

BANGKO SENTRAL NG PILIPINAS MONETARY BOARD AND CHUCHI FONACIER, PETITIONERS, VS. HON. NINA G. ANTONIO-VALENZUELA, IN HER CAPACITY AS REGIONAL TRIAL COURT JUDGE OF MANILA, BRANCH...

G.R. No. 184778. October 02, 2009

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

The Case

This is a Petition for Review on Certiorari under Rule 45 with Prayer for Issuance of a Temporary Restraining Order (TRO)/Writ of Preliminary Injunction, questioning the Decision dated September 30, 2008[1] of the Court of Appeals (CA) in CA-G.R. SP No. 103935. The CA Decision upheld the Order[2] dated June 4, 2008 of the Regional Trial Court (RTC), Branch 28 in Manila, issuing writs of preliminary injunction in Civil Case Nos. 08-119243, 08-119244, 08-119245, 08-119246, 08-119247, 08-119248, 08-119249, 08-119250, 08-119251, and 08-119273, and the Order dated May 21, 2008 that consolidated the civil cases.

The Facts

In September of 2007, the Supervision and Examination Department (SED) of the Bangko Sentral ng Pilipinas (BSP) conducted examinations of the books of the following banks: Rural Bank of Parañaque, Inc. (RBPI), Rural Bank of San Jose (Batangas), Inc., Rural Bank of Carmen (Cebu), Inc., Pilipino Rural Bank, Inc., Philippine Countryside Rural Bank, Inc., Rural Bank of Calatagan (Batangas), Inc. (now Dynamic Rural Bank), Rural Bank of Darbci, Inc., Rural Bank of Kananga (Leyte), Inc. (now First Interstate Rural Bank), Rural Bank de Bisayas Minglanilla (now Bank of East Asia), and San Pablo City Development Bank, Inc.

After the examinations, exit conferences were held with the officers or representatives of the banks wherein the SED examiners provided them with copies of Lists of Findings/Exceptions containing the deficiencies discovered during the examinations. These banks were then required to comment and to undertake the remedial measures stated in these lists within 30 days from their receipt of the lists, which remedial measures included the infusion of additional capital. Though the banks claimed that they made the additional capital infusions, petitioner Chuchi Fonacier, officer-in-charge of the SED, sent separate letters to the Board of Directors of each bank, informing them that the SED found that the banks failed to carry out the required remedial measures. In response, the banks requested that they be given time to obtain BSP approval to amend their Articles of Incorporation, that they have an opportunity to seek investors. They requested as well that the basis for the capital infusion figures be disclosed, and noted that none of them had received the Report of Examination (ROE) which finalizes the audit findings. They also requested meetings with the BSP audit teams to reconcile audit figures. In response, Fonacier reiterated the banks' failure to comply with the directive for additional capital infusions.

On May 12, 2008, the RBPI filed a complaint for nullification of the BSP ROE with application for a TRO and

writ of preliminary injunction before the RTC docketed as Civil Case No. 08-119243 against Fonacier, the BSP, Amado M. Tetangco, Jr., Romulo L. Neri, Vicente B. Valdepenas, Jr., Raul A. Boncan, Juanita D. Amatong, Alfredo C. Antonio, and Nelly F. Villafuerte. RBPI prayed that Fonacier, her subordinates, agents, or any other person acting in her behalf be enjoined from submitting the ROE or any similar report to the Monetary Board (MB), or if the ROE had already been submitted, the MB be enjoined from acting on the basis of said ROE, on the allegation that the failure to furnish the bank with a copy of the ROE violated its right to due process.

The Rural Bank of San Jose (Batangas), Inc., Rural Bank of Carmen (Cebu), Inc., Pilipino Rural Bank, Inc., Philippine Countryside Rural Bank, Inc., Rural Bank of Calatagan (Batangas), Inc., Rural Bank of Darbci, Inc., Rural Bank of Kananga (Leyte), Inc., and Rural Bank de Bisayas Minglanilla followed suit, filing complaints with the RTC substantially similar to that of RBPI, including the reliefs prayed for, which were raffled to different branches and docketed as Civil Cases Nos. 08-119244, 08-119245, 08-119246, 08-119247, 08-119248, 08-119249, 08-119250, and 08-119251, respectively.

On May 13, 2008, the RTC denied the prayer for a TRO of Pilipino Rural Bank, Inc. The bank filed a motion for reconsideration the next day.

On May 14, 2008, Fonacier and the BSP filed their opposition to the application for a TRO and writ of preliminary injunction in Civil Case No. 08-119243 with the RTC. Respondent Judge Nina Antonio-Valenzuela of Branch 28 granted RBPI's prayer for the issuance of a TRO.

