

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. SECURITY CREDIT AND ACCEPTANCE CORPORATION, ROSENDO T. RESUELLO, PABLO TANJUTCO, ARTURO SORIANO, RUBEN BELTRAN, BIENVENIDO V. ZAPA, ...

G.R. No. 20583. January 23, 1967

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

This is an original quo warranto proceeding, initiated by the Solicitor General, to dissolve the Security Credit and Acceptance Corporation for allegedly engaging in banking operations without the authority required therefor by the General Banking Act (Republic Act No. 337). Named as respondents in the petition are, in addition to said corporation, the following, as alleged members of its Board of Directors and/or Executive Officers, namely:

"NAME POSITION

Rosendo T. Resuello President & Chairman of the Board

Pablo Tanjutco Director

Arturo Soriano Director

Ruben Beltran Director

Bienvenido V. Zapa Director & Vice-President

Pilar G. Resuello Director & Secretary-Treasurer

Ricardo D. Balatbat Director & Auditor

Jose R. Sebastian Director & Legal Counsel

Vito Tanjutco, Jr. Director & Personnel Manager"

The record shows that the Articles of Incorporation of defendant corporation[1] were registered with the Securities and Exchange Commission on March 27, 1961; that the next day, the Board of Directors of the corporation adopted a set of by-laws,[2] which were filed with said Commission on April 5, 1961 that on September 19, 1961, the Superintendent of Banks of the Central Bank of the Philippines asked its legal counsel an opinion on whether or not said corporation is a banking institution, within the purview of Republic Act No. 337; that, acting upon this request, on October 11, 1961, said legal counsel rendered an opinion resolving the query in the affirmative; that in a letter, dated January 15, 1962, addressed to said Superintendent of Banks, the corporation through its president, Rosendo T. Resuello, one of defendants herein, sought a reconsideration of the

aforementioned opinion, which reconsideration was denied on March 16, 1962; that, prior thereto, or on March 9, 1961, the corporation had applied with the Securities and Exchange Commission for the registration and licensing of its securities under the Securities Act; that, before acting on this application, the Commission referred it to the Central Bank, which, in turn, gave the former a copy of the above-mentioned opinion, in line with which, the Commission advised the corporation on December 5, 1961, to comply with the requirements of the General banking Act; that, upon application of members of the Manila Police Department and an agent of the Central Bank, on May 18, 1962, the Municipal Court of Manila issued Search Warrant No. A-1019; that, pursuant thereto, members of the intelligence division of the Central Bank and of the Manila Police Department searched the premises of the corporation and seized documents and records thereof relative to its business operations; that, upon the return of said warrant, the seized documents and records were, with the authority of the court, placed under the custody of the Central Bank of the Philippines; that, upon examination and evaluation of said documents and records, the intelligence division of the Central Bank submitted, to the Acting Deputy Governor thereof, a memorandum dated September 10, 1962, finding that the corporation is:

"1. Performing banking functions, without requisite certificate of authority from the Monetary Board of the Central Bank, in violation of Secs. 2 and 6 of Republic Act 337, in that it is soliciting and accepting deposit from the public and lending out the funds so received;

"2. Soliciting and accepting savings deposits from the general public when the company's articles of incorporation authorize it only to engage primarily in financing agricultural, commercial and industrial projects, and secondarily, in buying and selling stocks and bonds of any corporation, thereby exceeding the scope of its powers and authority as granted under its charter; consequently such acts are ultra-vires;

"3. Soliciting subscriptions to the corporate shares of stock and accepting deposits on account thereof, without prior registration and/or licensing of such shares or securing exemption therefor, in violation of the Securities Act; and

"4. That being a private credit and financial institution, it should come under the supervision of the Monetary Board of the Central Bank, by virtue of the transfer of the authority, power, duties and functions of the Secretary of Finance, Bank Commissioner and the defunct Bureau of Banking, to the said Board, pursuant to Secs. 139 and 140 of Republic Act 265 and Secs. 88 and 89 of Republic Act 337." (Italics supplied.)

that upon examination and evaluation of the same records of the corporation, as well as of other documents and pertinent papers obtained elsewhere, the Superintendent of Banks, submitted to the Monetary Board of the Central Bank a memorandum dated August 28, 1962, stating inter alia

