

RURAL BANK OF SAN MIGUEL, INC. AND HILARIO P. SORIANO, IN HIS CAPACITY AS MAJORITY STOCKHOLDER IN THE RURAL BANK OF SAN MIGUEL, INC., PETITIONERS, VS. MONETARY BOARD, BANGKO SEN...

G.R. NO. 150886. February 16, 2007

Ponente: CORONA, J.

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CORONA, J.:

This is a petition for review on certiorari[1] of a decision[2] and resolution[3] of the Court of Appeals (CA) dated March 28, 2000 and November 13, 2001, respectively, in CA-G.R. SP No. 57112.

Petitioner Rural Bank of San Miguel, Inc. (RBSM) was a domestic corporation engaged in banking. It started operations in 1962 and by year 2000 had 15 branches in Bulacan.[4] Petitioner Hilario P. Soriano claims to be the majority stockholder of its outstanding shares of stock.[5]

On January 21, 2000, respondent Monetary Board (MB), the governing board of respondent Bangko Sentral ng Pilipinas (BSP), issued Resolution No. 105 prohibiting RBSM from doing business in the Philippines, placing it under receivership and designating respondent Philippine Deposit Insurance Corporation (PDIC) as receiver:

On the basis of the comptrollership/monitoring report as of October 31, 1999 as reported by Mr. Wilfredo B. Domo-ong, Director, Department of Rural Banks, in his memorandum dated January 20, 2000, which report showed that [RBSM] (a) is unable to pay its liabilities as they become due in the ordinary course of business; (b) cannot continue in business without involving probable losses to its depositors and creditors; that the management of the bank had been accordingly informed of the need to infuse additional capital to place the bank in a solvent financial condition and was given adequate time within which to make the required infusion and that no infusion of adequate fresh capital was made, the Board decided as follows:

1. To prohibit the bank from doing business in the Philippines and to place its assets and affairs under receivership in accordance with Section 30 of [RA 7653];
2. To designate the [PDIC] as receiver of the bank;

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On January 31, 2000, petitioners filed a petition for certiorari and prohibition in the Regional Trial Court (RTC) of Malolos, Branch 22 to nullify and set aside Resolution No. 105.[7] However, on February 7, 2000, petitioners filed a notice of withdrawal in the RTC and, on the same day, filed a special civil action for certiorari and prohibition in the CA. On February 8, 2000, the RTC dismissed the case pursuant to Section 1, Rule 17 of the Rules of Court.[8]

The CA's findings of facts were as follows.

To assist its impaired liquidity and operations, the RBSM was granted emergency loans on different occasions

in the aggregate amount of P375 [million].

As early as November 18, 1998, Land Bank of the Philippines (LBP) advised RBSM that it will terminate the clearing of RBSM's checks in view of the latter's frequent clearing losses and continuing failure to replenish its Special Clearing Demand Deposit with LBP. The BSP interceded with LBP not to terminate the clearing arrangement of RBSM to protect the interests of RBSM's depositors and creditors.

After a year, or on November 29, 1999, the LBP informed the BSP of the termination of the clearing facility of RBSM to take effect on December 29, 1999, in view of the clearing problems of RBSM.

On December 28, 1999, the MB approved the release of P26.189 [million] which is the last tranche of the P375 million emergency loan for the sole purpose of servicing and meeting the withdrawals of its depositors. Of the P26.180 million, xxx P12.6 million xxx was not used to service withdrawals [and] remains unaccounted for as admitted by [RBSM's Treasury Officer and Officer-in-Charge of Treasury]. Instead of servicing withdrawals of depositors, RBSM paid Forcecollect Professional Solution, Inc. and Surecollect Professional, Inc., entities which are owned and controlled by Hilario P. Soriano and other RBSM officers.

On January 4, 2000, RBSM declared a bank holiday. RBSM and all of its 15 branches were closed from doing business.

Alarmed and disturbed by the unilateral declaration of bank holiday, [BSP] wanted to examine the books and records of RBSM but encountered problems.

Meanwhile, on November 10, 1999, RBSM's designated comptroller, Ms. Zenaida Cabais of the BSP, submitted to the Department of Rural Banks, BSP, a Comptrollership Report on her findings on the financial condition and operations of the bank as of October 31, 1999. Another set of findings was submitted by said comptroller [and] this second report reflected the financial status of RBSM as of December 31, 1999.