The other banks separately filed motions for consolidation of their cases in Branch 28, which motions were granted. Judge Valenzuela set the complaint of Rural Bank of San Jose (Batangas), Inc. for hearing on May 15, 2008. Petitioners assailed the validity of the consolidation of the nine cases before the RTC, alleging that the court had already prejudged the case by the earlier issuance of a TRO in Civil Case No. 08-119243, and moved for the inhibition of respondent judge. Petitioners filed a motion for reconsideration regarding the consolidation of the subject cases.

On May 16, 2008, San Pablo City Development Bank, Inc. filed a similar complaint against the same defendants with the RTC, and this was docketed as Civil Case No. 08-119273 that was later on consolidated with Civil Case No. 08-119243. Petitioners filed an Urgent Motion to Lift/Dissolve the TRO and an Opposition to the earlier motion for reconsideration of Pilipino Rural Bank, Inc.

On May 19, 2008, Judge Valenzuela issued an Order granting the prayer for the issuance of TROs for the other seven cases consolidated with Civil Case No. 08-119243. On May 21, 2008, Judge Valenzuela issued an Order denying petitioners' motion for reconsideration regarding the consolidation of cases in Branch 28. On May 22, 2008, Judge Valenzuela granted the urgent motion for reconsideration of Pilipino Rural Bank, Inc. and issued a TRO similar to the ones earlier issued.

On May 26, 2008, petitioners filed a Motion to Dismiss against all the complaints (except that of the San Pablo City Development Bank, Inc.), on the grounds that the complaints stated no cause of action and that a condition precedent for filing the cases had not been complied with. On May 29, 2008, a hearing was conducted on the application for a TRO and for a writ of preliminary injunction of San Pablo City Development Bank, Inc.

The Ruling of the RTC

After the parties filed their respective memoranda, the RTC, on June 4, 2008, ruled that the banks were entitled to the writs of preliminary injunction prayed for. It held that it had been the practice of the SED to provide the ROEs to the banks before submission to the MB. It further held that as the banks are the subjects of examinations, they are entitled to copies of the ROEs. The denial by petitioners of the banks' requests for copies of the ROEs was

held to be a denial of the banks' right to due process.

The dispositive portion of the RTC's order reads:

WHEREFORE, the Court rules as follows:

1) Re: Civil Case No. 08-119243. Pursuant to Rule 58, Section 4(b) of the Revised Rules of Court, plaintiff Rural Bank of Paranaque Inc. is directed to post a bond executed to the defendants, in the amount of P500,000.00 to the effect that the plaintiff will pay to the defendants all damages which they may sustain by reason of the injunction if the Court should finally decide that the plaintiff was not entitled thereto. After posting of the bond and approval thereof, let a writ of preliminary injunction be issued to enjoin and restrain the defendants from submitting the Report of Examination or any other similar report prepared in connection with the examination conducted on the plaintiff, to the Monetary Board. In case such a Report on Examination [sic] or any other similar report prepared in connection with the examination conducted on the plaintiff has been submitted to the Monetary Board, the latter and its members (i.e. defendants Tetangco, Neri, Valdepenas, Boncan, Amatong, Antonio, and Villafuerte) are enjoined and restrained from acting on the basis of said report.

2) Re: Civil Case No. 08-119244. Pursuant to Rule 58, Section 4(b) of the Revised Rules of Court, plaintiff Rural Bank of San Jose (Batangas), Inc. is directed to post a bond executed to the defendants, in the amount of P500,000.00 to the effect that the plaintiff will pay to the defendants all damages which they may sustain by reason of the injunction if the Court should finally decide that the plaintiff was not entitled thereto. After posting of the bond and approval thereof, let a writ of preliminary injunction be issued to enjoin and restrain the defendants from submitting the Report of Examination or any other similar report prepared in connection with the examination conducted on the plaintiff, to the Monetary Board. In case such a Report on Examination [sic] or any other similar report prepared in connection with the examination conducted on the plaintiff has been submitted to the Monetary Board, the latter and its members (i.e. defendants Tetangco, Neri, Valdepenas, Boncan, Amatong, Antonio, and Villafuerte) are enjoined and restrained from acting on the basis of said report.

3) Re: Civil Case No. 08-119245. Pursuant to Rule 58, Section 4(b) of the Revised Rules of Court, plaintiff Rural Bank of Carmen (Cebu), Inc. is directed to post a bond executed to the defendants, in the amount of P500,000.00 to the effect that the plaintiff will pay to the defendants all damages which they may sustain by reason of the injunction if the Court should finally decide that the plaintiff was not entitled thereto. After posting of the bond and approval thereof, let a writ of preliminary injunction be issued to enjoin and restrain the defendants from submitting the Report of Examination or any other similar report prepared in connection with the examination conducted on the plaintiff, to the Monetary Board. In case such a Report on Examination [sic] or any other similar report prepared in connection with the examination conducted on the plaintiff has been submitted to the Monetary Board, the latter and its members (i.e. defendants Tetangco, Neri, Valdepenas, Boncan, Amatong, Antonio, and Villafuerte) are enjoined and restrained from acting on the basis of said report.