"11. Pursuant to the request for assistance by the Chief, Intelligence Division, contained in his Memorandum to the Governor dated May 23, 1962 and in accordance with the written instructions of Governor Castillo dated May 31, 1962, an examination of the books and records of the Security Credit and Loans Organizations, Inc. seized by the combined MPD-CB team was conducted by this Department. The examination disclosed the following findings:

a. Considering the extent of its operations, the Security Credit and Acceptance Corporation, Inc. receives deposits from the public regularly. Such deposits are treated in the Corporation's financial statements as conditional subscriptions to capital stock. Accumulated deposits of 5,000 of an individual depositor may be converted into stock subscription to the capital stock of the Security Credit and Acceptance Corporation at the option of the depositor. Sale of its shares of stock or subscriptions to its capital stock are offered to the public as part of its regular operations.

b. That out of the funds obtained from the public through the receipt of deposits and/or the sale of securities, loans are made regularly to any person by the Security Credit and Acceptance Corporation.

A copy of the Memorandum Report dated July 30, 1962 of the examination made by Examiners of this Department of the seized books and records of the Corporation is attached hereto.

"12. Section 2 of Republic Act No. 337, otherwise known as the General Banking Act, defines the term 'banking institution' as follows:

'Sec. 2. Only duly authorized persons and entities may engage in the lending of funds obtained from the public through the receipt of deposits or the sale of bonds, securities, or obligations of any kind and all entities regularly conducting operations shall be considered as banking institutions and shall be subject to the provisions of this Act, of the Central Bank Act, and of other pertinent laws. * * *

"13. Premises considered, the examination disclosed that the Security Credit and Acceptance Corporation is regularly lending funds obtained from the receipt of deposits and/or the sale of securities. The Corporation therefore is performing 'banking functions' as contemplated in Republic Act No. 337, without having, first complied with the provisions of said Act.

Recommendations:

"In view of all the foregoing, it is recommended that the Monetary Board decide and declare:

'1. That the Security Credit and Acceptance Corporation is performing banking functions without having first complied with the provisions of Republic Act No. 337, otherwise known as the General Banking Act, in violation of Sections 2 and 6 thereof; and

'2. That this case be referred to the Special Assistant to the Governor (Legal Counsel) for whatever legal actions are warranted, including, if warranted criminal action against the persons criminally liable and/or quo warranto proceedings with preliminary injunction against the Corporation for its dissolution.'" (Italics supplied.)

that, acting upon said memorandum of the Superintendent of Banks, on September 14, 1962, the Monetary Board promulgated its Resolution No. 1095, declaring that the corporation is performing banking operations, without having first complied with the provisions of Sections 2 and 6 of Republic Act No. 337;[3] that on September 25, 1962, the corporation was advised of the aforementioned resolution, but, this notwithstanding, the corporation, as well as the members of its Board of Directors and the officers of the corporation, have been and still are performing the functions and activities which had been declared to constitute illegal banking operations; that during the period from March 27, 1961 to May 18, 1962, the corporation had established 74 branches in principal cities and towns throughout the Philippines; that through a systematic and vigorous campaign undertaken by the corporation, the same had managed to induce the public to open 59,463 savings deposit accounts with an aggregate deposit of P1,689,136.74; that in consequence of the foregoing deposits with the corporation, its original capital stock of P500,000, divided into 20,000 founders' shares of stock and 80,000 preferred shares of stock, both of which had a par value of P5.00 each, was increased, in less than one (1) year, to P3,000,000 divided into 130,000 founders' shares and 470,000 preferred shares, both with a par value of P5.00 each; and that, according to its statement of assets and liabilities, as of December 31, 1961, the corporation had a capital stock aggregating P1,273,265.98 and suffered, during the year 1961, a loss of P96,685.29. Accordingly, on December 6, 1962, the Solicitor General commenced this quo warranto proceedings for the dissolution of the corporation, with a prayer that, meanwhile, a writ of preliminary injunction be issued ex parte, enjoining the corporation and its branches, as well as its officers and agents, from performing the banking operations complained of, and that a receiver be appointed pendente lite.

Upon joint motion of both parties, on August 20, 1963, the Superintendent of Banks of the Central Bank of the Philippines was appointed by this Court receiver pendente lite of defendant corporation, and upon the filing of the

requisite bond, said officer assumed his functions as such receiver on September 16, 1963.