The findings of the comptroller on the financial state of RBSM as of October 31, 1999 in comparison with the financial condition as of December 31, 1999 is summed up pertinently as follows:

FINANCIAL CONDITION OF RBSM

As of Oct. 31, 1999 As of Dec. 31, 1999

Total obligations/Liabilities

P1,076,863,000.00 1,009,898,000.00

Realizable Assets 898,588,000.00 796,930,000.00

Deficit 178,275,000.00 212,968,000.00

Cash on Hand 101,441.547.00 8,266,450.00

Required Capital Infusion P252,120,000.00

Capital Infusion (On Dec. 20, 1999) P5,000,000.00

Actual Breakdown of Total Obligations:

1) Deposits of 20,000 depositors – P578,201,000.00

2) Borrowings from BSP – P320,907,000.00

3) Unremitted withholding and gross receipt taxes – P57,403,000.00.[9]

Based on these comptrollership reports, the director of the Department of Rural Banks Supervision and Examination Sector, Wilfredo B. Domo-ong, made a report to the MB dated January 20, 2000.[10] The MB, after evaluating and deliberating on the findings and recommendation of the Department of Rural Banks Supervision

and Examination Sector, issued Resolution No. 105 on January 21, 2000.[11] Thereafter, PDIC implemented the closure order and took over the management of RBSM's assets and affairs.

In their petition[12] before the CA, petitioners claimed that respondents MB and BSP committed grave abuse of discretion in issuing Resolution No. 105. The petition was dismissed by the CA on March 28, 2000. It held, among others, that the decision of the MB to issue Resolution No. 105 was based on the findings and recommendations of the Department of Rural Banks Supervision and Examination Sector, the comptroller reports as of October 31, 1999 and December 31, 1999 and the declaration of a bank holiday. Such could be considered as substantial evidence.[13]

Pertinently, on June 9, 2000, on the basis of reports prepared by PDIC stating that RBSM could not resume business with sufficient assurance of protecting the interest of its depositors, creditors and the general public, the MB passed Resolution No. 966 directing PDIC to proceed with the liquidation of RBSM under Section 30 of RA 7653.[14]

Hence this petition.

It is well-settled that the closure of a bank may be considered as an exercise of police power.[15] The action of the MB on this matter is final and executory.[16] Such exercise may nonetheless be subject to judicial inquiry and can be set aside if found to be in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction.[17]

Petitioners argue that Resolution No. 105 was bereft of any basis considering that no complete examination had been conducted before it was issued. This case essentially boils down to one core issue: whether Section 30 of RA 7653 (also known as the New Central Bank Act) and applicable jurisprudence require a current and complete examination of the bank before it can be closed and placed under receivership.

Section 30 of RA 7653 provides:

SECTION 30. Proceedings in Receivership and Liquidation. — Whenever, upon report of the head of the supervising or examining department, the Monetary Board finds that a bank or quasi-bank:

(a) is unable to pay its liabilities as they become due in the ordinary course of business: Provided, That this shall not include inability to pay caused by extraordinary demands induced by financial panic in the banking community;

(b) has insufficient realizable assets, as determined by the [BSP] to meet its liabilities; or

(c) cannot continue in business without involving probable losses to its depositors or creditors; or

(d) has willfully violated a cease and desist order under Section 37 that has become final, involving acts or transactions which amount to fraud or a dissipation of the assets of the institution; in which cases, the Monetary Board may summarily and without need for prior hearing forbid the institution from doing business in the Philippines and designate the Philippine Deposit Insurance Corporation as receiver of the banking institution.

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The actions of the Monetary Board taken under this section or under Section 29 of this Act shall be final and executory, and may not be restrained or set aside by the court except on petition for certiorari on the ground that the action taken was in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction. The petition for certiorari may only be filed by the stockholders of record representing the majority of the capital stock within ten (10) days from receipt by the board of directors of the institution of

the order directing receivership, liquidation or conservatorship. (Emphasis supplied)

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Petitioners contend that there must be a current, thorough and complete examination before a bank can be closed under Section 30 of RA 7653. They argue that this section should be harmonized with Sections 25 and 28 of the same law:

SECTION 25. Supervision and Examination. — The [BSP] shall have supervision over, and conduct periodic or special examinations of, banking institutions and quasi-banks, including their subsidiaries and affiliates engaged in allied activities.

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SECTION 28. Examination and Fees. — The supervising and examining department head, personally or by deputy, shall examine the books of every banking institution once in every twelve (12) months, and at such other time as the Monetary Board by an affirmative vote of five (5) members may deem expedient and to make a report on the same to the Monetary Board: Provided that there shall be an interval of at least twelve (12) months between annual examinations. (Emphasis supplied)

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According to the petitioners, it is clear from these provisions that the “report of the supervising or examining department” required under Section 30 refers to the report on the examination of the bank which, under Section 28, must be made to the MB after the supervising or examining head conducts an examination mandated by Sections 25 and 28.[18] They cite *Banco Filipino Savings & Mortgage Bank v. Monetary Board, Central Bank of the Philippines*[19] wherein the Court ruled:

There is no question that under Section 29 of the Central Bank Act, the following are the mandatory requirements to be complied with before a bank found to be insolvent is ordered closed and forbidden to do business in the Philippines: Firstly, an examination shall be conducted by the head of the appropriate supervising or examining department or his examiners or agents into the condition of the bank; secondly, it shall be disclosed in the examination that the condition of the bank is one of insolvency, or that its continuance in business would involve probable loss to its depositors or creditors; thirdly, the department head concerned shall inform the Monetary Board in writing, of the facts; and lastly, the Monetary Board shall find the statements of the department head to be true.[20] (Emphasis supplied)

Petitioners assert that an examination is necessary and not a mere report, otherwise the decision to close a bank would be arbitrary.

