of jurisdiction or with grave abuse of discretion so as to justify the writs of certiorari and prohibition granted by this Court; and just how and where said respondent neglected to perform a duty specifically enjoined by law so as to justify the writ of mandamus. To my mind the acts complained of in the petition, namely, Resolutions Nos. 1263 and 1290, passed by the Monetary Board on July 31 and August 1, 1968, respectively, were, if anything, a judicious exercise of discretion for the purpose of carrying out the policies laid down by the Central Bank Act with respect to supervision over the operation of private banking institutions; and

this Court, by issuing the writs prayed for, has substituted its own judgment for that of the Monetary Board in a matter that is peculiarly within the competence of the latter.

The thrust of the decision, as far as I can make out, is that the Voting Trust Agreement of November 20, 1967 created contractual obligations, with which "res-pendent Central Bank of the Philippines is directed to comply..." The directive does not specify what those obligations are. The principal stipulation in the agree-ment is simply what its title indicates: petitioners here, referred to as the Cestuis Que Trust, assign to the Trustee "for such purpose" the voting rights to all their shares of stock in the Overseas Bank of Manila, subject to certain conditions thereafter stated. The purpose envisaged is expressed in the first of the two "WHEREAS" clauses of the agreement, to wit: "the abovenamed stock-holders (petitioners here) believe that it is for and/or in the interest and benefit of the bank's depositors, creditors and stockholders that this trust agreement should be entered into by them for the rehabilitation, normalization and stabilization of the Overseas Bank of Manila."

It seems, from a reading of the decision of this Court, that the purpose for which the Voting Trust Agreement was entered into - more accurately, the goal sought to be achieved - is mistaken for the obligation thereunder, and that such obligation devolves not upon the Trustee, the Superintendent of Banks, but upon the Central Bank itself, which is not a party to the agree-ment. Be that as it may, the agreement contains an optional rescission clause, which is only logical, since the feasibility of rehabilitating, normalizing and stabilizing the Overseas Bank, which was then in extreme-ly distressed circumstances, would depend upon many factors which could not be predicted with mathematical certitude, but only upon a reasonably considered projection of future probabilities. Thus while the life of the agreement would be for three years from the date of its execution, it was provided expressly "that the Trustee may, at its option, relinquish the trust, upon approval of the Monetary Board."

Resolution No. 1263, adopted July 31, 1968, excluded the Overseas Bank, then under trusteeship, from clearing with the Central Bank, effective immediately. Resolution No. 1290, adopted the next day, granted authority to the Board of Directors of the Overseas Bank to suspend opera-tions pending final action by the Monetary Board. Such final action was evidently meant to be in connection with the recommendation submitted by the Superintendent of Banks to the Monetary Board on June 23, 1968, which reads in part as follows:

"After considering (1) the Ex-aminers' provisions for estimated losses on the recorded loans and re-ceivables of P13.766 million (exclusive of estimated losses of P13.243 million on 'unrecorded' loans and receivables), plus 2(a) the accrued interest on the emergency loans by, and overdrawings with, the Central Bank, and 2(b) penal-ties payable on deposit reserve de-ficiencies aggregating P3.228 million, or a total of P16.994 million, all of these not yet taken up in the books, the bank's capital accounts per books of P14.356 million as of June 30, 1968, would be wiped out resulting in an estimated deficiency to credi-tors of P2.638 million. Since the minimum capital required under Sec-tion 22 of Republic Act No. 337 as of June 30, 1968 is P19.142 million, the amount of fresh capital needed to be put up to comply with the minimum capital requirement as of June 30, 1968 would be P21.780 million. In addition, P18.950 million of new capital must be put up by the Bank to support the necessary expansion in risk assets of P126.334 million in order to break even in its operations. Therefore, the total fresh capital which the Bank must put up to meet the requirements of Section 22 of R.A. No. 337, after considering the estimated losses on loans and other expenses not yet taken up in the books, as well as the necessary expansion in risk assets so as to break even in its operations, would be P40.730 million.

xxx xxx xxx

"If the capital structure cannot be strengthened to meet the requirements of Section 22 of R.A. No. 337, and massive financing cannot be given to enable the Bank to expand its risk as-sets to the level at which it can break even in operations, then there seems to be no other alternative except to liquidate the Bank under Section 29 of R.A. No. 265. The Bank's continuance in business under its present extremely precarious financial condition, with-out the necessary capital injection and financial aid, will involve not merely probable, but

certain, further losses to its depositors and other creditors and may have further adverse effects on the banking system."

In the situation depicted by the Superintendent of Banks, which in his opinion presented no other alternative except to liquidate the Overseas Bank pursuant to Section 29 of Republic Act No. 265 (Charter of the Central Bank), the adoption of Resolutions Nos. 1263 and 1290 was not, in my opinion, a violation of the Voting Trust Agreement, much less an abuse of discretion on the part of the Monetary Board.

