

## CENTRAL BANK OF THE PHILIPPINES, PETITIONER, VS. THE HONORABLE JUDGE JESUS P. MORFE AND FIRST MUTUAL SAVINGS AND LOANS ORGANIZATION, INC., RESPONDENTS.

*G.R. No. L-20119. June 30, 1967*

Ponente: CONCEPCION, C.J.

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### CONCEPCION, C.J.:

This is an original action for certiorari, prohibition and injunction, with preliminary injunction, against an order of the Court of First Instance of Manila, the dispositive part of which reads:

"WHEREFORE, upon the petitioner filing an injunction bond in the amount of P3,000.00, let a writ of preliminary preventive and/or mandatory injunction issue, restraining the respondents, their agents or representatives, from further searching the premises and pro-perties and from taking custody of the various documents and papers of the petitioner corpo-ration, whether in its main office or in any of its branches; and ordering the respondent Central Bank and/or its co-respondents to re-turn to the petitioner within five (5) days from service on respondents of the writ of preventive and/or mandatory injunction, all the books, documents, and papers so far seized from the petitioner pursuant to the aforesaid search warrant."

Upon the filing of the petition herein and of the re-quisite bond, we issued, on August 14, 1962, a writ of preliminary injunction restraining and prohibiting respondents herein from enforcing the order above quoted.

The main respondent in this case, the First Mutual Savings and Loan Organization, Inc. -- hereinafter referred to as the Organization --- is a registered non-stock corpora-tion, the main purpose of which, according to its Articles of Incorporation, dated February 14, 1961, is "to encourage x x x and implement savings and thrift among its members, and to extend financial assistance in the form of loans," to them. The Organization has three (3) classes of "members"[1] namely: (a) founder members -- who originally join-ed the organization and have signed the pre-incorporation papers -- with the exclusive right to vote and be voted for; (b) participating members -- with "no right to vote or be voted for" -- to which category all other members belong; except (c) honorary members, so made by the board of trustees, -- "at the exclusive discretion" thereof -- due to "assistance, honor, prestige or help extended in the propagation" of the objectives of the Organization -- without any pecuniary expenses on the part of said honorary members.

On February 14, 1962, the legal department of the Central Bank of the Philippines -- hereinafter referred to as the Bank -- rendered an opinion to the effect that the Organiza-tion and others of similar nature are banking institutions, falling within the purview of the Central Bank Act.[2] Hence, on April 1 and 3, 1962, the Bank caused to be published in the newspapers the following:

#### "A N N O U N C E M E N T

"To correct any wrong impression which recent newspaper reports on 'savings and loan associations' may have created in the minds of the public and other interested parties, as well as to answer numerous inquires from the public, the Central Bank of the Philippines wishes to announce that all 'savings and loan associations' now in

operation and other organizations using different corporate names, but engaged in operations similar in nature to said 'associations' HAVE NEVER BEEN AUTHORIZED BY THE MONETARY BOARD OF THE CENTRAL BANK OF THE PHILIPPINES TO ACCEPT DEPOSIT OF FUNDS FROM THE PUBLIC NOR TO ENGAGE IN THE BANKING BUSINESS NOR TO PERFORM ANY BANKING ACTIVITY OR FUNCTION IN THE PHILIPPINES.

"Such institutions violate Section 2 of the General Banking Act, Republic Act No. 337, should they engage in the 'lending of funds obtained from the public through the receipts of deposits or the sale of bonds, securities or obligations of any kind' without authority from the Monetary Board. Their activities and operations are not supervised by the Superintendent of Banks and persons dealing with such institutions do so at their risk.