4) Re: Civil Case No. 08-119246. Pursuant to Rule 58, Section 4(b) of the Revised Rules of Court, plaintiff Pilipino Rural Bank Inc. is directed to post a bond executed to the defendants, in the amount of P500,000.00 to the effect that the plaintiff will pay to the defendants all damages which they may sustain by reason of the injunction if the Court should finally decide that the plaintiff was not entitled thereto. After posting of the bond and approval thereof, let a writ of preliminary injunction be issued to enjoin and restrain the defendants from submitting the Report of Examination or any other similar report prepared in connection with the examination conducted on the plaintiff, to the Monetary Board. In case such a Report on Examination [sic] or any other similar report prepared in connection with the examination conducted on the plaintiff has been submitted to the Monetary Board, the latter and its members (i.e. defendants Tetangco, Neri, Valdepenas, Boncan, Amatong, Antonio, and Villafuerte) are enjoined and restrained from acting on the basis of said report.

5) Re: Civil Case No. 08-119247. Pursuant to Rule 58, Section 4(b) of the Revised Rules of Court, plaintiff Philippine Countryside Rural Bank Inc. is directed to post a bond executed to the defendants, in the amount of P500,000.00 to the effect that the plaintiff will pay to the defendants all damages which they may sustain by reason of the injunction if the Court should finally decide that the plaintiff was not entitled thereto. After posting of the bond and approval thereof, let a writ of preliminary injunction be issued to enjoin and restrain the defendants from submitting the Report of Examination or any other similar report prepared in connection with the examination conducted on the plaintiff, to the Monetary Board. In case such a Report on Examination [sic] or any other similar report prepared in connection with the examination conducted on the plaintiff has been submitted to the Monetary Board, the latter and its members (i.e. defendants Tetangco, Neri, Valdepenas, Boncan, Amatang, Antonio, and Villafuerte) are enjoined and restrained from acting on the basis of said report.

6) Re: Civil Case No. 08-119248. Pursuant to Rule 58, Section 4(b) of the Revised Rules of Court, plaintiff Dynamic Bank Inc. (Rural Bank of Calatagan) is directed to post a bond executed to the defendants, in the amount of P500,000.00 to the effect that the plaintiff will pay to the defendants all damages which they may sustain by reason of the injunction if the Court should finally decide that the plaintiff was not entitled thereto. After posting of the bond and approval thereof, let a writ of preliminary injunction be issued to enjoin and restrain the defendants from submitting the Report of Examination or any other similar report prepared in connection with the examination conducted on the plaintiff, to the Monetary Board. In case such a Report on Examination [sic] or any other similar report prepared in connection with the examination conducted on the plaintiff has been submitted to the Monetary Board, the latter and its members (i.e. defendants Tetangco, Neri, Valdepenas, Boncan, Amatang, Antonio, and Villafuerte) are enjoined and restrained from acting on the basis of said report.

7) Re: Civil Case No. 08-119249. Pursuant to Rule 58, Section 4(b) of the Revised Rules of Court, plaintiff Rural Bank of DARBCI, Inc. is directed to post a bond executed to the defendants, in the amount of P500,000.00 to the effect that the plaintiff will pay to the defendants all damages which they may sustain by reason of the injunction if the Court should finally decide that the plaintiff was not entitled thereto. After posting of the bond and approval thereof, let a writ of preliminary injunction be issued to enjoin and restrain the defendants from submitting the Report of Examination or any other similar report prepared in connection with the examination conducted on the plaintiff, to the Monetary Board. In case such a Report on Examination [sic] or any other similar report prepared in connection with the examination conducted on the plaintiff has been submitted to the Monetary Board, the latter and its members (i.e. defendants Tetangco, Neri, Valdepenas, Boncan, Amatang, Antonio, and Villafuerte) are enjoined and restrained from acting on the basis of said report.

8) Re: Civil Case No. 08-119250. Pursuant to Rule 58, Section 4(b) of the Revised Rules of Court, plaintiff Rural Bank of Kananga Inc. (First Intestate Bank), is directed to post a bond executed to the defendants, in the amount of P500,000.00 to the effect that the plaintiff will pay to the defendants all damages which they may sustain by reason of the injunction if the Court should finally decide that the plaintiff was not entitled thereto. After posting of the bond and approval thereof, let a writ of preliminary injunction be issued to enjoin and restrain the defendants from submitting the Report of Examination or any other similar report prepared in connection with the examination conducted on the plaintiff, to the Monetary Board. In case such a Report on Examination [sic] or any other similar report prepared in connection with the examination conducted on the plaintiff has been submitted to the Monetary Board, the latter and its members (i.e. defendants Tetangco, Neri, Valdepenas, Boncan, Amatang, Antonio, and Villafuerte) are enjoined and restrained from acting on the basis of said report.

