

**PHILIPPINE DEPOSIT INSURANCE CORPORATION (PDIC),
PETITIONER, VS. PHILIPPINE COUNTRYSIDE RURAL BANK, INC.,
RURAL BANK OF CARMEN (CEBU), INC., BANK OF EAST ASIA
(MINGLANILLA, CEBU...**

G.R. No. 176438. January 24, 2011

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court filed by the Philippine Deposit Insurance Corporation (PDIC) assailing the September 18, 2006 Decision of the Court of Appeals-Cebu (CA-Cebu), which granted the petition for injunction filed by respondents Philippine Countryside Rural Bank, Inc. (PCRBI), Rural Bank of Carmen (Cebu), Inc. (RBCI), Bank of East Asia (Minglanilla, Cebu), Inc. (BEAI), and Pilipino Rural Bank (Cebu), Inc. (PRBI), all collectively referred to as "Banks." The dispositive portion of the CA-Cebu decision reads:

WHEREFORE, in view of all the foregoing premises, the petition for injunction is hereby GRANTED. The respondent PDIC is restrained from further conducting investigations or examination on petitioners-banks without the requisite approval from the Monetary Board.

SO ORDERED.[1]

In a resolution dated January 25, 2007, the CA-Cebu denied petitioner's motion for reconsideration for "lack of merit." [2]

THE FACTS

On March 9, 2005, the Board of Directors of the PDIC (PDIC Board) adopted Resolution No. 2005-03-032[3] approving the conduct of an investigation, in accordance with Section 9(b-l) of Republic Act (R.A.) No. 3591, as amended, on the basis of the Reports of Examination of the Bangko Sentral ng Pilipinas (BSP) on ten (10) banks, four (4) of which are respondents in this petition for review. The said resolution also created a Special Investigation Team to conduct the said investigation, with the authority to administer oaths, to examine, take and preserve testimony of any person relating to the subject of the investigation, and to examine pertinent bank records.

On May 25, 2005, the PDIC Board adopted another resolution, Resolution No. 2005-05-056,[4] approving the conduct of an investigation on PCRBI based on a Complaint-Affidavit filed by a corporate depositor, the Philippine School of Entrepreneurship and Management (PSEMI) through its president, Jacinto L. Jamero.

On June 3, 2005, in accordance with the two PDIC Board resolutions, then PDIC President and Chief Executive Officer Ricardo M. Tan issued the Notice of Investigation[5] to the President or The Highest Ranking Officer of PCRBI.

On June 7, 2005, the PDIC Investigation Team personally served the Notice of Investigation on PCRBI at its Head Office in Pajo, Lapu-Lapu City.[6]

According to PDIC, in the course of its investigation, PCRBI was found to have granted loans to certain individuals, which were settled by way of dacion of properties. These properties, however, had already been previously foreclosed and consolidated under the names of PRBI, BEAI and RBCI.[7]

On June 15, 2005, PDIC issued similar notices of investigation to PRBI[8] and BEAI.[9]

The notices stated that the investigation was to be conducted pursuant to Section 9 (b-1) of the PDIC Charter and upon authority of PDIC Board Resolution No. 2005-03-032 authorizing the twelve (12) named representatives of PDIC to conduct the investigation.[10]

The investigation was sought because the Banks were found to be among the ten (10) banks collectively known as "Legacy Banks." The Reports of General and Special Examinations of the BSP as of June 30, 2004, disclosed, among others, that the Legacy Banks were commonly owned and/or controlled by Legacy Plans Inc. (now Legacy Consolidated Plans, Inc.), and Celso Gancayco delos Angeles, Jr. and his family.[11]

The notice of investigation was served on PRBI the next day, June 16, 2005.[12]

On June 25, 2005, a separate notice of investigation[13] was served on RBCI. The latter provided the PDIC Investigation Team with certified copies of the loan documents they had requested, until its president received an order directing him not to allow the investigation.[14]

Subsequently, PRBI and BEAI refused entry to their bank premises and access to their records and documents by the PDIC Investigation Team, upon advice of their respective counsels.[16]

On June 16 and 17, 2005, Atty. Victoria G. Noel (Atty. Noel) of the Tiongson & Antenor Cruz Law Office sent letters to the PDIC[17] informing it of her legal advice to PCRBI and BEAI not to submit to PDIC investigation on the ground that its investigatory power pursuant to Section 9(b-1) of R.A. No. 3591, as amended (An Act Establishing The Philippine Deposit Insurance Corporation, Defining Its Powers And Duties And For Other Purposes), cannot be differentiated from the examination powers accorded to PDIC under Section 8, paragraph 8 of the same law, under which, prior approval from the Monetary Board is required.

On June 17, 2005, PDIC General Counsel Romeo M. Mendoza sent a reply to Atty. Noel stating that "PDIC's investigation power, as distinguished from the examination power of the PDIC under Section 8 of the same law, does not need prior approval of the Monetary Board." [18] PDIC then urged PRBI and BEAI "not to impede the conduct of PDIC's investigation" as the same "constitutes a violation of the PDIC Charter for which PRBI and BEAI may be held criminally and/or administratively liable." [19]

On June 27 and 28, 2005, the Banks, through counsel, sought further clarification from PDIC on its source of authority to conduct the impending investigations and requested that PDIC refrain from proceeding with the investigations.[20]

Simultaneously, the Banks wrote to the Monetary Board requesting a clarification on the parameters of PDIC's power of investigation/examination over the Banks and for an issuance of a directive to PDIC not to pursue the investigations pending the requested clarification.[21]

On June 28, 2005, PRBI and BEAI again received letters from PDIC, dated June 24, 2005, which appeared to be final demands on them to allow its investigation.[22] PRBI and BEAI replied that letters of clarification had been sent to PDIC and the Monetary Board.[23] Pending action on such requests, PDIC was requested to refrain from proceeding with the investigation.[24]