"CENTRAL BANK OF THE PHILIPPINES",

Moreover, on April 23, 1962, the Governor of the Bank directed the coordination of the investigation and gathering of evidence on the activities of the savings and loan associations which are operating contrary to law." Soon thereafter, or on May 18, 1962, a member of the intelligence division of the Bank filed with the Municipal Court of Manila a verified application for a search warrant against the Organization, alleging that "after close observation and personal investigation, the premises at No. 2745 Rizal Ave-nue, Manila" -- in which the offices of the Organization were housed -- "are being used unlawfully," because said Organization is illegally engaged in banking activities, "by receiving deposits of money for deposit, disbursement, safe-keeping or otherwise or transacts the business of a savings and mortgage bank and/or building and loan association x x x without having first complied with the provisions of Republic Act No. 337" and that the articles, papers, or effects enumerated in a list attached to said application, as Annex A thereof,<sup>3</sup> are kept in said premises, and "being used or intended to be used in the commission of a felony, to wit: violation of Sections 2 and 6 of Republic Act No. 337."<sup>4</sup> Said articles, papers or effects are described in the afore-mentioned Annex A, as follows:

"I. BOOKS OF ORIGINAL ENTRY

(1) General Journal

(2) Columnar Journal or Cash Book

(a) Cash Receipts Journal or Cash Receipt Book

(b) Cash Disbursements Journal or Cash Disbursement Book

"II. BOOKS OF FINAL ENTRY

(1) General Ledger

(2) Individual Deposits and Loans Ledgers

(3) Other Subsidiary Ledgers

**"III. OTHER ACCOUNTING RECORDS**

(1) Application for Membership

(2) Signature Card

(3) Deposit Slip

(4) Passbook Slip

(5) Withdrawal Slip

- (6) Tellers Daily Deposit Report
- (7) Application for Loan Credit Statement
- (8) Credit Report
- (9) Solicitor's Report
- (10) Promissory Note
- (11) Indorsement
- (12) Co-makers' Statements
- (13) Chattel Mortgage Contracts
- (14) Real Estate Mortgage Contracts
- (15) Trial Balance
- (16) Minutes Book - Board of Directors

#### "IV. FINANCIAL STATEMENTS

- (1) Income and Expenses Statements
- (2) Balance Sheet or Statement of Assets and Liabilities

#### "V. OTHERS

- (1) Articles of Incorporation
- (2) By-Laws
- (3) Prospectus, Brochures, Etc.

(4) And other documents and articles which are being used or intended to be used in unauthorized banking activities and operations contrary to law."

Upon the filing of said application, on May 18, 1962, Hon. Roman Cancino, as Judge of the said municipal court, issued the warrant above referred to,<sup>5</sup> commanding the search of the aforesaid premises at No. 2745 Rizal Avenue, Manila, and the seizure of the foregoing articles, there being "good and sufficient reasons to believe" - upon examination, under oath, of a detective of the Manila Police Department and said intelligence officer of the Bank --- that the Organization has un-der its control, in the address given, the aforementioned articles, which are the subject of the offense adverted to above or intended to be used as means for the commission of said offense.

Forthwith, or on the same date, the Organization com-menced Civil Case No. 50409 of the Court of First Instance of Manila, an original action for "certiorari, prohibition, with writ of preliminary injunction and/or writ of preliminary man-datory injunction," against said municipal court, the Sheriff of Manila, the Manila Police Department, and the Bank, to an-nul the aforementioned search warrant, upon the ground that, in issuing the same, the municipal court had acted "with grave abuse of discretion, without jurisdiction and/or in excess of jurisdiction" because: (a) "said search warrant is a roving commission, general in its terms x x x;" (b) "the use of the word 'and others' in the search warrant x x x permits the unreasonable search and seizure of documents which have no relation, whatsoever to any specific criminal act x x x;" and (c) "no court in the Philippines has any jurisdiction to try a criminal case against a corporation x x x."

The Organization, likewise, prayed that, pending hearing of the case on the merits, a writ of preliminary injunction be issued ex-parte restraining the aforementioned search and seizure, or, in the alternative, if the acts complained of, have been partially performed, that a writ of preliminary mandatory injunction be forthwith issued ex-parte, ordering the preservation of the status quo of the parties, as well as the immediate return to the Organization of the documents and papers so far seized under the search warrant in question. After due hearing, on the petition for said injunction, respondent, Hon. Jesus P. Morfe, Judge, who presided over the branch of the Court of First Instance of Manila to which said Case No. 50409 had been assigned, issued, on July 2, 1962, the order complained of.