9) Re: Civil Case No. 08-119251. Pursuant to Rule 58, Section 4(b) of the Revised Rules of Court, plaintiff Banco Rural De Bisayas Minglanilla (Cebu) Inc. (Bank of East Asia) is directed to post a bond executed to the defendants, in the amount of P500,000.00 to the effect that the plaintiff will pay to the defendants all damages

which they may sustain by reason of the injunction if the Court should finally decide that the plaintiff was not entitled thereto. After posting of the bond and approval thereof, let a writ of preliminary injunction be issued to enjoin and restrain the defendants from submitting the Report of Examination or any other similar report prepared in connection with the examination conducted on the plaintiff, to the Monetary Board. In case such a Report on Examination [sic] or any other similar report prepared in connection with the examination conducted on the plaintiff has been submitted to the Monetary Board, the latter and its members (i.e. defendants Tetangco, Neri, Valdepenas, Boncan, Amatong, Antonio, and Villafuerte) are enjoined and restrained from acting on the basis of said report.

10) Re: Civil Case No. 08-119273. Pursuant to Rule 58, Section 4(b) of the Revised Rules of Court, plaintiff San Pablo City Development Bank, Inc. is directed to post a bond executed to the defendants, in the amount of P500,000.00 to the effect that the plaintiff will pay to the defendants all damages which they may sustain by reason of the injunction if the Court should finally decide that the plaintiff was not entitled thereto. After posting of the bond and approval thereof, let a writ of preliminary injunction be issued to enjoin and restrain the defendants from submitting the Report of Examination or any other similar report prepared in connection with the examination conducted on the plaintiff, to the Monetary Board. In case such a Report on Examination [sic] or any other similar report prepared in connection with the examination conducted on the plaintiff has been submitted to the Monetary Board, the latter and its members (i.e. defendants Tetangco, Neri, Valdepenas, Boncan, Amatong, Antonio, and Villafuerte) are enjoined an

d restrained from acting on the basis of said report.[3]

The Ruling of the CA

Petitioners then brought the matter to the CA via a petition for certiorari under Rule 65 claiming grave abuse of discretion on the part of Judge Valenzuela when she issued the orders dated May 21, 2008 and June 4, 2008.

The CA ruled that the RTC committed no grave abuse of discretion when it ordered the issuance of a writ of preliminary injunction and when it ordered the consolidation of the 10 cases.

It held that petitioners should have first filed a motion for reconsideration of the assailed orders, and failed to justify why they resorted to a special civil action of certiorari instead.

The CA also found that aside from the technical aspect, there was no grave abuse of discretion on the part of the RTC, and if there was a mistake in the assessment of evidence by the trial court, that should be characterized as an error of judgment, and should be correctable via appeal.

The CA held that the principles of fairness and transparency dictate that the respondent banks are entitled to copies of the ROE.

Regarding the consolidation of the 10 cases, the CA found that there was a similarity of facts, reliefs sought, issues raised, defendants, and that plaintiffs and defendants were represented by the same sets of counsels. It found that the joint trial of these cases would prejudice any substantial right of petitioners.

Finding that no grave abuse of discretion attended the issuance of the orders by the RTC, the CA denied the petition.

On November 24, 2008, a TRO was issued by this Court, restraining the CA, RTC, and respondents from implementing and enforcing the CA Decision dated September 30, 2008 in CA-G.R. SP No. 103935.[4]

By reason of the TRO issued by this Court, the SED was able to submit their ROEs to the MB. The MB then prohibited the respondent banks from transacting business and placed them under receivership under Section 53 of Republic Act No. (RA) 8791[5] and Sec. 30 of RA

7653[6] through MB Resolution No. 1616 dated December 9, 2008; Resolution Nos. 1637 and 1638 dated December 11, 2008; Resolution Nos. 1647, 1648, and 1649 dated December 12, 2008; Resolution Nos. 1652 and 1653 dated December 16, 2008; and Resolution Nos. 1692 and 1695 dated December 19, 2008, with the Philippine Deposit Insurance Corporation as the appointed receiver.

Now we resolve the main petition.