Notwithstanding, on July 11, 2005, the Banks received a letter, dated July 8, 2005, from the PDIC General Counsel reiterating its position that prior Monetary Board approval was not a pre-requisite to PDIC's exercise of its investigative power.[25]

Not in conformity, on July 28, 2005, the Banks filed a Petition for Declaratory Relief with a Prayer for the Issuance of a TRO and/or Writ of Preliminary Injunction (RTC Petition) before the Regional Trial Court of Makati (RTC-Makati) which was docketed as Civil Case No. 05-697.[26]

In the RTC Petition, the Banks prayed for a judgment interpreting Section 9(b-1) of the PDIC Charter, as amended, to require prior Monetary Board approval before PDIC could exercise its investigation/examination power over the Banks.[27]

PDIC filed a motion to dismiss alleging that the RTC had no jurisdiction over the said petition since a breach had already been committed by the Banks when they received the notices of investigation, and because PDIC need not secure prior Monetary Board approval since "examination" and "investigation" are two different terms.[28]

Later, the Banks withdrew their application for a temporary restraining order (TRO) reasoning that lower courts cannot issue injunctions against PDIC. Thus, the Banks instituted a petition for injunction with application for TRO and/or Preliminary Injunction (CA-Manila petition) before the Court of Appeals-Manila (CA-Manila). The case was docketed as CA-G.R. SPNo. 91038.[29]

Even before the CA-Manila could rule on the application for a TRO and/or writ of preliminary injunction, the RTC-Makati dismissed the petition on the ground that there already existed a breach of law that isolated the case from the jurisdiction of the trial court.[30]

The Banks filed a motion for reconsideration but it was denied by the RTC for lack of merit.[31] On February 10, 2006, the Banks filed a notice of appeal[32] which they later withdrew on February 28, 2006.[33]

In view of the dismissal of the RTC-Makati petition, the CA-Manila dismissed the petition for injunction for being moot and academic. In its Decision, dated February 1, 2006,[34] the CA-Manila wrote:

What remained for the petitioners to do was to litigate over the breach or violation by ordinary action, as the circumstances ensuing from the breach or violation warrant. The ordinary action may either be in the same case, if the RTC permitted the conversion, in which event the RTC may allow the parties to file such pleadings as may be necessary or proper, pursuant to Sec. 5, Rule 63; or the petitioners may file another action in the proper court (e.g. including the Court of Appeals, should injunction be among the reliefs to be sought) upon some cause of action that has arisen from the breach or violation.[35]

Thereafter, on March 14, 2006, the Banks filed their Petition for Injunction with Prayer for Preliminary Injunction[36] (CA-Cebu Petition) with the CA-Cebu (CA-Cebu).

On March 15, 2006, the CA-Cebu issued a resolution granting the Bank's application for a TRO. This enjoined the PDIC, its representatives or agents or any other persons or agency assisting them or acting for and in their behalf from conducting examinations/investigations on the Banks' head and branch offices without securing the requisite approval from the Monetary Board of BSP.[38]

During the pendency of the CA-Cebu petition, PDIC filed with this Court a Petition for Certiorari, Prohibition and Mandamus with Prayer for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction under Rule 65 docketed as G.R. No. 173370.[39] It alleged that the CA-Cebu committed grave abuse of discretion amounting to lack or excess of jurisdiction in taking cognizance of the Banks' petition, and in issuing a TRO and a writ of preliminary injunction.[40]

On July 31, 2006, this Court issued a resolution dismissing the petition for certiorari in G.R. No. 173370. The Resolution reads:

Considering the allegations, issues and arguments adduced in the petition for certiorari, prohibition and mandamus with prayer for preliminary injunction and/or restraining order dated 19 July 2006, the Court resolves to DISMISS the petition for failure to sufficiently show that the questioned resolution of the Court of Appeals is tainted with grave abuse of discretion. Moreover, the petition failed to conform with Rule 65 and other related provisions of the 1997 Rules of Civil Procedure, as amended, governing petitions for certiorari, prohibition and mandamus filed with the Supreme Court, since petitioner failed to submit a verified statement of material date of receipt of the assailed resolution dated 16 May 2006 in accordance with Section 4, Rule 65 in relation to the second paragraph of Section 3, Rule 46. In any event, the petition is premature since no motion for reconsideration of the questioned resolution of the Court of Appeals was filed prior to the availment of this special civil action and there are no sufficient allegations to bring the case within the recognized exceptions to this rule.[41]

On September 18, 2006, after both parties had submitted their respective memoranda, the CA-Cebu rendered a decision granting the writ of preliminary injunction,[42] pertinent portions of which read:

[A]fter undergoing a series of amendments, the controlling law with respect to PDIC's power to conduct examination of banks is- prior approval of the Monetary Board is a condition sine qua non for PDIC to exercise its power of examination. To rule otherwise would disregard the amendatory law of the PDIC's charter.

The Court is not also swayed by the contention of respondent that what it seeks to conduct is an investigation and not an examination of petitioners' transactions, hence prior approval of the Monetary Board is a mere surplusage.

The ordinary definition of the words "examination" and "investigation" would lead one to conclude that both pertain to the same thing and there seems to be no fine line differentiating one from the other. Black's Law Dictionary defines the word "investigate" as "to examine and inquire into with care and accuracy; to find out by careful inquisition; examination and the word "examination" as an investigation. In Collin's Dictionary of Banking and Finance, the word "investigation" is defined as an "examination to find out what is wrong."

In the case of Anti-Graft League of the Philippines, Inc. vs. Hon. Ortega, et. al,[43] the Supreme Court using Ballentine's Law Dictionary defines an "investigation" as an inquiry, judicial or otherwise, for the discovery or collection of facts concerning the matter or matters involved. Such common definitions would show that there is really nothing to distinguish between these two (2) terms as to support the PDIC view differentiating Section 9 (b-i) from paragraph 8, Section 8 of the PDIC Charter.