In their answer, defendants admitted practically all of the allegations of fact made in the petition. They, however, denied that defendants Tanjutco (Pablo and Vito, Jr.), Soriano, Beltran, Zapa, Balatbat and Sebastian, are directors of the corporation, as well as the validity of the opinion, ruling, evaluation and conclusions rendered, made and or reached by the legal counsel and the intelligence division of the Central Bank, the Securities and Exchange Commission, and the Superintendent of Banks of the Philippines, or in Resolution No. 1095 of the Monetary Board, or of Search Warrant No. A-1019 of the Municipal Court of Manila, and of the search and seizure made thereunder. By way of affirmative allegations, defendants averred that, as of July 7, 1961, the Board of Directors of the corporation was composed of defendants Rosendo T. Resuello, Aquilino L. Illera and Pilar G. Resuello; that on July 11, 1962, the corporation had filed with the Superintendent of Banks an application for conversion into a Security Savings and Mortgage Bank, with defendants Zapa, Balatbat, Tanjutco (Pablo and Vito, Jr.), Soriano, Beltran and Sebastian as proposed directors, in addition to the defendants first named above, with defendants Rosendo T. Resuello, Zapa, Pilar G. Resuello, Balatbat and Sebastian as proposed president, vice-president, secretary-treasurer, auditor and legal counsel, respectively; that said additional officers had never assumed their respective offices because of the pendency of the approval of said application for conversion; that defendants Soriano, Beltran, Sebastian, Vito Tanjutco Jr. and Pablo Tanjutco had subsequently withdrawn from the proposed mortgage and savings bank; that on November 29, 1962—or before the commencement of the present proceedings—the corporation and defendants Rosendo T. Resuello and Pilar G. Resuello had instituted Civil Case No. 52342 of the Court of First Instance of Manila against Purificacion Santos and other members of the savings plan of the corporation and the City Fiscal, for a declaratory relief and an injunction; that on December 3, 1962, Judge Gaudencio Cloribel of said court issued a writ directing the defendant in said case No. 52342 and their representatives or agents to refrain from prosecuting the plaintiff spouses and other officers of the corporation by reason of or in connection with the acceptance by the same of deposits under its savings plan; that acting upon a petition filed by plaintiffs in said case No. 52342, on December 6, 1962, the Court of First Instance of Manila had appointed Jose Ma. Ramirez as receiver of the corporation; that, on December 12, 1962, said Ramirez qualified as such receiver, after filing the requisite bond; that, except as to one of the defendants in said case No. 52342, the issues therein have already been joined; that the failure of the corporation to honor the demands for withdrawal of its depositors or members of its savings plan and its former employees was due, not to mismanagement or misappropriation of corporate funds, but to an abnormal situation created by the mass demand for withdrawal of deposits, by the attachment of property of the corporation by its creditors, by the suspension by debtors of the corporation of the payment of their debts thereto and by an order of the Securities and Exchange Commission dated September 26, 1962, to the corporation to stop soliciting and receiving deposits; and that the withdrawal of deposits of members of the savings plan of the corporation was understood to be subject, as to time and amounts, to the financial condition of the corporation as an investment firm.

In its reply, plaintiff alleged that a photostat copy, attached to said pleading, of the anniversary publication of defendant corporation showed that defendants Pablo Tanjutco, Arturo Soriano, Ruben Beltran, Bienvenido V. Zapa, Ricardo D. Balatbat, Jose R. Sebastian and Vito Tanjutco, Jr. are officers and/or directors thereof; that this is confirmed by the minutes of a meeting of stockholders of the corporation, held on September 27, 1962, showing that said defendants had been elected officers thereof; that the views of the legal counsel of the Central Bank, of the Securities and Exchange Commission, the Intelligence Division, the Superintendent of Banks and the Monetary Board above referred to have been expressed in the lawful performance of their respective duties and have not been assailed or impugned in accordance with law; that neither has the validity of Search Warrant No. A-1019 been contested as provided by law; that the only assets of the corporation now consist of accounts receivable amounting approximately to P500,000, and its office equipment and appliances, despite its increased

capitalization of P3,000,000 and its deposits amounting to not less than P1,689,136.74; and that the aforementioned petition of the corporation, in Civil Case No. 52342 of the Court of First Instance of Manila, for a declaratory relief is now highly improper, the defendants having already committed infractions and violations of the law justifying the dissolution of the corporation.

Although, admittedly, defendant corporation has not secured the requisite authority to engage in banking, defendants deny that its transactions partake of the nature of banking operations. It is conceded, however, that, in consequence of a propaganda campaign therefor, a total of 59,463 savings account deposits have been made by the public with the corporation and its 74 branches, with an aggregate deposit of P1,689,136.74, which has been lent out to such persons as the corporation deemed suitable therefor. It is clear that these transactions partake of the nature of banking, as the term is used in Section 2 of the General Banking Act. Indeed, a bank has been defined as:

"* * * a moneyed institute [Talmage vs. Pell, 7 N.Y. (3 Seld.) 328, 347, 348] founded to facilitate the borrowing, lending, and safe-keeping of money (Smith vs. Kansas City Title & Trust Co., 41 S. Ct. 243, 255 U.S. 180, 210, 65 L. Ed. 577) and to deal in notes, bills of exchange, and credits (State vs. Comings Say. Bank, 115 N.W. 937, 139 Iowa, 338)." (Banks & Banking, by Zellmann, Vol. I, p. 46.)