In a sense the issue with respect to the afore-said resolutions has become moot and academic in view of the fact that on August 13, 1968, after the instant petition was filed, the Monetary Board adopted Resolution No. 1333, wherein it decided as follows:

"(1) To forbid the Overseas Bank of Manila to do business in the Philippines;

"(2) To instruct the Superintendent of Banks to take charge, in the name of the Monetary Board of the bank's assets;

"(3) 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

"(4) To refer the said memorandum report of the Superintendent of Banks as well as previous pertinent reports of the examiners of the Department of Supervision and Examination, particularly those pertaining to unrecorded certificates of time deposits bearing the signatures of former officers of the bank, to the Central Bank Legal Counsel for appropriate legal action."

The adoption of Resolution No. 1333, it seems to me, should remove the present controversy from this Court - if it was properly here at all in the first place, which I doubt - and address it to the Court of First Instance pursuant to Section 29 of the Central Bank Charter, which provides:

"SEC. 29. Proceeding upon insolvency. - Whenever, upon examination by the Superintendent or his examiners or agents into the condition of any banking institution, it shall be disclosed that the condition of the same is one of insolvency, or that its continuance in business would involve probable loss to its depositors or creditors, it shall be the duty of the Superintendent forthwith, in writing, to inform the Monetary Board of the facts, and the Board, upon finding the statements of the Superintendent to be true, shall forthwith forbid the institution to do business in the Philippines and shall take charge of its assets and proceeds according to law.

The Monetary Board shall there-upon determine within thirty days whether the institution may be reorganized or otherwise placed in such a condition so that it may be permitted to resume business with safety to its creditors and shall prescribe the conditions under which such resumption of business shall take place. In such case the expenses and fees in the administration of the institution shall be determined by the Board and shall be paid to the Central Bank out of the assets of such banking institution.

At any time within ten days after the Monetary Board has taken charge of the assets of any banking institution, such institution may apply to the Court of First Instance for an order requiring the Monetary Board to show cause why it should not be enjoined from continuing such charge of its assets, and the court may direct the Board to refrain from further proceedings and to surrender charge of its assets.

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 to money."

My misgiving as to the propriety of the remedy sought by petitioners is that it is essentially for the enforcement of

an alleged contract, presented in the guise of a petition for certiorari, prohibition and mandamus. This is borne out by the decision of this Court, which directs the Central Bank "to comply with its obligations under the Voting Trust Agreement, and to desist from taking any action in violation thereof." It is to be noted that no "act which the law specifically enjoins as a duty resulting from an office, trust, or station" is ordered to be performed. Compliance with contractual obligations is beyond the purview of mandamus, and original jurisdiction over an action for that purpose pertains to the Courts of First Instance. Such an action is a plain, speedy and adequate remedy in the ordinary course of law which, being available to petitioners, should bar the present recourse to the extraordinary writ of mandamus, especially because certain vital facts are controverted by the parties, such as the outstanding liabilities which can not be paid by the Overseas Bank, the value of the properties mortgaged to the Central Bank by petitioners, the extent of the loans secured by the mortgage, and the amount of money which the Central Bank is supposed to advance in order to comply with its supposed undertaking to rehabilitate, normalize and stabilize the Overseas Bank. Curiously enough, as already noted, the decision of this Court merely directs compliance with the Voting Trust Agreement without specifying - if indeed what is implied is the rehabilitation of the Overseas Bank - just what should be done to achieve that goal, or just how many millions of pesos the Central Bank must continue to pump into the Overseas Bank in order to put it on its feet again. It is no idle speculation to say that the writs granted by this Court may raise more questions than they answer.

With particular reference to the mortgages executed by petitioners, they say the same were a consideration of the Voting Trust Agreement. Respondent Central Bank denies this and maintains that the mortgages were constituted as security for "the huge amounts of emergency loans and overdrawings advanced in the clearing house to the OBM by the Central Bank." The Voting Trust Agreement itself is silent on the point. My own reading of the record convinces me of the correctness of the position of the Central Bank. In any case, considering the existence of a substantial disagreement on this point, not only between the parties but also among the members of this Court, the issue could best be resolved in an ordinary action, either for specific performance as hereinbefore indicated or for rescission of the mortgages and the re-conveyance of the mortgaged properties to petitioners. For the resolution of this issue I believe that this Court is not the proper forum in the first instance, nor the present petition the proper vehicle.

Going back to Section 29 of Republic Act No. 265, it may be noted that what the Central Bank did, including its suggestion that a Voting Trust Agreement be executed, was in accordance with its powers and duties under the said section. Whenever a banking institution is in a state of insolvency the Monetary Board shall determine whether it "may be reorganized or otherwise placed in such a condition so that it may be permitted to resume business with safety." A Voting Trust, such as that which was entered into in the case of the Overseas Bank, is certainly one of the measures which may be adopted for that purpose. The rehabilitation of the distressed institution is the primary goal of the authority given to the Monetary Board, and there is nothing so sacrosanct in a voting trust agreement, or in the use of the word "rehabilitate" therein, that once it is executed the Central Bank is thereby bound to see the "rehabilitation" through as an ordinary contractual commitment, no matter how costly and impractical it may prove. For Section 29 also provides that "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." This was precisely the step contemplated by the Monetary Board when it passed Resolution No. 1333 on August 1968, and any questions concerning its validity, in my opinion, should be raised in a proper case as authorized in the said provision.

In view of the foregoing considerations, I vote to deny the writs prayed for and to dismiss the instant petition.

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