Grounds in Support of Petition

- THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT FINDING THAT THE INJUNCTION ISSUED BY THE REGIONAL TRIAL COURT VIOLATED SECTION 25 OF THE NEW CENTRAL BANK ACT AND EFFECTIVELY HANDCUFFED THE BANGKO SENTRAL FROM DISCHARGING ITS FUNCTIONS TO THE GREAT AND IRREPARABLE DAMAGE OF THE COUNTRY'S BANKING SYSTEM;
- THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT RESPONDENTS ARE ENTITLED TO BE FURNISHED COPIES OF THEIR RESPECTIVE ROEs BEFORE THE SAME IS SUBMITTED TO THE MONETARY BOARD IN VIEW OF THE PRINCIPLES OF FAIRNESS AND TRANSPARENCY DESPITE LACK OF EXPRESS PROVISION IN THE NEW CENTRAL BANK ACT REQUIRING BSP TO DO THE SAME
- THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN DEPARTING FROM WELL-ESTABLISHED PRECEPTS OF LAW AND JURISPRUDENCE
- THE EXCEPTIONS CITED BY PETITIONER JUSTIFIED RESORT TO PETITION FOR CERTIORARI UNDER RULE 65 INSTEAD OF FIRST FILING A MOTION FOR RECONSIDERATION
- RESPONDENT BANKS' ACT OF RESORTING IMMEDIATELY TO THE COURT WAS PREMATURE SINCE IT WAS MADE IN UTTER DISREGARD OF THE PRINCIPLE OF PRIMARY JURISDICTION AND EXHAUSTION OF ADMINISTRATIVE REMEDY
- THE ISSUANCE OF A WRIT OF PRELIMINARY INJUNCTION BY THE REGIONAL TRIAL COURT WAS NOT ONLY IMPROPER BUT AMOUNTED TO GRAVE ABUSE OF DISCRETION[7]

Our Ruling

The petition is meritorious.

In *Lim v. Court of Appeals* it was stated:

The requisites for preliminary injunctive relief are: (a) the invasion of right sought to be protected is material and substantial; (b) the right of the complainant is clear and unmistakable; and (c) there is an urgent and paramount necessity for the writ to prevent serious damage.

As such, a writ of preliminary injunction may be issued only upon clear showing of an actual existing right to be protected during the pendency of the principal action. The twin requirements of a valid injunction are the existence of a right and its actual or threatened violations. Thus, to be entitled to an injunctive writ, the right to be protected and the violation against that right must be shown.[8]

These requirements are absent in the present case.

In granting the writs of preliminary injunction, the trial court held that the submission of the ROEs to the MB before the respondent banks would violate the right to due process of said banks.

This is erroneous.

The respondent banks have failed to show that they are entitled to copies of the ROEs. They can point to no provision of law, no section in the procedures of the BSP that shows that the BSP is required to give them copies of the ROEs. Sec. 28 of RA 7653, or the New Central Bank Act, which governs examinations of banking institutions, provides that the ROE shall be submitted to the MB; the bank examined is not mentioned as a recipient of the ROE.

The respondent banks cannot claim a violation of their right to due process if they are not provided with copies of the ROEs. The same ROEs are based on the lists of findings/exceptions containing the deficiencies found by the SED examiners when they examined the books of the respondent banks. As found by the RTC, these lists of findings/exceptions were furnished to the officers or representatives of the respondent banks, and the respondent banks were required to comment and to undertake remedial measures stated in said lists. Despite these instructions, respondent banks failed to comply with the SED's directive.

Respondent banks are already aware of what is required of them by the BSP, and cannot claim violation of their right to due process simply because they are not furnished with copies of the ROEs. Respondent banks were held by the CA to be entitled to copies of the ROEs prior to or simultaneously with their submission to the MB, on the principles of fairness and transparency. Further, the CA held that if the contents of the ROEs are essentially the same as those of the lists of findings/exceptions provided to said banks, there is no reason not to give copies of the ROEs to the banks. This is a flawed conclusion, since if the banks are already aware of the contents of the ROEs, they cannot say that fairness and transparency are not present. If sanctions are to be imposed upon the respondent banks, they are already well aware of the reasons for the sanctions, having been informed via the lists of findings/exceptions, demolishing that particular argument. The ROEs would then be superfluities to the respondent banks, and should not be the basis for a writ of preliminary injunction. Also, the reliance of the RTC on *Banco Filipino v. Monetary Board*[9] is misplaced. The petitioner in that case was held to be entitled to annexes of the Supervision and Examination Sector's reports, as it already had a copy of the reports themselves. It was not the subject of the case whether or not the petitioner was entitled to a copy of the reports. And the ruling was made after the petitioner bank was ordered closed, and it was allowed to be supplied with annexes of the reports in order to better prepare its defense. In this instance, at the time the respondent banks requested copies of the ROEs, no action had yet been taken by the MB with regard to imposing sanctions upon said banks.