In the realm of the PDIC rules, specifically under Section 3 of PDIC Regulatory Issuance No. 2205-02[44] "investigation" is defined as: Investigation shall refer to fact-finding examination, study, inquiry, for determining whether the allegations in a complaint or findings in a final report of examination may properly be the subject of an administrative, criminal or civil action.

From the foregoing definition alone, it can be easily deduced that investigation and examination are synonymous terms. Simply stated, investigation encompasses a fact-finding examination. Thus, it is inconsistent with the rules if respondent PDIC be (sic) allowed to conduct an investigation without the approval of the Monetary Board.

Moreover, the Court sees that the rationale of the law in requiring a (sic) prior approval from the Monetary Board whenever an examination or in this case an investigation needs to be conducted by the PDIC is obviously to ensure that there is no overlapping of efforts, duplication of functions and more importantly to provide a check and balance to the otherwise unrestricted power of respondent PDIC to conduct investigations

on banks insured by it.

With the foregoing premises, this Court rules that a prior approval from the Monetary Board is necessary before respondent PDIC can proceed with its investigations on petitioners-banks.[45]

PDIC moved for reconsideration but it was denied in a resolution dated January 25, 2007.[46]

Hence, this petition.

THE ISSUES

I.

WHETHER RESPONDENT BANKS VIOLATED THE RULE AGAINST FORUM SHOPPING WHEN THEY FILED THE PETITION FOR INJUNCTION BEFORE THE COURT OF APPEALS-CEBU.

II.

WHETHER THE PRONOUNCEMENT OF THE REGIONAL TRIAL COURT OF MAKATI IN THE PETITION FOR DECLARATORY RELIEF CONSTITUTES RES JUDICATA TO THE PETITION FOR INJUNCTION IN THE COURT OF APPEALS-CEBU.

III.

WHETHER PETITIONER WAS DEPRIVED OF ITS OPPORTUNITY TO BE HEARD WHEN THE COURT OF APPEALS-CEBU ISSUED THE WRIT OF INJUNCTION.

IV.

WHETHER THE ISSUES RAISED BY PETITIONERS ARE THE SAME ISSUES RAISED IN G.R. NO. 173370 WHICH WAS EARLIER DISMISSED BY THIS COURT.

V.

WHETHER THE COURT OF APPEALS ERRED IN FINDING THAT PRIOR APPROVAL OF THE MONETARY BOARD OF THE BANGKO SENTRAL NG PILIPINAS IS NECESSARY BEFORE THE PDIC MAY CONDUCT AN INVESTIGATION OF RESPONDENT BANKS.

THE COURT'S RULING

I - Whether respondent banks violated the rule against forum shopping when they filed the petition for injunction before the Court of Appeals-Cebu. II - Whether the pronouncement of the Regional Trial Court of Makati in the petition for declaratory relief constitutes res judicata to the petition for injunction in the Court of Appeals-Cebu.

In the recent case of Sameer Overseas Placement Agency, Inc. v. Mildred R. Santos,[56] the Court discussed the matter of forum shopping:

Forum shopping is defined as an act of a party, against whom an adverse judgment or order has been rendered in one forum, of seeking and possibly getting a favorable opinion in another forum, other than by appeal or special civil action for certiorari. It may also be the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. There is

forum shopping where the elements of *litis pendentia* are present, namely: (a) there is identity of parties, or at least such parties as represent the same interest in both actions; (b) there is identity of rights asserted and relief prayed for, the relief being founded on the same set of facts; and (c) the identity of the two preceding particulars is such that any judgment rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other. It is expressly prohibited by this Court because it trifles with and abuses court processes, degrades the administration of justice, and congests court dockets. A willful and deliberate violation of the rule against forum shopping is a ground for summary dismissal of the case, and may also constitute direct contempt.[57]

Juxtaposing the RTC-Makati, CA-Manila and CA-Cebu petitions, what must be determined here, is whether the elements of *litis pendentia* are present between and among these petitions, i.e. whether (a) there is identity of parties, or at least such parties as represent the same interest in both actions; (b) there is identity of rights asserted and relief prayed for, the relief being founded on the same set of facts; and (c) the identity of the two preceding particulars is such that any judgment rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other.

The first element is clearly present as between the RTC-Makati petition and the CA-Cebu petition. Both involved the Banks on one hand, and the PDIC on the other.

The second and third elements of *litis pendentia*, however, are patently wanting. The rights asserted and reliefs prayed for were different, though founded on the same set of facts. The RTC-Makati Petition was one for declaratory relief while the CA-Manila Petition was one for injunction with a prayer for preliminary injunction.

A petition for declaratory relief is filed by any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation, before breach or violation, thereof, to determine any question of construction or validity arising, and for a declaration of his rights or duties thereunder.[58]

Injunction, on the other hand, is "a judicial writ, process or proceeding whereby a party is directed either to do a particular act, in which case it is called a mandatory injunction, or to refrain from doing a particular act, in which case it is called a prohibitory injunction. As a main action, injunction seeks to permanently enjoin the defendant through a final injunction issued by the court and contained in the judgment." [59]

Clearly, there is a marked difference between the reliefs sought under an action for declaratory relief and an action for injunction. While an action for declaratory relief seeks a declaration of rights or duties, or the determination of any question or validity arising under a statute, executive order or regulation, ordinance, or any other governmental regulation, or under a deed, will, contract or other written instrument, under which his rights are affected, and before breach or violation, an action for injunction ultimately seeks to enjoin or to compel a party to perform certain acts.

