

SECURITIES AND EXCHANGE COMMISSION (SEC) AND INSURANCE COMMISSION (IC), PETITIONERS, VS. COLLEGE ASSURANCE PLAN PHILIPPINES, INC., RESPONDENT.

G.R. No. 202052. March 07, 2018

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

The dispute concerns the use of the assets of the trust fund of the respondent as a pre-need company. We reiterate that the law clearly establishes the trust fund for the sole benefit of the planholders, and its assets cannot be used to satisfy the claims of the creditors of the company.

The Case

This appeal assails the decision promulgated on June 14, 2011,[1] whereby the Court of Appeals (CA) nullified the orders issued by the Regional Trial Court (RTC), Branch 149, in Makati City on April 29, 2009,[2] September 18, 2009[3] and January 18, 2010[4] in SP. No. M-6144 entitled In the Matter of Petition for Corporate Rehabilitation; College Assurance Plan Philippines, Inc., Petitioner, and disposed thusly:

WHEREFORE, premises considered, finding grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent, the instant petition is GRANTED. The assailed Orders dated April 29, 2009, September 18, 2009 and January 18, 2010 of the Regional Trial Court of Makati City, Branch 149, is hereby NULLIFIED. Petitioner College Assurance Plan Philippines, Inc., through its Receiver, is directed to pay its outstanding obligation to Smart Share Investment, Ltd., and Fil-Estate Management, Inc. in the amount of \$6 million as set aside by the Trustee, Philippine Veterans Bank.

SO ORDERED.[5]

Antecedents

The CA narrated the following factual and procedural antecedents:

Petitioner College Assurance Plan Philippines, Inc. (CAP) is a duly registered domestic corporation with the primary purpose of selling pre-need educational plans. To guarantee the payment of benefits under its educational plans, CAP set up a Trust Fund contributing therein a certain percentage of the amount actually collected from each planholder. The Trust Fund, with the aid of trustee banks, is invested in assets and securities with yields higher than the projected increase in tuition fees. With the adoption of the policy of deregulation of private educational institutions by the Department of Education in 1993 and the economic crisis and peso devaluation which started in 1997, CAP and its Trust Fund were adversely affected.

In 2000, Republic Act No. 8799 (Securities Regulation Code) was passed. Pursuant thereto, the Securities and Exchange Commission (SEC) promulgated on August 16, 2001 the New Rules on the Registration and Sale of Pre-Need Plans under Section 16 of the Securities Regulation Code. With the adoption of the Pre-Need Uniform Chart of Accounts for the accounting and reporting of the operations of the pre-need companies in the Philippines and the new rules on the valuation of trust funds invested in real property, CAP incurred a trust

fund deficiency of 3.179 billion as of December 31, 2001. In compliance with the directive of SEC to submit a funding scheme to correct the deficiency, CAP, among others, proposed to purchase MRT III Bonds and assign the same to the Trust Fund. Hence, on August 6, 2002, CAP purchased MRT III Bonds with a present value then of \$14 million from Smart[6] and FEMI,[7] and assigned the same to the Trust Fund. The purchase price was to be paid by CAP in sixty (60) monthly installments payable over five (5) years. This obligation was secured by a Deed of Chattel Mortgage over 9,762,982 common shares of Comprehensive Annuity Plans & Pension Corporation owned by CAP. In 2003, after having paid US\$6,536,405.01 of the total purchase price, CAP was ordered by the SEC Oversight Board to stop paying SMART/FEMI due to its perceived inadequacy of CAP's funds.

On August 23, 2005, CAP filed a Petition for Rehabilitation. After finding the petition to be sufficient in form and substance, a Stay Order was issued by the court effectively staying and suspending the enforcement of all claims against CAP. Mr. Mamerto Marcelo, Jr. was appointed as Interim Rehabilitation Receiver.

In its Order dated December 16, 2005, the trial court gave due course to CAP's Petition for Rehabilitation and directed the Receiver to submit a report on the rehabilitation plan. The 2006 Revised Business Plan was approved by the court on November 8, 2006. Under the Rehabilitation Plan, CAP intended to sell in 2009 the MRT Bonds at 60% of their face value of US\$ 81.2 million.