The issuance by the RTC of writs of preliminary injunction is an unwarranted interference with the powers of the MB. Secs. 29 and 30 of RA 7653[10] refer to the appointment of a conservator or a receiver for a bank, which is a power of the MB for which they need the ROEs done by the supervising or examining department. The writs of preliminary injunction issued by the trial court hinder the MB from fulfilling its function under the law. The actions of the MB under Secs. 29 and 30 of RA 7653 "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 writs of preliminary injunction order are precisely what cannot be done under the law by preventing the MB from taking action under either Sec. 29 or Sec. 30 of RA 7653.

As to the third requirement, the respondent banks have shown no necessity for the writ of preliminary injunction to prevent serious damage. The serious damage contemplated by the trial court was the possibility of the imposition of sanctions upon respondent banks, even the sanction of closure. Under the law, the sanction of closure could be imposed upon a bank by the BSP even without notice and hearing. The apparent lack of procedural due process would not result in the invalidity of action by the MB. This was the ruling in *Central Bank of the Philippines v. Court of Appeals*.[11] This "close now, hear later" scheme is grounded on practical and legal considerations to prevent unwarranted dissipation of the bank's assets and as a valid exercise of police power to

protect the depositors, creditors, stockholders, and the general public. The writ of preliminary injunction cannot, thus, prevent the MB from taking action, by preventing the submission of the ROEs and worse, by preventing the MB from acting on such ROEs.

The trial court required the MB to respect the respondent banks' right to due process by allowing the respondent banks to view the ROEs and act upon them to forestall any sanctions the MB might impose. Such procedure has no basis in law and does in fact violate the "close now, hear later" doctrine. We held in *Rural Bank of San Miguel, Inc. v. Monetary Board, Bangko Sentral ng Pilipinas*:

It is well-settled that the closure of a bank may be considered as an exercise of police power. The action of the MB on this matter is final and executory. 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.[12]

The respondent banks cannot--through seeking a writ of preliminary injunction by appealing to lack of due process, in a roundabout manner-- prevent their closure by the MB. Their remedy, as stated, is a subsequent one, which will determine whether the closure of the bank was attended by grave abuse of discretion. Judicial review enters the picture only after the MB has taken action; it cannot prevent such action by the MB. The threat of the imposition of sanctions, even that of closure, does not violate their right to due process, and cannot be the basis for a writ of preliminary injunction.

The "close now, hear later" doctrine has already been justified as a measure for the protection of the public interest. Swift action is called for on the part of the BSP when it finds that a bank is in dire straits. Unless adequate and determined efforts are taken by the government against distressed and mismanaged banks, public faith in the banking system is certain to deteriorate to the prejudice of the national economy itself, not to mention the losses suffered by the bank depositors, creditors, and stockholders, who all deserve the protection of the government.[13]

The respondent banks have failed to show their entitlement to the writ of preliminary injunction. It must be emphasized that an application for injunctive relief is construed strictly against the pleader.[14] The respondent banks cannot rely on a simple appeal to procedural due process to prove entitlement. The requirements for the issuance of the writ have not been proved. No invasion of the rights of respondent banks has been shown, nor is their right to copies of the ROEs clear and unmistakable. There is also no necessity for the writ to prevent serious damage. Indeed the issuance of the writ of preliminary injunction tramples upon the powers of the MB and prevents it from fulfilling its functions. There is no right that the writ of preliminary injunction would protect in this particular case. In the absence of a clear legal right, the issuance of the injunctive writ constitutes grave abuse of discretion.[15] In the absence of proof of a legal right and the injury sustained by the plaintiff, an order for the issuance of a writ of preliminary injunction will be nullified.[16]

Courts are hereby reminded to take greater care in issuing injunctive relief to litigants, that it would not violate any law. The grant of a preliminary injunction in a case rests on the sound discretion of the court with the caveat that it should be made with great caution.[17] Thus, the issuance of the writ of preliminary injunction must have basis in and be in accordance with law. All told, while the grant or denial of an injunction generally rests on the sound discretion of the lower court, this Court may and should intervene in a clear case of abuse.[18]

WHEREFORE, the petition is hereby GRANTED. The assailed CA Decision dated September 30, 2008 in CA-G.R. SP No. 103935 is hereby REVERSED. The assailed order and writ of preliminary injunction of respondent Judge Valenzuela in Civil Case Nos. 08-119243, 08-119244, 08-119245, 08-119246, 08-119247, 08-119248, 08-119249, 08-119250, 08-119251, and 08-119273 are hereby declared NULL and VOID.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Peralta, JJ., concur.

[1] Penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justices Bienvenido L. Reyes and Mariflor P. Punzalan Castillo.

[2] Penned by Judge Nina G. Antonio Valenzuela.