Respondents counter that RA 7653 merely requires a report of the head of the supervising or examining department. They maintain that the term “report” under Section 30 and the word “examination” used in Section 29 of the old law are not synonymous. “Examination” connotes in-depth analysis, evaluation, inquiry or investigation while “report” connotes a simple disclosure or narration of facts for informative purposes.[21]

Petitioners’ contention has no merit. *Banco Filipino* and other cases petitioners cited[22] were decided using Section 29 of the old law (RA 265):

SECTION 29. Proceedings upon insolvency. — Whenever, upon examination by the head of the appropriate supervising or examining department or his examiners or agents into the condition of any bank or non-bank financial intermediary performing quasi-banking functions, 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 department head concerned forthwith, in writing, to inform the Monetary

Board of the facts. The Board may, upon finding the statements of the department head to be true, forbid the institution to do business in the Philippines and designate an official of the Central Bank or a person of recognized competence in banking or finance, as receiver to immediately take charge of its assets and liabilities, as expeditiously as possible collect and gather all the assets and administer the same for the benefits of its creditors, and represent the bank personally or through counsel as he may retain in all actions or proceedings for or against the institution, exercising all the powers necessary for these purposes including, but not limited to, bringing and foreclosing mortgages in the name of the bank or non-bank financial intermediary performing quasi-banking functions. (Emphasis supplied)

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Thus in *Banco Filipino*, we ruled that an “examination [conducted] by the head of the appropriate supervising or examining department or his examiners or agents into the condition of the bank”[23] is necessary before the MB can order its closure.

However, RA 265, including Section 29 thereof, was expressly repealed by RA 7653 which took effect in 1993. Resolution No. 105 was issued on January 21, 2000. Hence, petitioners’ reliance on *Banco Filipino* which was decided under RA 265 was misplaced.

In RA 7653, only a “report of the head of the supervising or examining department” is necessary. It is an established rule in statutory construction that where the words of a statute are clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation:[24]

This plain meaning rule or *verba legis* derived from the maxim *index animi sermo est* (speech is the index of intention) rests on the valid presumption that the words employed by the legislature in a statute correctly express its intention or will and preclude the court from construing it differently. The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by use of such words as are found in the statute. *Verba legis non est recedendum*, or from the words of a statute there should be no departure.[25]

The word “report” has a definite and unambiguous meaning which is clearly different from “examination.” A report, as a noun, may be defined as “something that gives information” or “a usually detailed account or statement.”[26] On the other hand, an examination is “a search, investigation or scrutiny.”[27]

This Court cannot look for or impose another meaning on the term “report” or to construe it as synonymous with “examination.” From the words used in Section 30, it is clear that RA 7653 no longer requires that an examination be made before the MB can issue a closure order. We cannot make it a requirement in the absence of legal basis.

Indeed, the court may consider the spirit and reason of the statute, where a literal meaning would lead to absurdity, contradiction, injustice, or would defeat the clear purpose of the lawmakers.[28] However, these problems are not present here. Using the literal meaning of “report” does not lead to absurdity, contradiction or injustice. Neither does it defeat the intent of the legislators. The purpose of the law is to make the closure of a bank summary and expeditious in order to protect public interest. This is also why prior notice and hearing are no longer required before a bank can be closed.[29]

Laying down the requisites for the closure of a bank under the law is the prerogative of the legislature and what its wisdom dictates. The lawmakers could have easily retained the word “examination” (and in the process also preserved the jurisprudence attached to it) but they did not and instead opted to use the word “report.” The insistence on an examination is not sanctioned by RA 7653 and we would be guilty of judicial legislation were we to make it a requirement when such is not supported by the language of the law.

What is being raised here as grave abuse of discretion on the part of the respondents was the lack of an examination and not the supposed arbitrariness with which the conclusions of the director of the Department of Rural Banks Supervision and Examination Sector had been reached in the report which became the basis of Resolution No. 105.

The absence of an examination before the closure of RBSM did not mean that there was no basis for the closure order. Needless to say, the decision of the MB and BSP, like any other administrative body, must have something to support itself and its findings of fact must be supported by substantial evidence. But it is clear under RA 7653 that the basis need not arise from an examination as required in the old law.