While negotiations to effect the sale were ongoing, Smart demanded that CAP settle its outstanding balance of US\$ 10,680,045.25 as February 28, 2009 and warned that, should CAP insist on holding on to the MRT III Bonds instead of selling them, Smart would demand the immediate return of the MRT III Bonds as full and final settlement of CAP's outstanding obligation. The Receiver denied that CAP has agreed to pay its liabilities to FEMI and Smart from the proceeds of the prospective sale of the MRT III Bonds. On April 13, 2009, the Receiver filed a Manifestation seeking the public respondent's approval of the sale of MRT III Bonds, with a face value of US\$ 81,200,000.00, "at the best possible price" to the Development Bank of the Philippines (DBP) and the Land Bank of the Philippines.

In the Order of April 15, 2009, the public respondent approved the sale of MRT III Bonds "at the best possible price." Two days later, the Receiver received a letter from FEMI that Smart intended to annotate a notice of unpaid seller's lien on the MRT III Bonds with Deutsche Bank, the custodian bank. However, Smart opted not to do so and would instead assist in finding a buyer provided that the seller's lien of US\$ 9.5 million will be settled through the arrangement it presented, subject to the approval of the rehabilitation court. The Receiver then filed a Manifestation with Motion dated April 22, 2009 where he sought the public respondent's approval of CAP's payment of its obligations to Smart and FEMI, partly from the proceeds of the sale of the MRT III Bonds.

The MRT III Bonds were in fact sold at US\$ 21,501,760 to DBP and Land Bank. The Buyers agreed to purchase the MRT III Bonds at a premium of 3.30% made possible by: (1) Smart's desistance from enforcing its unpaid seller's lien, (2) FEMI's relinquishing its four (4) board seats with Metro Rail Transit Corporation, (3) swap arrangement of FEMI shares held by CAP to liquidate \$3.5 million of the outstanding obligation; and (4) substantial discount of \$1.2 million from CAP's outstanding liabilities. The contract of sale was perfected and partly consummated-FEMI gave up its four (4) board seats in MRTTC, the MRT III Bonds were delivered to the buyers, and the buyers paid \$21,501,760 to CAP, which amount was credited to its trust accounts with Philippine Veterans Bank (PVB). However, CAP's payment to Smart and FEMI remained to be executed.[8]

Based on the foregoing antecedents, the receiver moved for the payment of the respondent's obligations to Smart and FEMI. The RTC approved the motion in open court on April 24, 2009.[9] However, on April 29, 2009, the RTC withdrew the approval and instead ordered the receiver and the respondent to file their reply to the opposition.[10] After the exchange of pleadings, the RTC issued a joint order dated September 18, 2009 denying the motion to approve payment to Smart as well as the motion to approve the respondent's additional equity infusion in CAP General Insurance.[11]

Subsequently, the respondent received summons from the High Court of Hong Kong Special Administrative Region, Court of First Instance, directing it to either satisfy the claim of Smart and FEMI, or to return the Acknowledgment of Service, stating whether it intended to contest the proceedings or to make an admission. In view of this, the respondent filed its motion dated December 21, 2009 in the RTC seeking authorization to pay the claims of Smart and FEMI and explaining that the institution of the action in Hong Kong presented a real threat that the buyers would rescind their contact with the respondent and demand the return of the purchase price of \$21,501,760.00.[12]

On January 18, 2010, the RTC issued the assailed order denying the respondent's motion for payment to Smart and FEMI, and holding that in keeping with the principle of "equality is equity" in rehabilitation proceedings, the respondent's assets should be held in trust for the equal benefit of all the creditors, both secured and unsecured, who stood on equal footing during the rehabilitation.[13] The RTC disposed as follows:

WHEREFORE, premises considered, the motion dated December 21, 2009 for authority to settle CAP's obligations to Smart Share Investments Ltd. and Fil Estate Management, Inc. is hereby denied for utter lack of merit.