[3] Rollo, pp. 352-356.

[4] Id. at 457-459.

[5] SECTION 53. Other Banking Services.--In addition to the operations specifically authorized in this Act, a bank may perform the following services:

53.1. Receive in custody funds, documents and valuable objects;

53.2. Act as financial agent and buy and sell, by order of and for the account of their customers, shares, evidences of indebtedness and all types of securities;

53.3. Make collections and payments for the account of others and perform such other services for their customers as are not incompatible with banking business;

53.4. Upon prior approval of the Monetary Board, act as managing agent, adviser, consultant or administrator of investment management/advisory/consultancy accounts; and

53.5. Rent out safety deposit boxes.

The bank shall perform the services permitted under Subsections 53.1, 53.2, 53.3 and 53.4 as depository or as an agent. Accordingly, it shall keep the funds, securities and other effects which it receives duly separate from the bank's own assets and liabilities.

The Monetary Board may regulate the operations authorized by this Section in order to ensure that such operations do not endanger the interests of the depositors and other creditors of the bank.

In case a bank or quasi-bank notifies the Bangko Sentral or publicly announces a bank holiday, or in any manner suspends the payment of its deposit liabilities continuously for more than thirty (30) days, the Monetary Board may summarily and without need for prior hearing close such banking institution and

place it under receivership of the Philippine Deposit Insurance Corporation.

[6] 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 quasibank:

(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) by the Bangko Sentral, 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.

For a quasi-bank, any person of recognized competence in banking or finance may be designed as receiver.

The receiver shall immediately gather and take charge of all the assets and liabilities of the institution, administer the same for the benefit of its creditors, and exercise the general powers of a receiver under the Revised Rules of Court but shall not, with the exception of administrative expenditures, pay or commit any act that will involve the transfer or disposition of any asset of the institution: Provided, That the receiver may deposit or place the funds of the institution in nonspeculative investments. The receiver shall determine as soon as possible, but not later than ninety (90) days from take over, whether the institution may be rehabilitated or otherwise placed in such a condition so that it may be permitted to resume business with safety to its depositors and creditors and the general public: Provided, That any determination for the resumption of business of the institution shall be subject to prior approval of the Monetary Board.

If the receiver determines that the institution cannot be rehabilitated or permitted to resume business in accordance with the next preceding paragraph, the Monetary Board shall notify in writing the board of directors of its findings and direct the receiver to proceed with the liquidation of the institution. The receiver shall:

1. file ex parte with the proper regional trial court, and without requirement of prior notice or any other action, a petition for assistance in the liquidation of the institution pursuant to a liquidation plan adopted by the Philippine Deposit Insurance Corporation for general application to all closed banks. In case of quasi-banks, the liquidation plan shall be adopted by the Monetary Board. Upon acquiring jurisdiction, the court shall, upon motion by the receiver after due notice, adjudicate disputed claims against the institution, assist the enforcement of individual liabilities of the stockholders, directors and officers, and decide on other issues as may be material to implement the liquidation plan adopted. The receiver shall pay the cost of the proceedings from the assets of the institution.
2. convert the assets of the institutions to money, dispose of the same to creditors and other parties, for the purpose of paying the debts of such institution in accordance with the rules on concurrence and preference of credit under the Civil Code of the Philippines and he may, in the name of the institution, and with the assistance of counsel as he may retain, institute such actions as may be necessary to collect and recover accounts and assets of, or defend any action against, the institution. The assets of an institution under receivership or liquidation shall be deemed in custodia legis in the hands of the receiver and shall, from the moment the institution was placed under such receivership or liquidation, be exempt from any order of garnishment, levy, attachment, or execution.

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. The designation of a conservator under Section 29 of this Act or the appointment of a receiver under this section shall be vested exclusively with the Monetary Board. Furthermore, the designation of a conservator is not a precondition to the designation of a receiver.

[7] Rollo, pp. 28-29.

[8] G.R. No. 134617, February 13, 2006, 482 SCRA 326, 331.

[9] No. L-70054, July 8, 1986, 142 SCRA 523.

[10] SECTION 29. Appointment of Conservator.--Whenever, on the basis of a report submitted by the appropriate supervising or examining department, the Monetary Board finds that a bank or a quasi-bank is in a state of continuing inability or unwillingness to maintain a condition of liquidity deemed adequate to protect the interest of depositors and creditors, the Monetary Board may appoint a conservator with such powers as the Monetary Board shall deem necessary to take charge of the assets, liabilities, and the management thereof, reorganize the management, collect all monies and debts due said institution, and exercise all powers necessary to restore its viability. The conservator shall report and be responsible to the Monetary Board and shall have the power to overrule or revoke the actions of the previous management and board of directors of the bank or quasi-bank.