Moreover, as stated in the RTC-Makati Decision, because the Banks had already breached the provisions of law on which declaratory judgment was being sought, it was without jurisdiction to take cognizance of the same. Any judgment rendered in the RTC-Makati petition would not amount to *res judicata* in the CA-Manila Petition. Thus, the RTC was correct in dismissing the case, having been bereft of jurisdiction to take cognizance of the action for declaratory judgment.

As between the CA-Manila and the CA-Cebu petitions, the second and third elements of *litis pendentia* are absent. The rights asserted and reliefs prayed for were different, although founded on the same set of facts.

The CA-Manila Petition is a petition for injunction wherein the Banks prayed that:

1) Immediately upon filing of this Petition, a Writ of Preliminary Injunction and/or Temporary Restraining Order be issued commanding the respondent and all its officers, employees and agents to cease and desist from proceeding with the investigations sought to be conducted on the petitioners' head and branch offices while the Petition for Declaratory Relief before Branch 8 of the Makati Regional Trial Court is pending.

2) After due proceedings, judgment be rendered declaring as permanent the Writ of Preliminary Injunction and/or Temporary Restraining Order prayed for above.

Other equitable reliefs are likewise prayed for.[61] [Underscoring supplied]

The CA-Cebu Petition, on the other hand, is denominated as a Petition for Injunction With Prayer for Writ of Preliminary Injunction and/or Restraining Order. The Banks prayed therein that:

1) Upon filing of this Petition, a Writ of Preliminary Injunction and/or Temporary Restraining Order be issued forthwith, enjoining Respondent PDIC and - all its officers, employees and agents to cease and desist from conducting examinations/investigations on Petitioner Banks' head and branch offices without securing the requisite approval from the Monetary Board of the Bangko Sentral ng Pilipinas, as required by Sec. 8, Paragraph 8 of the PDIC Charter, as amended;

2) After due proceedings, judgment be rendered declaring as permanent the Writ of Preliminary Injunction and/or Temporary Restraining Order prayed for above.

Other equitable reliefs are likewise prayed for.[62]

As can be gleaned from the above-cited portions of the CA-Manila and CA-Cebu petitions, the petitions seek different reliefs.

Therefore, as between and among the RTC Makati, and the CA-Manila and CA-Cebu petitions, there is no forum shopping.

III - Whether petitioner was deprived of its opportunity to be heard when the Court of Appeals-Cebu issued the writ of injunction.

PDIC alleges that the CA-Cebu, in issuing the TRO in its March 15, 2006 Resolution, and subsequently, the preliminary injunction in its May 16, 2006 Resolution, violated the fundamental rule that courts should avoid issuing injunctive relief which would in effect dispose of the main case without trial.[64] PDIC argues that a TRO is intended only as a restraint until the propriety of granting a temporary injunction can be determined, and it goes no further than to preserve the status until that determination.[65] Moreover, its purpose is merely to suspend proceedings until such time when there may be an opportunity to inquire whether any injunction should be granted, and it is not intended to operate as an injunction pendente lite, and should not, in effect, determine the issues involved before the parties can have their day in court, or give an advantage to either party by proceeding in the acquisition or alteration of the property the right to which is disputed while the hands of the other party are tied.[66]

On the other hand, the Banks claim that PDIC was given every opportunity to present its arguments against the issuance of the injunction.[67] Its active participation in the proceedings negates its assertion that it was denied procedural due process in the issuance of the writ of injunction.[68] Citing *Salonga v. Court of Appeals*,^[69] the Banks state that the essence of due process is the reasonable opportunity to be heard and to submit evidence one may have in support of one's defense,^[70] and PDIC was able to do so.

On March 15, 2006, the CA-Cebu issued a resolution granting their prayer for a 60-day TRO, and requiring PDIC to file its comment.[71] The latter thereafter filed its Comment ad Cautelam dated March 30, 2006.[72] [Underscoring ours]

On May 16, 2006, the CA-Cebu issued another resolution, this time granting the prayer for a preliminary injunction and requiring the parties to file their respective memoranda. PDIC thereafter filed its memorandum dated July 31, 2006.[73]

On September 18, 2006, the CA-Cebu promulgated its Decision granting the Petition for Injunction.[74] PDIC filed a motion for reconsideration dated October 10, 2006,[75] which was subsequently denied.

The essence of procedural due process is found in the reasonable opportunity to be heard and submit one's evidence in support of his defense.[76] The Court finds that procedural due process was observed by the CA-Cebu. The parties were afforded equal opportunity to present their arguments. In the absence of any indication to the contrary, the CA-Cebu must be accorded the presumption of regularity in the performance of their functions. However, as discussed herein, the matter of whether it erred in its conclusion and issuance of the TRO, preliminary injunction and final injunction is another matter altogether.

IV - Whether the issues raised by petitioner are the same issues raised in G.R. No. 173370 which was earlier dismissed by this Court.

In G.R. 173370, a petition for certiorari under Rule 65 of the Rules of Court, PDIC alleged that the CA-Cebu committed grave abuse of discretion amounting to lack or excess of jurisdiction in taking cognizance of the Banks' petition, and in issuing a TRO and a writ of preliminary injunction.[78]

In the case at bench, a petition for review under Rule 45, PDIC's core contention is that the CA-Cebu erred in finding that prior approval of the Monetary Board of the BSP is necessary before it may conduct an investigation of the Banks.

Clearly then, the two petitions were of different nature raising different issues.

G.R. 173370 challenged the CA-Cebu's having taken cognizance of the Banks' petition and interlocutory orders on the issuance of a TRO and a writ of preliminary injunction. This case, however, strikes at the core of the final decision on the merits of the CA-Cebu, and not merely the interlocutory orders. While both G.R. 173370 and the present case may have been anchored on the same set of facts, that is, the refusal of the Banks to allow PDIC to conduct an investigation without the prior consent of the Monetary Board, the issues raised in the two petitions are not identical. Moreover, the disposal of the first case does not amount to *res judicata* in this case.