SO ORDERED.[14]

Decision of the CA

The foregoing developments impelled the respondent to bring a petition for certiorari to the CA, insisting therein that:[15]

I

RESPONDENT COURT ACTED WITHOUT OR IN EXCESS OF JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF EXCESS OF JURISDICTION, WHEN IT UNILATERALLY MODIFIED THE TERMS AND CONDITIONS OF THE SALE OF THE MRT III BONDS AS AGREED UPON BY THE PARTIES

II

RESPONDENT COURT ACTED WITHOUT OR IN EXCESS OF JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION, WHEN IT DENIED THE RECEIVER'S MOTION, KNOWING FULLY WELL THAT SUCH ACTION WILL BE DETRIMENTAL TO THE INTERESTS OF CAP AND ITS STAKEHOLDERS

On August 17, 2010, upon the application of the respondent, the CA directed Philippine Veterans Bank and the receiver to set aside US\$6 million from the proceeds of the sale of the MRT III Bonds pending the determination of the suit.[16]

On June 14, 2011, the CA promulgated the assailed decision,[17] whereby it found and declared that the RTC had committed grave abuse of discretion in disapproving the payment of the respondent's obligation to Smart and FEMI from the proceeds of the sale of the MRT III Bonds.

The CA opined that payment to Smart and FEMI constituted "benefits" that could be validly withdrawn from the trust fund pursuant to Rule 16.4 of the New Rules on the Registration and Sale of Pre-Need Plans under Section 16 of the Securities and Regulation Code (New Rules) in relation to Section 30 of Republic Act No. 9829 (Pre-Need Code of the Philippines);[18] that because the MRT III Bonds had not been fully paid, the unpaid portion of the purchase price thereof could not be considered as part of the trust fund; that considering that there was an unpaid seller's lien, the payment to Smart and FEMI from the proceeds of the sale could not be considered

as payment to an ordinary creditor, but as payment to the contributors of the source of the assets of the trust fund;[19] that at any rate the respondent's outstanding obligation to Smart and FEMI could be considered as an administrative expense not covered by the stay order, and was an expense to preserve the assets of the trust fund;[20] and that the "equality is equity" principle did not apply because Smart and FEMI had played a significant role in the sale of the MRT III Bonds that had worked for the benefit of the planholders.[21]

The petitioners sought reconsideration, but the CA denied their motion for that purpose on May 21, 2012.[22]

Hence, this appeal.

Issues

The petitioners hereby submit the following for consideration:

I

WHETHER OR NOT THE PAYMENT OF RESPONDENT'S OUTSTANDING OBLIGATION TO SMART AND FEMI, REPRESENTING THE BALANCE OF THE PURCHASE PRICE OF THE MRT III BONDS CAN BE VALIDLY WITHDRAWN FROM THE RESPONDENT'S TRUST FUND.

II

WHETHER OR NOT PAYMENT OF RESPONDENT'S OUTSTANDING OBLIGATION TO SMART AND FEMI CAN BE CONSIDERED AN ADMINISTRATIVE EXPENSE AND, THUS, AN ALLOWABLE WITHDRAWAL FROM THE RESPONDENT'S TRUST FUND.

III

WHETHER OR NOT THE TRIAL COURT ACTED WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN DENYING PAYMENT OF RESPONDENT'S OBLIGATION TO SMART AND FEMI FROM THE PROCEEDS OF THE SALE OF THE MRT III BONDS, WHICH FORM PART OF THE RESPONDENT'S TRUST FUND.[23]