Moreover, it has been held that:

"An investment company which loans out the money of its customers, collects the interest, and charges a commission to both lender and borrower is a bank." (Western Investment Banking Co. vs. Murray, 56 P. 728, 730, 731; 6 Ariz. 215.)

"* * * any person engaged in the business carried on by banks of deposit, of discount, or of circulation is doing a banking business, although but one of these functions is exercised." (MacLaren vs. State, 124 N.W. 667, 141 Wis. 577, 135 Am. S.R. 55, 18 Ann. Cas. 826; 9 C.J.S. 30.)

Accordingly, defendant corporation has violated the law by engaging in banking without securing the administrative authority required in Republic Act No. 337.

That the illegal transactions thus undertaken by defendant corporation warrant its dissolution is apparent from the fact that the foregoing misuser of the corporate funds and franchise affects the essence of its business, that it is willful and has been repeated 59,643 times, and that its continuance inflicts injury upon the public, owing to the number of persons affected thereby.

It is urged, however, that this case should be remanded to the Court of First Instance of Manila upon the authority of Veraguth vs. Isabela Sugar Co. (57 Phil. 266). In this connection, it should be noted that this Court is vested with original jurisdiction, concurrently with courts of first instance, to hear and decide quo warranto cases and, that, consequently, it is discretionary for us to entertain the present case or to require that the issues therein be taken up in said Civil Case No. 52342. The Veraguth case cited by herein defendants, in support of the second alternative, is not in point, because in said case there were issues of fact which required the presentation of evidence, and courts of first instance are, in general, better equipped than appellate courts for the taking of testimony and the determination of questions of fact. In the case at bar, there is, however, no dispute as to the principal facts or acts performed by the corporation in the conduct of its business. The main issue here is one of law, namely, the legal nature of said facts or of the aforementioned acts of the corporation. For this reason, and because public interest demands an early disposition of the case, we have deemed it best to determine the merits thereof.

Wherefore, the writ prayed for should be, as it is hereby granted and defendant corporation is, accordingly, ordered dissolved. The appointment of receiver herein issued pendente lite is hereby made permanent, and the

receiver is, accordingly, directed to administer the properties, deposits, and other assets of defendant corporation and wind up the affairs thereof conformably to Rules 59 and 66 of the Rules of Court. It is so ordered.

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

[1] Which, as amended on May 8, 1961, authorized it:

- "1. To extend credit facilities for home building and agricultural, commercial and industrial projects;
2. To extend credit, give loans, mortgages and pledges, either as principal, agent, broker or attorney-in-fact, upon every and all kinds and classes of products, materials, goods, merchandise, and other properties, real or personal of every kind and nature;
- "3. To draw, accept, endorse, purchase, own, sell, discount, mortgage, assign or otherwise dispose of, negotiate or collect accounts or notes receivables, negotiable instruments, letters of credit and other evidence of indebtedness;
4. To purchase, acquire, and take over, all or any part of the rights, assets and business of any person, partnership, corporation or association, and to undertake and assume the liabilities and obligations of such person, partnership, corporation or association whose rights, assets, business or property may be purchased, acquired or taken over;
5. To issue bonds, debentures, securities, collaterals and other obligations or otherwise incur indebtedness in such manner as may be ascertained by the corporation; and
6. To undertake the management, promotion, financing and/or collection services of the operation of the business, industry or enterprises of any person, partnership, corporation or association in so far as may be permitted under the laws of the Philippines." (Underscoring supplied.)

[2] Empowering said Board, inter alia:

"c) To pay for any property or rights acquired by the corporation or to discharge obligations of the corporation either wholly or partly in money or in stock, bonds, debentures or other securities of the corporation;

"d) To lend or borrow, money for the corporation with or without security and for such purpose to accept or create, make and issue mortgages, bonds, deeds of trust and negotiable instruments or securities, secured by mortgage or pledge of property belonging to the corporation; provided, that as hereinafter provided, the proper officers of the corporation shall have these powers, unless expressly limited by the Board of Directors; * * *"; (underlining supplied.)

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

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

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

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

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