V - Whether the Court of Appeals-Cebu erred in finding that prior approval of the Monetary Board of the Bangko Sentral ng Pilipinas is necessary before the PDIC may conduct an investigation of respondent banks.

PDIC is of the position that in order for it to exercise its power of investigation, the law requires that:

- (a) The investigation is based on a complaint of a depositor or any other government agency, or on the report of examination of [the] Bangko Sentral ng Pilipinas (BSP) and/or PDIC; and,
- (b) The complaint alleges, or the BSP and/or PDIC Report of Examination contains adverse findings of, fraud, irregularities or anomalies committed by the Bank and/or its directors, officers, employees or agents; and,

(c) The investigation is upon the authority of the PDIC Board of Directors.[89]

It argues that when it commenced its investigation on the Banks, all of the aforementioned requirements were met. PDIC stresses that its power of examination is different from its power of investigation, in such that the former requires prior approval of the Monetary Board while the latter requires merely the approval of the PDIC Board.[90] It further claims that the power of examination cannot be exercised within twelve (12) months from the last examination conducted, whereas the power of investigation is without limitation as to the frequency of its conduct. It states that the purpose of the PDIC's power of examination is merely to look into the condition of the bank, whereas the power of investigation aims to address fraud, irregularities and anomalies based on complaints from depositors and other government agencies or upon reports of examinations conducted by the PDIC itself or by the BSP.[91]

The Banks, on the other hand, are of the opinion that a holistic reading of the PDIC charter shows that petitioner's power of examination is synonymous with its power of investigation.[92] They cite, as bases, the law dictionary definitions, Section 8, Eighth paragraph[93] and Section 9(b-1)[94] of the PDIC Charter, and Rule 1, Section 3(1) of PDIC Regulatory Issuance No. 2005-02, which defines "investigation" as follows:

(1) 'Investigation' shall refer to fact-finding examination, study or inquiry for determining whether the allegations in a complaint or findings in a final report of examination may properly be the subject of an administrative, criminal or civil action.

The Banks further cite Section X658 of the Manual of Regulations for Banks, which states:

Sec. X658 - Examination by the BSP. The Term 'examination' shall, henceforth, refer to an investigation of an institution under the supervisory authority of the BSP to determine compliance with laws and regulations. It shall include determination that the institution is conducting its business on a safe and sound basis. Examination requires full and comprehensive looking into the operations and books of institutions, and shall include, but need not be limited to the following:

- a. Determination of the bank's solvency and liquidity position;
- b. Evaluation of asset quality as well as determination of sufficiency of valuation reserves on loans and other risk assets;
- c. Review of all aspects of bank operations;
- d. Assessment of risk management system, including the evaluation of the effectiveness of the bank management's oversight functions, policies, procedures, internal control and audit;
- e. Appraisal of overall management of the bank;
- f. Review of compliance and applicable laws, rules and regulations; and any other activities relevant to the above."

After an evaluation of the respective positions of the parties, the Court is of the view that the Monetary Board approval is not required for PDIC to conduct an investigation on the Banks.

The disagreement stems from the interpretation of these two key provisions of the PDIC Charter. The confusion can be attributed to the fact that although "investigation" and "examination" are two separate and distinct procedures under the charter of the PDIC and the BSP, the words seem to be used loosely and interchangeably.

It does not help that indeed these terms are very closely related in a generic sense. However, while "examination" connotes a mere generic perusal or inspection, "investigation" refers to a more intensive scrutiny for a more specific fact-finding purpose. The latter term is also usually associated with proceedings conducted prior to

criminal prosecution.

The PDIC was created by R.A. No. 3591 on June 22, 1963 as an insurer of deposits in all banks entitled to the benefits of insurance under the PDIC Charter to promote and safeguard the interests of the depositing public by way of providing permanent and continuing insurance coverage of all insured deposits. It is a government instrumentality that operates under the Department of Finance. Its primary purpose is to act as deposit insurer, as a co-regulator of banks, and as receiver and liquidator of closed banks.[95]

Section 1 of the PDIC Charter states:

SECTION 1. There is hereby created a Philippine Deposit Insurance Corporation hereinafter referred to as the "Corporation" which shall insure, as herein provided, the deposits of all banks which are entitled to the benefits of insurance under this Act, and which shall have the powers hereinafter granted.

The Corporation shall, as a basic policy, promote and safeguard the interests of the depositing public by way of providing permanent and continuing insurance coverage on all insured deposits.

Section 1 of R.A. No. 9576 further provides: An Act Increasing the Maximum Deposit Insurance Coverage, and in connection therewith, to Strengthen the Regulatory and Administrative Authority, and Financial Capability of the Philippine Deposit Insurance Corporation (PDIC), amending for this purpose R.A. No. 3591, as Amended, otherwise known as the PDIC Charter.

SECTION 1. Statement of State Policy and Objectives. - It is hereby declared to be the policy of the State to strengthen the mandatory deposit insurance coverage system to generate, preserve, maintain faith and confidence in the country's banking system, and protect it from illegal schemes and machinations.

Towards this end, the government must extend all means and mechanisms necessary for the Philippine Deposit Insurance Corporation to effectively fulfill its vital task of promoting and safeguarding the interests of the depositing public by way of providing permanent and continuing insurance coverage on all insured deposits, and in helping develop a sound and stable banking system at all times.