The petitioners maintain that the trust fund, being essentially and primarily constituted for the sole and exclusive benefit of the planholders, should be treated separately and distinctly from the paid-up capital and assets of the respondent; that Section 30 of R.A. No. 9829 provided that the trust fund should in no case be used to satisfy the claims of the creditors of the pre-need company;[24] that because the proceeds of the sale of the MRT III Bonds formed part of the assets of the trust fund, they were not owned by the respondent, but by the trustee insofar as the legal title was concerned and by the planholders as beneficial owners;[25] that contrary to the view of the CA, the infusion to the trust fund made by the respondent to cover its deficiency could not have diluted the nature and purpose of the trust fund because the respondent was legally required to make the necessary deposit in case of fund insufficiency;[26] that the "benefits" mentioned in Section 16.4, Rule 16 of the New Rules referred to those that the pre-need company undertook to deliver to planholders; that consequently the "cost of services rendered or property delivered" should refer to the cost of any service or property that the pre-need company undertook to deliver to the planholders in the future as specified in their respective pre-need plans; that the cost of property infused by the pre-need company in order to cover the deficiency in the trust fund was excluded; and that the CA erred in ruling that the payment to Smart and FEMI constituted "benefits" or "cost of services or property delivered" that could be withdrawn from the trust fund.[27]

Lastly, the petitioners posit that administrative expenses included whatever was incurred in the operation of the trust fund, like trust fees, bank charges and investment expenses used in the operation of the trust fund, taxes on

the fund, and reasonable withdrawals for minor repairs and cost of ordinary maintenance of the fund, but did not include the cost of the capital asset infused in the trust fund.[28]

In its comment,[29] the respondent counters that the settlement of its obligation to Smart and FEMI was a necessary condition of the sale of the MRT III Bonds; that the RTC had already approved the payment of said obligations on April 24, 2009, but withdrew the approval on April 29, 2009 despite its knowledge that the sale had been partly consummated;[30] that the RTC as the rehabilitation court had no power to modify the terms of the contract of sale as negotiated and agreed upon by the parties;[31] that the "cost of services" that could be validly withdrawn from the trust fund included payments of obligations, aside from those made to the planholders, trustees, banks, and the Government, among others; that the payment of its obligation to Smart and FEMI constituted a "cost" of converting the MRT III Bonds to much-needed cash that redounded to the benefit of the planholders;[32] that the sale of the MRT III Bonds, having been realized through the concessions made by Smart and FEMI, was made for the benefit of the planholders;[33] and that disapproving the payment to Smart and FEMI would result to a protracted litigation that might be ultimately detrimental to its rehabilitation, among other consequences.[34]

Did the CA correctly rule that the obligation to pay to Smart and FEMI constituted "benefits" or "cost of services rendered or property delivered" or "administrative expense" that could be validly withdrawn from the trust fund pursuant to Section 16.4, Rule 16 of the New Rules and Section 30 of R.A. No. 9829?

Ruling of the Court

The appeal is meritorious.

I

The obligation to pay Smart and FEMI did not constitute the "benefits" or "cost of services rendered" or "property delivered" under Section 16.4, Rule 16 of the New Rules and Section 30 of R.A. No. 9829

The petitioners submit that the trust fund should be treated separately and distinctly from the corporate assets and obligations of the respondent. On the other hand, the respondent insists that the CA correctly ruled that the payment to Smart and FEMI constituted a valid withdrawal from the trust fund because it was upon a "benefit" in the nature of "cost for services rendered or property delivered."

We uphold the submission of the petitioners.

In respect of pre-need companies, the trust fund is set up from the planholders' payments to pay for the cost of benefits and services, termination values payable to the planholders and other costs necessary to ensure the delivery of benefits or services to the planholders as provided for in the contracts.[35] The trust fund is to be treated as separate and distinct from the paid-up capital of the company, and is established with a trustee under a trust agreement approved by the Securities and Exchange Commission to pay the benefits as provided in the pre-need plans.[36]

Section 16.4, Rule 16 of the New Rules, which governs the utilization of the trust fund, states as follows:

16.4. No withdrawal shall be made from the Trust Fund except for paying the Benefits such as the monetary consideration, the cost of services rendered or property delivered, trust fees, bank charges and investment expenses in the operation of the Trust Fund, termination values payable to the Planholders, annuities, contributions of cancelled plans to the fund and taxes on Trust Funds. Furthermore, only reasonable withdrawals for minor repairs and costs of ordinary maintenance of trust fund assets shall be allowed. (Bold scoring supplied for emphasis)

The term "benefits" used in Section 16.4 is defined as "the money or services which the Pre-Need Company undertakes to deliver in the future to the planholder or his beneficiary." [37] Accordingly, benefits refer to the payments made to the planholders as stipulated in their pre-need plans. Worthy of emphasis herein is that the trust fund is established "to ensure the delivery of the guaranteed benefits and services provided under a pre-need plan contract." [38] Hence, benefits can only mean payments or services rendered to the planholders by virtue of the pre-need contracts.