Within the period stated in said order, the Bank moved for a reconsideration thereof, which was denied on August 7, 1962. Accordingly, the Bank commenced, in the Supreme Court, the present action, against Judge Morfe and the Organization, alleging that respondent Judge had acted with grave abuse of discretion and in excess of his jurisdiction in issuing the order in question.

At the outset, it should be noted that the action taken by the Bank, in causing the aforementioned search to be made and the articles above listed to be seized, was predicated upon the theory that the Organization was illegally engaged in banking - by receiving money for deposit, disbursement, safekeeping or otherwise, or transacting the business of a savings and mortgage bank and/or building and loan association, -- without first complying with the provisions of R. A. No. 337, and that the order complained of assumes that the Organization had violated sections 2 and 6 of said Act. Yet respondent Judge found the searches and seizures in question to be unreasonable, through the following process of reasoning: the deposition given in support of the application for a search warrant states that the deponent personally knows that the premises of the Organization, at No. 2745 Rizal Avenue, Manila, were being used unlawfully for banking purposes. Respondent Judge deduced, from this premise, that the deponent "knows specific banking transactions of the petitioner with specific persons," and, then concluded, that said deponent "x x x could have, if he really knew of actual violation of the law, applied for a warrant to search and seize only books" or records

"covering the specific purportedly illegal banking transactions of the petitioner with specific persons who are the supposed victims of said illegal banking transactions according to his knowledge. To authorize and seize all the records listed in Annex A to said application for search warrant, without reference to specific alleged victims of the purported illegal banking transactions, would be to harass the petitioner, and its officers with a roving commission or fishing expedition for evidence which could be discovered by normal intelligence operations or inspection (not seizure) of books and records pursuant to Section 4 of Republic Act No. 337 x x x."

The concern thus shown by respondent Judge for the civil liberty involved is, certainly, in line with the function of courts, as ramparts of justice and liberty, and deserves the greatest encouragement and warmest commendation. It lives up to the highest traditions of the Philippine Bench, which underlies the people's faith in and adherence to the Rule of Law and the democratic principles in this part of the World.

At the same time, it cannot be gainsaid that the Constitutional injunction against unreasonable searches and seizures seeks to forestall, not purely abstract or imaginary evils, but specific and concrete ones. Indeed, unreasonableness is, in the very nature of things, a condition dependent upon the circumstances surrounding each case, in much the same way as the question whether or not "probable cause" exists is one which must be decided in the light of the conditions obtaining in given situations.

Referring particularly to the one at bar, it is not clear from the order complained of whether respondent Judge opined that the above mentioned statement of the deponent - to the effect that the Organization was engaged in the transactions mentioned in his deposition - deserved credence or not. Obviously, however, a mere disagreement

with Judge Can-cino, who issued the warrant, on the credibility of said state-ment, would not justify the conclusion that said municipal Judge had committed a grave abuse of discretion, amounting to lack of jurisdiction or excess of jurisdiction. Upon the other hand, the failure of the witness to mention particular individuals does not necessarily prove that he had no per-sonal knowledge of specific illegal transactions of the Or-ganizations, for the witness might be acquainted with such specific transactions, even if the names of the individuals concerned were unknown to him.

Again, the aforementioned order would seem to assume that an illegal banking transaction, of the kind contemplated in the contested action of the officers of the Bank, must al-ways connote the existence of a "victim." If this term is used to denote a party whose interests have been actually injured, then the assumption is not necessarily justified. The law requiring compliance with certain requirements before any-body can engage in banking obviously seeks to protect the public against actual, as well as potential, injury. Similarly, we are not aware of any rule limiting the use of search warrants to papers or effects which cannot be secured otherwise.

The line of reasoning of respondent Judge might, per-haps, be justified if the acts imputed to the Organization consisted of isolated transactions, distinct and detached from the type of business in which it is generally engaged. In such case, it may be necessary to specify or identify the parties involved in said isolated transactions, so that the search and seizure be limited to the records pertinent thereto. Such, however, is not the situation confronting us. The records suggest clearly that the transactions objected to by the Bank constitute the general pattern of the business of the Organization. Indeed, the main purpose thereof, according to its By-laws, is "to extend financial assistance, in the form of loans, to its members," with funds deposited by them.