Under its charter, the PDIC is empowered to conduct examination of banks with prior approval of the Monetary Board:

Eighth - To conduct examination of banks with prior approval of the Monetary Board: Provided, That no examination can be conducted within twelve (12) months from the last examination date: Provided, however, That the Corporation may, in coordination with the Bangko Sentral, conduct a special examination as the Board of Directors, by an affirmative vote of a majority of all of its members, if there is a threatened or impending closure of a bank; Provided, further, That, notwithstanding the provisions of Republic Act No. 1405, as amended, Republic Act No. 6426, as amended, Republic Act No. 8791, and other laws, the Corporation and/or the Bangko Sentral, may inquire into or examine deposit accounts and all information related thereto incase there is a finding of unsafe or unsound banking practice; Provided, That to avoid overlapping of efforts, the examination shall maximize the efficient use of the relevant reports, information, and findings of the Bangko Sentral, which it shall make available to the Corporation; (As amended by RA. 9302, 12 August 2004, RA. 9576, 1 June 2009)

xxx. [Underlining supplied]

Section 9(b-l) of the PDIC Charter further provides that the PDIC Board shall have the power to:

POWERS AND RESPONSIBILITIES AND PROHIBITIONS

SECTION 9. xxx

(b) The Board of Directors shall appoint examiners who shall have power, on behalf of the Corporation to examine any insured bank. Each such examiner shall have the power to make a thorough examination of all the affairs of the bank and in doing so, he shall have the power to administer oaths, to examine and take and preserve the testimony of any of the officers and agents thereof, and, to compel the presentation of books, documents, papers, or records necessary in his judgment to ascertain the facts relative to the condition of the bank; and shall make a full and detailed report of the condition of the bank to the Corporation. The Board of Directors in like manner shall appoint claim agents who shall have the power to investigate and examine all claims for insured deposits and transferred deposits. Each claim agent shall have the power to administer oaths and to examine under oath and take and preserve testimony of any person relating to such claim. (As amended by E.O. 890, 08 April 1983; RA. 7400, 13 April 1992)

(b-1) The investigators appointed by the Board of Directors shall have the power on behalf of the Corporation to conduct investigations on frauds, irregularities and anomalies committed in banks, based on reports of examination conducted by the Corporation and Bangko Sentral ng Pilipinas or complaints from depositors or from other government agency. Each such investigator shall have the power to administer oaths, and to examine and take and preserve the testimony of any person relating to the subject of investigation. (As added by RA. 9302, 12 August 2004)

xxx. [Underscoring supplied]

As stated above, the charter empowers the PDIC to conduct an investigation of a bank and to appoint examiners who shall have the power to examine any insured bank. Such investigators are authorized to conduct investigations on frauds, irregularities and anomalies committed in banks, based on an examination conducted by the PDIC and the BSP or on complaints from depositors or from other government agencies.

The distinction between the power to investigate and the power to examine is emphasized by the existence of two separate sets of rules governing the procedure in the conduct of investigation and examination. Regulatory Issuance (RI) No. 2005-02 or the PDIC Rules on Fact-Finding Investigation of Fraud, Irregularities and Anomalies Committed in Banks covers the procedural requirements of the exercise of the PDIC's power of investigation. On the other hand, RI No. 2009-05 sets forth the guidelines for the conduct of the power of examination.

The definitions provided under the two aforementioned regulatory issuances elucidate on the distinction between the power of examination and the power of investigation.

Section 2 of RI No. 2005-02 states that its coverage shall be applicable to "all fact-finding investigations on fraud, irregularities and/or anomalies committed in banks that are conducted by PDIC based on: [a] complaints from depositors or other government agencies; and/or [b] final reports of examinations of banks conducted by the Bangko Sentral ng Pilipinas and/or PDIC."

The same issuance states that the Final Report of Examination^[97] is one of the three pre-requisites to the conduct of an investigation, in addition to the authorization of the PDIC Board^[98] and a complaint.^[99] Juxtaposing this provision with Section 9(b-l) of the PDIC Charter, since an examination is explicitly made the basis of a fact-finding examination, then clearly examination and investigation are two different proceedings. It would obviously defy logic to make the result of an "investigation" the basis of the same proceeding. Thus, RI No. 2005-02 defines an "investigation" as a "fact-finding examination, study or inquiry for determining whether the allegations in a complaint or findings in a final report of examination may properly be the subject of an administrative, criminal or civil action."^[100]

The Banks cite the dictionary definitions of "examination" and "investigation" to justify their conclusion that these terms refer to one and the same proceeding. It is tempting to use these two terms interchangeably, which

practice may be perfectly justified in a purely literary sense. Indeed, a reading of the PDIC Charter shows that the two terms have been used interchangeably at some point. However, based on the provisions aforecited, the intention of the laws is clearly to differentiate between the process of investigation and that of examination.

In 2009, to clarify procedural matters, PDIC released RI No. 2009-05 or the Rules and Regulations on Examination of Banks. Section 2 thereof differentiated between the two types of examination as follows:

Section 2. Types of Examination

- a. Regular Examination - An examination conducted independently or jointly with the BSP. It requires the prior approval of the PDIC Board of Directors and the Monetary Board (MB). It may be conducted only after an interval of at least twelve (12) months from the closing date of the last Regular Examination.
- b. Special Examination - An examination conducted at any time in coordination with the BSP, by an affirmative vote of a majority of all the members of the PDIC Board of Directors, without need of prior MB approval, if there is a threatened or impending bank closure as determined by the PDIC Board of Directors. [Underscoring supplied]

Section 3 of RI No. 2009-05 provides for the general scope of the PDIC examination:

Section 3. Scope of Examination

The examination shall include, but need not be limited to, the following:

- a. Determination of the bank's solvency and liquidity position;
- b. Evaluation of asset quality as well as determination of sufficiency of valuation reserves on loans and other risk assets;
- c. Review of all aspects of bank operations;
- d. Assessment of risk management system, including the evaluation of the effectiveness of the bank management's oversight functions, policies, procedures, internal control and audit;
- e. Appraisal of overall management of the bank;
- f. Review of compliance with applicable banking laws, and rules and regulations, including PDIC issuances;
- g. Follow-through of specific exceptions/ violations noted during a previous examination; and
- h. Any other activity relevant to the above.