Moreover, Section 30 of R.A. No. 9829 expressly stipulates that the trust fund is to be used at all times for the sole benefit of the planholders, and cannot ever be applied to satisfy the claims of the creditors of the company, viz.:

Section 30. Trust Fund. - To ensure the delivery of the guaranteed benefits and services provided under a pre-need plan contract, a trust fund per pre-need plan category shall be established. A portion of the installment payment collected shall be deposited by the pre-need company in the trust fund, the amount of which will be as determined by the actuary based on the viability study of the pre-need plan approved by the Commission. Assets in the trust fund shall at all times remain for the sole benefit of the planholders. At no time shall any part of the trust fund be used for or diverted to any purpose other than for the exclusive benefit of the planholders. In no case shall the trust fund assets be used to satisfy claims of other creditors of the pre-need company. The provision of any law to the contrary notwithstanding, in case of insolvency of the pre-need company, the general creditors shall not be entitled to the trust fund.

Except for the payment of the cost of benefits or services, the termination values payable to the planholders, the insurance premium payments for insurance-funded benefits of memorial life plans and other costs necessary to ensure the delivery of benefits or services to planholders, no withdrawal shall be made from the trust fund unless approved by the Commission. The benefits received by the planholders shall be exempt from all taxes and the trust fund shall not be held liable for attachment, garnishment, levy or seizure by or under any legal or equitable processes except to pay for the debt of the planholder to the benefit plan or that arising from criminal liability imposed in a criminal action.

The trust fund shall at all times be sufficient to cover the required pre-need reserve. (Bold underscoring supplied)

Section 30 prohibits the utilization of the trust fund for purposes other than for the benefit of the planholders. The allowed withdrawals (specifically, the cost of benefits or services, the termination values payable to the planholders, the insurance premium payments for insurance-funded benefits of memorial life plans and other costs) refer to payments that the pre-need company had undertaken to be made based on the contracts.

Accordingly, the CA gravely erred in authorizing the payment out of the trust fund of the obligations due to Smart and FEMI. Even assuming that the obligations were incurred by the respondent in order to infuse sufficient money in the trust fund to correct its deficiencies, such obligations should be paid for by its assets, not by the trust fund. Indeed, Section 30 definitely provided that the trust fund could not be used to satisfy the claims of the respondent's creditors. Worthy to reiterate is our pronouncement in *Securities and Exchange Commission v. Laigo*, [39] as follows:

In the course of delving into the complex relationships created by the agreement and the existing regulatory framework, this Court finds that Legacy's claimed interest in the enforcement of the trust and in the trust properties is mere apparent than real. Legacy is not a beneficiary.

First, it must be stressed that a person is considered as a beneficiary of a trust if there is a manifest intention to give such a person the beneficial interest over the trust properties. This is the considered opinion expressed in the Restatement of the Law of Trust (Restatement) which Justice Vicente Abad Santos has described in his

contribution to the Philippine Law Journal as containing the more salient principles, doctrines and rules on the subject. Here, the terms of the trust agreement plainly confer the status of beneficiary to the planholders, not to Legacy. In the recital clauses of the said agreement, Legacy bound itself to provide for the sound, prudent and efficient management and administration of such portion of the collection "for the benefit and account of the planholders," through LBP (as the trustee).

This categorical declaration doubtless indicates that the intention of the trustor is to make the planholders the beneficiaries of the trust properties, and not Legacy. It is clear that because the beneficial ownership is vested in the planholders and the legal ownership in the trustee, LBP, Legacy, as trustor, is left without any iota of interest in the trust fund. This is consistent with the nature of a trust arrangement, whereby there is a separation of interests in the subject matter of the trust, the beneficiary having an equitable interest, and the trustee having an interest which is normally legal interest.