It is true, that such funds are referred to - in the Arti-cles of Incorporation and the By-laws - as their "savings," and that the depositors thereof are designated as "members," but, even a cursory examination of said documents will readily show that anybody can be a depositor and thus be a "participating member." In other words, the Organization is, in effect, open to the "public" for deposit accounts, and the funds so raised may be lent by the Organization. Moreover, the power to so dispose of said funds is placed under the exclusive authority of the "founder members," and "participating members" are express-ly denied the right to vote or be voted for, their "privileges and benefits," if any, being limited to those which the board of trustee may, in its discretion, determine from time to time. As a consequence, the "membership" of the "participating members" is purely nominal in nature. This situation is fraught, precisely, with the very dangers or evils which Republic Act No. 337 seeks to forestall, by exacting compliance with the requirements of said Act, before the transactions in question could be undertaken.

It is interesting to note, also, that the Organization does not seriously contest the main facts, upon which the action of the Bank is based. The principal issue raised by the Organization is predicated upon the theory that the aforementioned transactions of the Organization do not amount to "banking," as the term is used in Republic Act No. 337. We are satis-fied, however, in the light of the circumstances obtaining in this case, that the Municipal Judge did not commit a grave abuse of discretion in finding that there was probable cause that the Organization had violated Sections 2 and 6 of the aforesaid law and in issuing the warrant in question, and that, accordingly, and in line with *Alvarez vs. Court of First Instance* (64 Phil. 33), the search and seizure complained of have not been proven to be unreasonable.

WHEREFORE, the order of respondent Judge dated July 2, 1962, and the writ of preliminary mandatory injunction issued in compliance therewith are hereby annulled, and the writ of preliminary injunction issued by this Court on August 14, 1962, accordingly, made permanent, with costs against respond-ent First Mutual Savings and Loan Organization, Inc.

**IT IS SO ORDERED.**

Reyes, J.B.L., Makalintal, Bengzon, J.P., Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

[1] Pursuant to the by-laws of the Organization, as amended, on March 29, 1961.

[2] Republic Act No. 337.

3 P. 106, Rollo.

4 Annex 6 to Annex E, p. 105 of the Rollo.

5 P. 107, Rollo.

6 "Section 2. Only duly authorized persons and entities may engage in the lending of funds obtained from the public through the receipt of deposits or the sale of bonds securities or obligations of any kind, and all entities regularly conducting such operations shall be considered as banking institutions and shall be subject to the provisions of this Act, of the Central Bank Act, and of other pertinent laws. The terms 'banking institution' and 'bank,' as used in this Act, are synonymous and interchangeable and specifically include banks, banking institutions, commercial banks, savings banks, mortgage banks, trust companies, building and loan associations, branches and agencies in the Philippines of foreign banks, hereinafter called Philippine branches, and all other corporations, companies, partnerships, and associations performing banking functions in the Philippines.

"Persons and entities which receive deposits only occasionally shall not be considered as banks, but such persons and entities shall be subject to regulations by the Monetary Board of the Central Bank; nevertheless, in no case may the Central Bank authorize the drawing of checks against deposits not maintained in banks, or branches or agencies thereof.

"The Monetary Board may similarly regulate the activities of persons and entities which act as agents of banks."

"Section 6. No person, association or corporation not conducting the business of a commercial banking corporation, trust corporation, savings and mortgage bank, or building and loan association, as defined in this Act, shall advertise or hold itself out as being engaged in the business of such bank, corporation or association, or use in connection with its business title the word or words 'bank,' 'banking,' 'banker,' 'building and loan association,' 'trust company,' or other words of similar import, or solicit or receive deposits of money for deposit, disbursement, safekeeping, or otherwise, or transact in any manner the business of any such bank, corporation or association, without having first complied with the provisions of this Act in so far as it relates to commercial banking corporations, trust corporations, savings and mortgage banks, or building and loan associations, as the case may be. For any violation of the provisions of this section by a corporation, the officers and directors thereof shall be jointly and severally liable. Any violation of the provisions of the section shall be punished by a fine of five hundred pesos for each day during which such violation is continued or repeated, and in default of the payment thereof, subsidiary imprisonment as prescribed by law."

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