Rule 2, Section 1 of PDIC RI No. 2005-02 or the PDIC Rules on Fact-Finding Investigation of Fraud, Irregularities and Anomalies Committed in Banks provides for the scope of fact-finding investigations as follows:

SECTION 1. Scope of the Investigation.

Fact-finding Investigations shall be limited to the particular acts or omissions subject of a complaint or a Final Report of Examination.

From the above-cited provisions, it is clear that the process of examination covers a wider scope than that of investigation.

Examination involves an evaluation of the current status of a bank and determines its compliance with the set standards regarding solvency, liquidity, asset valuation, operations, systems, management, and compliance with banking laws, rules and regulations.

Investigation, on the other hand, is conducted based on specific findings of certain acts or omissions which are subject of a complaint or a Final Report of Examination.

Clearly, investigation does not involve a general evaluation of the status of a bank. An investigation zeroes in on specific acts and omissions uncovered via an examination, or which are cited in a complaint.

An examination entails a review of essentially all the functions and facets of a bank and its operation. It necessitates poring through voluminous documents, and requires a detailed evaluation thereof. Such a process then involves an intrusion into a bank's records.

In contrast, although it also involves a detailed evaluation, an investigation centers on specific acts or omissions and, thus, requires a less invasive assessment.

The practical justification for not requiring the Monetary Board approval to conduct an investigation of banks is the administrative hurdles and paperwork it entails, and the correspondent time to complete those additional steps or requirements. As in other types of investigation, time is always of the essence, and it is prudent to expedite the proceedings if an accurate conclusion is to be arrived at, as an investigation is only as precise as the evidence on which it is based. The promptness with which such evidence is gathered is always of utmost importance because evidence, documentary evidence in particular, is remarkably fungible. A PDIC investigation is conducted to "determine[e] whether the allegations in a complaint or findings in a final report of examination may properly be the

subject of an administrative, criminal or civil action.[101] In other words, an investigation is based on reports of examination and an examination is conducted with prior Monetary Board approval. Therefore, it would be unnecessary to secure a separate approval for the conduct of an investigation. Such would merely prolong the process and provide unscrupulous individuals the opportunity to cover their tracks.

Indeed, while in a literary sense, the two may be used interchangeably, under the PDIC Charter, examination and investigation refer to two different processes. To reiterate, an examination of banks requires the prior consent of the Monetary Board, whereas an investigation based on examination report, does not.

WHEREFORE, the petition is GRANTED. The Decision and Resolution of the Court of Appeals in CA G.R. CEB SP. No. 01550, dated September 18, 2006 and January 25, 2007 are REVERSED and SET ASIDE.

SO ORDERED.

Carpio, (Chairperson), Nachura, Peralta, and Abad, JJ., concur.

[1] Rollo, p. 107. Penned by Justice Pampio A. Abarintos with Justice Agustin S. Dizon and Justice Priscilla Baltazar-Padilla, concurring.

[2] Id. at 111.

[3] Id. at 113.

[4] Id. at 115.

[5] Id. at 116.

[6] Id.

[7] Id. at 25.

- [8] Id. at 120
- [9] Id. at 126.
- [10] Id. at 120-121, 126-127, 132-133.
- [11] Id. at 20.
- [12] Id. at 27.
- [13] Id. at 132.
- [14] Id. at 29.
- [16] Id. at 29-30.
- [17] Id. at 134-135.
- [18] Id. at 31, 136-141.
- [19] Id. at 136-141.
- [20] Id. at 142-159.
- [21] Id. at 160-161.
- [22] Id. at 579.
- [23] Id.
- [24] Id.
- [25] Id.
- [26] Id. at 572.
- [27] Id at 579.
- [28] Id. at 579-580.
- [29] Id. at 219.
- [30] Id. at 260.
- [31] Id. at 337.
- [32] Id. at 338.
- [33] Id. at 340.
- [34] Id. at 433.
- [35] Id. at 430-431.
- [36] Id. at 442.
- [38] Id. at 448.
- [39] Id.
- [40] Id. at 583.

[41] Id. at 152.

[42] Id. at 94.

[43] 188 Phil. 55, 58(1980).

[44] This should read "Regulatory Issuance No. 2005-02."

[45] Rollo, pp. 102-104.

[46] Id. at 110.

[56] G.R. No. 152579, August 4, 2009, 595 SCRA 67, 76-77.

[57] Id., citing Philippine Islands Corporation for Tourism Development, Inc. v. Victorias Milling Company, Inc., G.R. No. 167674, June 17, 2008, 554 SCRA 561, 569; Tegimenta Chemical Phils, v. Buensalida, G.R. No. 176466, June 17, 2008, 554 SCRA 670, 679; and Tapuz v. Del Rosario, G.R. No. 182484, June 17, 2008, 554 SCRA 768, 782.

[58] Rule 63, Section 1 Revised Rules of Civil Procedure.

[59] PEZA v. Carantes, G.R. No. 181274, 23 June 2010.

[61] Rollo, p. 452.

[62] Id. at 390.

[64] Id. at 669.

[65] Id. at 671, citing Francisco, The Revised Rules of Court in the Philippines, Vol. IV-A, 1971,p. 185.

[66] Id., citing Government Service Insurance System v. Florendo, G.R. No. 48603, September 29, 1989, 178 SCRA 76, 87.

[67] Id. at 605.

[68] Id. at 607.

[69] 336 Phil. 514, 528 (1997).

[70] Rollo,p. 605.

[71] Id. at 606.

[72] Id.

[73] Id.

[74] Id. at 94.

[75] Id. at 606.

[76] Republic of the Philippines v. Sandiganbayan, et. al. 461 Phil. 598, 614 (2003), citing Mutuc v. Court of Appeals, G.R. No. 48108, September 26, 1990, 190 SCRA 43.

[77] Rollo, p. 583.

[89] Id. at 673.

[90] Id. at 82.

[91] Id.