Second, considering the fact that a mandated pre-need trust is one imbued with public interest, the issue on who the beneficiary is must be determined on the basis of the entire regulatory framework. Under the New Rules, it is unmistakable that the beneficial interest over the trust properties is with the planholders. Rule 16.3 of the New Rules provides that: [n]o withdrawal shall be made from the trust fund except for paying the benefits such as monetary consideration, the cost of services rendered or property delivered, trust fees, bank charges and investment expenses in the operation of the trust fund, termination values payable to the planholders, annuities, contributions of cancelled plans to the fund and taxes on trust funds.

Rule 17.1 also states that to ensure the liquidity of the trust fund to guarantee the delivery of the benefits provided for under the plan contract and to obtain sufficient capital growth to meet the growing actuarial reserve liabilities, all investments of the trust fund shall be limited to Fixed Income Instruments, Mutual Funds, Equities, and Real Estate, subject to certain limitations.

Further, Rule 20.1 directs the trustee to exercise due diligence for the protection of the planholders guided by sound investment principles in the exclusive management and control over the funds and its right, at any time, to sell, convert, invest, change, transfer, or otherwise change or dispose of the assets comprising the funds. All these certainly underscore the importance of the planholders being recognized as the ultimate beneficiaries of the SEC-mandated trust.

This consistently runs in accord with the legislative intent laid down in Chapter IV of R.A. No. 8799, or the SRC, which provides for the establishment of trust funds for the payment of benefits under such plans. Section 16 of the SRC provides:

SEC 16. Pre-Need Plans. - No person shall sell or offer for sale to the public any pre-need plan except in accordance with rules and regulations which the Commission shall prescribe. Such rules shall regulate the sale of pre-need plans by, among other things, requiring the registration of pre-need plans, licensing persons involved in the sale of pre-need plans, requiring disclosures to prospective plan holders, prescribing advertising guidelines, providing for uniform accounting system, reports and record keeping with respect to such plans, imposing capital, bonding and other financial responsibility, and establishing trust funds for the payment of benefits under such plans. [Emphasis supplied]

It is clear from Section 16 that the underlying congressional intent is to make the planholders the exclusive beneficiaries. It has been said that what is within the spirit is within the law even if it is not within the letter of the law because the spirit prevails over the letter.

This will by the legislature was fortified with the enactment of R.A. No. 9829 or the Pre-Need Code in 2009. The Congress, because of the chaos confounding the industry at the time, considered it necessary to provide a stronger legal framework so that no entity could claim that the mandate and delegated authority of the SEC under the SRC was nebulous. The Pre-Need Code cemented the regulatory framework governing the pre-need industry with precise specifics to ensure that the rights of the pre-need planholders would be categorically defined and

protected. x x x[40]

The CA observed that only the paid value of the MRT III Bonds should be made part of the trust fund; that with the MRT III Bonds being subject to the unpaid seller's lien, Smart and FEMI were considered as contributors to the source of the assets of the trust fund, and for that reason were not to be treated as ordinary creditors of the respondent.[41]

We cannot sustain the observations of the CA.

There had been no indication by the respondent to the trustee bank that only the paid value of the MRT III Bonds should accrue to the trust fund. Even in its comment, the respondent intimated that the bonds were assigned to the trust fund without any reservations or conditions imposed thereon, to wit:

4. x x x x With the adoption and immediate retroactive implementation of the Pre-Need Uniform Chart of Accounts for the accounting and reporting of the operations of pre-need companies in the Philippines and the new rules on the valuation of trust funds invested in real property, CAP incurred a trust fund deficiency of P3.179 billion as of 31 December 2001. It must be stressed at this point theretofore, CAP has strictly complied with the Trust Fund reserve and build-up requirement of the SEC. The SEC, however, required CAP to immediately submit a funding scheme to correct the deficiency, under pain of summary suspension of its permit to sell and the imposition of other sanctions.