The conservator should be competent and knowledgeable in bank operations and management.

The conservatorship shall not exceed one (1) year.

The conservator shall receive remuneration to be fixed by the Monetary Board in an amount not to exceed two-thirds (2/3) of the salary of the president of the institution in one (1) year, payable in twelve (12) equal monthly payments: Provided, That, if at any time within one-year period, the conservatorship is terminated on the ground that the institution can operate on its own, the conservator shall receive the balance of the remuneration which he would have received up to the end of the year; but if the conservatorship is terminated on other grounds, the conservator shall not be entitled to such remaining balance. The Monetary Board may appoint a conservator connected with the Bangko Sentral, in which case he shall not be entitled to receive any remuneration or emolument from the Bangko Sentral during the conservatorship. The expenses attendant to the conservatorship shall be borne by the bank or quasi-bank concerned.

The Monetary Board shall terminate the conservatorship when it is satisfied that the institution can continue to operate on its own and the conservatorship is no longer necessary. The conservatorship shall likewise be terminated should the Monetary Board, on the basis of the report of the conservator or of its own findings, determine that the continuance in business of the institution would involve probable loss to its depositors or creditors, in which case the provisions of Section 30 shall apply.

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) by the Bangko Sentral, 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.

For a quasi-bank, any person of recognized competence in banking or finance may be designed as receiver.

The receiver shall immediately gather and take charge of all the assets and liabilities of the institution, administer the same for the benefit of its creditors, and exercise the general powers of a receiver under the Revised Rules of Court but shall not, with the exception of administrative expenditures, pay or commit any act that will involve the transfer or disposition of any asset of the institution: Provided, That the receiver may deposit or place the funds of

the institution in nonspeculative investments. The receiver shall determine as soon as possible, but not later than ninety (90) days from take over, whether the institution may be rehabilitated or otherwise placed in such a condition so that it may be permitted to resume business with safety to its depositors and creditors and the general public: Provided, That any determination for the resumption of business of the institution shall be subject to prior approval of the Monetary Board.

If the receiver determines that the institution cannot be rehabilitated or permitted to resume business in accordance with the next preceding paragraph, the Monetary Board shall notify in writing the board of directors of its findings and direct the receiver to proceed with the liquidation of the institution. The receiver shall:

1. file ex parte with the proper regional trial court, and without requirement of prior notice or any other action, a petition for assistance in the liquidation of the institution pursuant to a liquidation plan adopted by the Philippine Deposit Insurance Corporation for general application to all closed banks. In case of quasi-banks, the liquidation plan shall be adopted by the Monetary Board. Upon acquiring jurisdiction, the court shall, upon motion by the receiver after due notice, adjudicate disputed claims against the institution, assist the enforcement of individual liabilities of the stockholders, directors and officers, and decide on other issues as may be material to implement the liquidation plan adopted. The receiver shall pay the cost of the proceedings from the assets of the institution.
2. convert the assets of the institutions to money, dispose of the same to creditors and other parties, for the purpose of paying the debts of such institution in accordance with the rules on concurrence and preference of credit under the Civil Code of the Philippines and he may, in the name of the institution, and with the assistance of counsel as he may retain, institute such actions as may be necessary to collect and recover accounts and assets of, or defend any action against, the institution. The assets of an institution under receivership or liquidation shall be deemed in custodia legis in the hands of the receiver and shall, from the moment the institution was placed under such receivership or liquidation, be exempt from any order of garnishment, levy, attachment, or execution.

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. The designation of a conservator under Section 29 of this Act or the appointment of a receiver under this section shall be vested exclusively with the Monetary Board. Furthermore, the designation of a conservator is not a precondition to the designation of a receiver.

[11] G.R. No. 76118, March 30, 1993, 220 SCRA 536.

[12] G.R. No. 150886, February 16, 2007, 516 SCRA 154, 160.

[13] Philippine Veterans Bank Employees Union-NUBE v. Philippine Veterans Bank, G.R. No. 67125, August 24, 1990, 189 SCRA 14, 28.

[14] Marquez v. Presiding Judge (Hon. Ismael B. Sanchez), RTC Br. 58, Lucena City, G.R. No. 141849, February 13, 2007, 515 SCRA 577, 594.

[15] Selegna Management and Development Corporation v. United Coconut Planters Bank, G.R. No. 165662, May 3, 2006, 489 SCRA 125, 145.

[16] Nisce v. Equitable PCI Bank, Inc., G.R. No. 167434, February 19, 2007, 516 SCRA 231, 253.

[17] Rural Bank of San Miguel, Inc., *supra* note 12, at 252.

[18] Republic v. Caguioa, G.R. No. 168584, October 15, 2007, 536 SCRA 193, 220.

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