[92] Id. at 474-479.

[93] Section 8 of R.A. 3591 provides:

"POWERS AS A CORPORATE BODY

SECTION 8. The Corporation as a corporate body shall have the power -

xxx

Eighth - To conduct examination of banks with prior approval of the Monetary Board: Provided, That no examination can be conducted within twelve (12) months from the last examination date: Provided, however, That the Corporation may, in coordination with the Bangko Sentral, conduct a special examination as the Board of Directors, by an affirmative vote of a majority of all of its members, if there is a threatened or impending closure of a bank; Provided, further, That, notwithstanding the provisions of Republic Act No. 1405, as amended, Republic Act No. 6426, as amended, Republic Act No. 8791, and other laws, the Corporation and/or the Bangko Sentral, may inquire into or examine deposit accounts and all information related thereto in case there is a finding of unsafe or unsound banking practice; Provided, That to avoid overlapping of efforts, the examination shall maximize the efficient use of the relevant reports, information, and findings of the Bangko Sentral, which it shall make available to the Corporation; (As amended by R.A. 9302, 12 August 2004, R.A. 9576, June 2009)

xxx"

[94] Section 9(b-1) of the PDIC Charter further provides that the Board of Directors of the PDIC shall have the power to:

"POWERS AND RESPONSIBILITIES AND PROHIBITIONS

SECTION 9. xxx

(b) The Board of Directors shall appoint examiners who shall have power, on behalf of the Corporation to examine any insured bank. Each such examiner shall have the power to make a thorough examination of all the affairs of the bank and in doing so, he shall have the power to administer oaths, to examine and take and preserve the testimony of any of the officers and agents thereof, and, to compel the presentation of books, documents, papers, or records necessary in his judgment to ascertain the facts relative to the condition of the bank; and shall make a full and detailed report of the condition of the bank to the Corporation. The Board of Directors in like manner shall appoint claim agents who shall have the power to investigate and examine all claims for insured deposits and transferred deposits. Each claim agent shall have the power to administer oaths and to examine under oath and take and preserve testimony of any person relating to such claim. (As amended by E.O. 890, 08 April 1983; R.A. 7400, 13 April 1992)

(b-1) The investigators appointed by the Board of Directors shall have the power on behalf of the Corporation to conduct investigations on frauds, irregularities and anomalies committed in banks, based on reports of examination conducted by the Corporation and Bangko Sentral ng Pilipinas or complaints from depositors or from other government agency. Each such investigator shall have the power to administer oaths, and to examine and take and preserve the testimony of any person relating to the subject of investigation. (As added by R.A. 9302, 12 August 2004)

xxx"

[95] Republic Act No. 3591, as amended, Section 1.

[97] The "Final Report of Examination" is defined under Section 2, Rule 3 of RI No. 2005-02 as follows:

"SECTION 2. Final Report of Examination.

A Final Report of Examination shall refer to the document approved by the PDIC Board or the Monetary Board containing a written statement/narration of the findings and/or recommendations resulting from an examination of a bank.

A Final Report of Examination of examiners of PDIC and/or BSP shall contain the following:

If possible, full name(s) and address(es) of the bank and/or its directors, officers, employees or agents or such description as would identify who appear to be responsible for the commission of fraud, irregularities and/or anomalies; and

A narration of the relevant and material facts which shows the fraudulent, irregular or anomalous acts or omissions allegedly committed in a bank.

In addition to the foregoing, copies of relevant documents, if available, should accompany the Final Report of Examination."

[98] Section 1, Rule 3 of RI No. 2005-02 states:

"SECTION 1. Authorization by the PDIC Board.

In all cases, a fact-finding investigation shall be conducted only upon authorization by the PDIC Board acting on the recommendation contained in a Final Report of Examination or based on any adverse finding stated therein, and/or a complaint from a depositor or government agency.

The Board shall likewise authorize the filing of criminal, civil, and/or administrative charges, if warranted. For this purpose, said authority is delegated to the President and Chief Executive Officer or the General Counsel in accordance with existing PDIC policies." 99 Section 3, Rule 3 of RI No. 2005-02 provides for the definition of a complaint as follows:

"SECTION 3. Complaint.

A complaint is a verified statement from a depositor alleging the commission or omission of certain acts which constitute fraud, irregularity or anomaly in a bank. The complaint shall follow the form attached hereto as Annex "A" and/or contain the following:

Full name and address of the complainant;

Full name and address of the bank and/or the names or sufficient description that will identify the directors, officers, employees and/or agents thereof who appear to be responsible for the commission of fraud, irregularities and/or anomalies;

A narration of the relevant and material facts which shows the fraudulent, irregular or anomalous act or acts allegedly committed in a bank;

A statement that the complainant has not commenced any action or filed any claim involving the same issues with BSP or any court, tribunal or quasi-judicial agency and, to the best of his/her knowledge, no such other action or

claim is pending therein; or a full disclosure of the status of an action or claim involving the same issues filed with BSP or any court, tribunal or quasi-judicial agency;

An undertaking that if the complainant should thereafter learn that a similar action or claim has been filed or is pending, he/she shall report that fact within five (5) days therefrom to PDIC;

If the incident complained of involves the deposit account of the complainant with the subject bank, a statement authorizing PDIC to look into the deposit account of the complainant for purposes of the investigation; and

Documents and/or affidavits, if any, supporting the allegations in the complaint.

In the absence of any one of the aforementioned requirements other than paragraph [g], the complaint may be dismissed.

A report from a government agency of fraud/irregularity/anomaly allegedly committed in a bank that is furnished PDIC, accompanied by a written request for the conduct of an investigation, is considered a valid complaint under these Rules."

[100] Sec. 3(1), PDIC Regulatory Issuance No. 2005-02.

[101] Sec. 3(1), PDIC Regulatory Issuance No. 2005-02.

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