5. In compliance with the above directive of the SEC, CAP proposed the infusion to the Trust Fund of cash, several post-dated checks, land and buildings in Digos, Davao del Sur and Kidapawan, North Cotabato, and MRT III Bonds valued at \$4,728,000.00. To cover the remaining balance of the Trust Fund, CAP proposed to, among other, purchase more MRT III Bonds and assign the same to the Trust Fund. Hence, on 6 August 2002, CAP purchased MRT III Bonds on installment, with a present value then of \$14 million, from Smart and FEMI, and assigned the same to the Trust Fund.[42]

Thus, we uphold the petitioners' following stance that the MRT III Bonds already formed part of the assets of the trust fund upon infusion, viz.:

[I]n so far as the Trust Fund is concerned, the MRT III bonds, upon their infusion thereto, and consequently, the proceeds of the sale thereof, were considered as the Trust Fund assets themselves.

The Agreement dated August 6, 2002 x x x indicates, thus:

AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

This AGREEMENT was made and entered into on 6 August 2002 at Hong Kong SAR, by and between: COLLEGE ASSURANCE PLAN PHILIPPINES, INC., a corporation duly organized and existing under Philippine laws with principal place of business at the 6th [F]loor, CAP I Building, Amorsolo Street, Legaspi Village, Makati City, represented in this act by its Senior Vice President, ALFREDO R. COLLADO, and hereinafter referred to as "CAP";

-and-

BANK OF COMMERCE TRUST SERVICES GROUP AS TRUSTEE FOR COLLEGE ASSURANCE PLAN PHILIPPINES, INC. TRUST FUND, a corporation duly organized and existing under Philippine laws, duly authorized/licensed to perform trust functions, with principal place of business at Banker's Centre, 6764 Ayala Avenue, Makati City, represented in this act by its Assistant Vice President of the Trust Services Group, LYDIA E. VIRTUSIO, and hereinafter referred to as "TRUSTEE";

WITNESSETH: That

x x x x x x x x

WHEREAS, upon the sale and delivery by Vendors to CAP of said Bonds, CAP shall assign the Bonds with a present value of approximately US\$14,000,000.00 to the Trust Fund administered by and in the possession of the TRUSTEE.

x x x x x x x x

NOW, THEREFORE, for and in consideration of the foregoing premises, the parties agree as follows:

x x x x x x x x

5. CAP represents and warrants that:

a. It has the legal right to transfer ownership of and interest in the Bonds in favor of TRUSTEE in accordance with the provisions of the contracts, agreements and instruments relating to the issuance and/or transfer thereof. It further warrants that the Bonds are not mortgaged nor in any way encumbered in favor of any person or corporation.

x x x x x x x x

That the unpaid purchase price of the MRT III bonds in favor of Smart and FEMI was not the liability of the respondent's Trust Fund is clearly shown in the Trust Fund Statements of respondent's Trust Fund with the Bank of Commerce (BOC). Specifically, the Balance Sheet as of December 31, 2002 for CAP's Trust Fund Account No. TG-91-07-00001-C x x x did not include among the respondent's Trust Fund liabilities the subject outstanding obligation of respondent to Smart and FEMI.

Likewise, the Balance Sheet as of February 28, 2009 of the Trust Account of respondent with Philippine Veteran's Bank (PVB) with Trust Account Nos. TA 4450-58-000124 (Old TA No. 81), TA 4450-58-000126 (Old TA No. 85) and TA 4450-58-000123 (Old TA No. 91), x x x did not report any liability relating to the MRT III bonds.

It should likewise be emphasized that the MRT III bonds substituted the liquid assets available in the restricted PVB Trust Funds under Account Nos. 85 and 91, which were all free from any liens and encumbrances under the management of BOC as trustee.

On the other hand, respondent CAP's unaudited financial statements for the year ended December 31, 2008 submitted to petitioner SEC x x x disclosed that respondent has an outstanding loan obligation to Smart and FEMI. Note 8 of the said corporate financial statements reported the details of the acquired MRT III bonds and the terms of respondent's liability thereto. x x x x

x x x x x x x x

It also bears emphasis that in a Certification dated April 18, 2009 x x x issued by respondent, the same "unpaid principal balance on the MRT Bonds was declared by CAP as one of their(sic) obligations in its court- approved rehabilitation program" x x x x.