We thus rule that the MB had sufficient basis to arrive at a sound conclusion that there were grounds that would justify RBSM's closure. It relied on the report of Mr. Domo-ong, the head of the supervising or examining department, with the findings that: (1) RBSM was unable to pay its liabilities as they became due in the ordinary course of business and (2) that it could not continue in business without incurring probable losses to its depositors and creditors.[30] The report was a 50-page memorandum detailing the facts supporting those grounds, an extensive chronology of events revealing the multitude of problems which faced RBSM and the recommendations based on those findings.

In short, MB and BSP complied with all the requirements of RA 7653. By relying on a report before placing a bank under receivership, the MB and BSP did not only follow the letter of the law, they were also faithful to its spirit, which was to act expeditiously. Accordingly, the issuance of Resolution No. 105 was untainted with arbitrariness.

Having dispensed with the issue decisive of this case, it becomes unnecessary to resolve the other minor issues raised.[31]

WHEREFORE, the petition is hereby DENIED. The March 28, 2000 decision and November 13, 2001 resolution of the Court of Appeals in CA-G.R. SP No. 57112 are AFFIRMED.

Costs against petitioners.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Azcuna, and Garcia, JJ., concur.

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Eugenio S. Labitoria (now retired) and concurred in by Associate Justices Bernardo P. Abesamis (now retired) and Elvi John S. Asuncion of the Thirteenth Division of the Court of Appeals; rollo, pp. 32-50.

[3]Id., pp. 52-57.

[4] Id., pp. 6 and 33.

[5]Id., p. 6.

[6]Id., p. 93.

[7] Docketed as Civil Case No. 66-M-2000; id. p. 187.

[8] Id., p. 38. Section 1, Rule 17 states:

Dismissal upon notice by plaintiff. — A complaint may be dismissed by the plaintiff by filing a notice of dismissal at any time before service of the answer or of a motion for summary judgment. Upon such notice being filed, the court shall issue an order confirming the dismissal. Unless otherwise stated in the notice, the dismissal is without prejudice, except that a notice operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in a competent court an action based on or including the same claim.

[9] *Id.*, pp. 33-36.

[10] *Id.*, pp. 375-426.

[11] *Id.*, pp. 33-37.

[12] Under Rule 65 of the Rules of Court.

[13] *Rollo*, p. 43.

[14] *Id.*, p. 172.

[15] *Rural Bank of Buhi, Inc. v. Court of Appeals*, G.R. No. L-61689, 20 June 1988, 162 SCRA 288, 303.

[16] Section 30, RA 7653.

[17] *Id.*

[18] *Rollo*, pp. 13-14.

[19] G.R. No. 70054, 11 December 1991, 204 SCRA 767.

[20] *Id.*, p. 794.

[21] *Rollo*, pp. 368-369.

[22] *Supra* note 15, at 302; and *Central Bank of the Philippines v. Court of Appeals*, G.R. No. 76118, 30 March 1993, 220 SCRA 536, 548.

[23] *Supra* note 19 at 794.

[24] *National Food Authority (NFA) v. Masada Security Agency, Inc.*, G.R. No. 163448, 8 March 2005, 453 SCRA 70, 79; *Philippine National Bank v. Garcia, Jr.*, G.R. No. 141246, 9 September 2002, 388 SCRA 485, 487, 491.

[25] *National Food Authority (NFA) v. Masada Security Agency, Inc.*, *id.*, citations omitted.

[26] *Webster's Third New International Dictionary* (1993).

[27] *Id.*

[28] *Ursua v. Court of Appeals*, G.R. No. 112170, 10 April 1996, 256 SCRA 147, 152, citations omitted.

[29] *Central Bank of the Philippines v. Court of Appeals*, *supra* note 22, at 544; *Banco Filipino Savings & Mortgage Bank v. Monetary Board*, *Central Bank of the Philippines*, *supra* note 19 at 798; *Rural Bank of Buhi, Inc. v. Court of Appeals*, *supra* note 22, at 303.

In *Rural Bank of Buhi*, we stated:

x x x [D]ue process does not necessarily require a prior hearing; a hearing or an opportunity to be heard may be subsequent to the closure. One can just imagine the dire consequences of a prior hearing: bank runs would be the order of the day, resulting in panic and hysteria. In the process, fortunes may be wiped out and disillusionment

will run the gamut of the entire banking community.

[30] Incidentally, the declaration of a bank holiday (done by RBSM in January 4, 2000) is also a ground for the closure of a bank by the MB under Section 53 of RA 8791 or the General Banking Law of 2000. However, RA 8791 became effective only on June 13, 2000 and consequently is not applicable to this case.

[31] 1) Whether petitioner Hilario P. Soriano has legal personality to file this petition;
2) Whether petitioners are guilty of forum shopping;
3) Whether petitioners failed to formally offer their evidence/documents in the CA; rollo, pp. 326, 330, 364.

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