The foregoing financial reports submitted by respondent to the SEC as well as its April 18, 2009 Certification only show that indeed the MRT III bonds were infused to respondent's Trust Fund free from any liens and encumbrances, and that the purchase price thereof is and remains to be respondent's loan obligation to Smart and FEMI, or its corporate liability, and not of the Trust Fund.[43]

II

Payment to Smart and FEMI was not an administrative expense to be withdrawn from the trust fund

The CA ruled that the respondent's outstanding obligation to Smart and FEMI could be considered an administrative expense that was not covered by the stay order.

The ruling of the CA was not warranted.

Section 16.4, Rule 6 of the New Rules made an exclusive enumeration of the administrative expenses that may be withdrawn from the trust fund, as follows: trust fees, bank charges and investment expenses in the operation of the trust fund, taxes on trust funds, as well as reasonable withdrawals for minor repairs and costs of ordinary maintenance of trust fund assets. Evidently, the purchase price of the bonds for the capital infusion to the trust fund was not included as an administrative expense that could be validly taken from the trust fund.

Yet, assuming that the unpaid obligation to Smart and FEMI constituted an administrative expense, its payment was the liability of the respondent's assets, not of the trust fund. It is already clear and definite enough that the trust fund was separate and distinct from the corporate assets of the respondent. In other words, only the planholders as the beneficiaries of the trust fund could claim against the trust fund, to the exclusion of Smart and FEMI as the respondent's creditors.

ACCORDINGLY, the Court GRANTS the petition for review on certiorari; SETS ASIDE and REVERSES the decision promulgated on June 14, 2011 and the resolution promulgated on May 21, 2012 of the Court of Appeals in CA-G.R. SP. No. 113576; and REINSTATES the orders dated April 29, 2009, September 18, 2009 and January 18, 2010 issued by the Regional Trial Court, Branch 149, in Makati City in SP. No. M-6144.

No pronouncement on costs of suit.

SO ORDERED.

Velasco, Jr., Leonen, Martires, and Gesmundo, JJ., concur.

[1] Rollo, pp. 135-159; penned by Associate Justice Rosmari D. Carandang, with Associate Justice Ramon R. Garcia and Associate Justice Samuel H. Gaerlan, concurring.

[2] Id. at 373.

[3] Id. at 430-431.

[4] Id. at 488-490.

[5] Supra note 1, at 159.

[6] Referring to Smart Share Investment, Ltd.

[7] Referring to Fil-Estate Management, Inc.

[8] Rollo, pp. 136-139.

[9] Id. at 140.

[10] Id. at 373.

[11] Id. at 430-431.

- [12] Id. at 432-435.
- [13] Id. at 438-490.
- [14] Id. at 490.
- [15] Id. at 503.
- [16] Id. at. 537-544.
- [17] Id. at 135-159.
- [18] Id. at 147.
- [19] Id. at 149-150.
- [20] Id. at 151-153.
- [21] Id. at 156-157.
- [22] Id. at 162-171.
- [23] Id. at 51-52.
- [24] Id. at 52-66.
- [25] Id. at 72.
- [26] Id. at 73.
- [27] Id. at 86-93.
- [28] Id. at 106-107.
- [29] Id. at 720-754.
- [30] Id. at 737-741.
- [31] Id. at 744-746.
- [32] Id. at 747-749.
- [33] Id. at 751-752.
- [34] Id. at 753-757.
- [35] Section 4(j), R.A. No. 9829.
- [36] Section 1.9, Rule 1, New Rules.
- [37] Section 1.6, Rule 1, New Rules.
- [38] Section 30, R.A. No. 9829.
- [39] G.R. No. 188639, September 2, 2015, 768 SCRA 633.
- [40] Id. at 652-653.
- [41] Rollo, pp. 149-150.
- [42] Id. at 722-723.

[43] Id. at 74-79.

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