

**CENTRAL BANK OF THE PHILIPPINES, MEMBERS OF THE
MONETARY BOARD, CONSOLACION V. ODRÁ, MARIO VICENTE,
DRBSLA, RAMIL PARAISO, DANTE L. REYES, DISIMULACION KING
AND NORA G. SARMIENT...**

G.R. No. 59957. November 12, 1990

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

This petition for certiorari, prohibition and mandamus was filed by the Central Bank of the Philippines, the members of the Monetary Board, Consolacion V. Odra, Mario Vicente, Ramil Paraiso, Dante L. Reyes, Disimulacion King and Nora G. Sarmiento, through the Solicitor General, praying this Court:

1. to annul the orders dated January 15, 1982, January 29, 1982, March 1, 1982, March 31, 1982 and April 20, 1982 (Annexes A, B, C, D and E) of the then Court of First Instance of Camarines Sur, Branch III;
2. to restrain respondent Judge Rafael De la Cruz, his agents, and representatives, from enforcing the aforesaid orders and from continuing to assume jurisdiction over Civil Case No. 1309, a proceeding for prohibition, mandamus, and injunction filed by herein private respondent Rural Bank of Libmanan, Inc., to stop its liquidation by the petitioners (defendants in the lower court) and to compel respondent Judge to dismiss Civil Case No. 1309 (pp. 24-26, Rollo); and
3. to restore to petitioner Consolacion V. Odra, as the duly appointed liquidator of the Central Bank, the control of the respondent Rural Bank of Libmanan (p. 27, Rollo).

The Rural Bank of Libmanan (hereinafter referred to as Libmanan Bank) started operations in 1965 under and by virtue of Republic Act No. 720, otherwise known as the Rural Banks' Act (p. 231, Rollo). Originally owned and managed by the Albas' family, Libmanan Bank was later sold to Manuel M. Villar and respondent Alex G. Durante, who commenced banking operations in January 1979 (p. 331, Rollo).

In 1979, the Department of Rural Banks and Savings and Loan Associations (DRBSLA) of the Central Bank of the Philippines (or CB) conducted examinations of the books and affairs of Libmanan Bank (pp. 28-32, Rollo). DRBSLA director, Consolacion V. Odra, found serious irregularities in its lending and deposit operations, including false entries and false statements in the bank's records to give it the appearance of solidity and soundness which it did not possess (p. 28, Rollo). As a result of its questionable transactions, the bank became insolvent.

In her Memorandum dated May 2, 1980 to the Monetary Board, Director Odra recommended, among other things, that: (1) Libmanan Bank be prohibited from doing business; (2) that it be placed under receivership in accordance with Section 29 of Republic Act No. 265, as amended; and (3) that the Director of DRBSLA be designated as receiver (p. 36, Rollo).

Finding the report to be true, the Monetary Board, on May 23, 1980, adopted Resolution No. 929 placing Libmanan Bank under statutory receivership and designating Director Consolacion V. Odra, as Receiver, pursuant to Section 29, of Republic Act No. 265, as amended (p. 39, Rollo).

Libmanan Bank was informed of the Monetary Board Resolution No. 929, and advised to submit to the Monetary Board an acceptable reorganization and rehabilitation program (p. 39, Rollo). Meanwhile, Director Odra, as receiver, took possession and control of the assets and records of the rural bank (p. 39, Rollo).

As Libmanan Bank failed to submit the required acceptable reorganization and rehabilitation plan, the Monetary Board issued on October 3, 1980 Resolution No. 1852 ordering its liquidation (p. 39, Rollo).

On August 3, 1981, the Solicitor General, in accordance with Republic Act No. 265, Section 29, filed in the then Court of First Instance of Camarines Sur, Branch III, presided over by respondent Judge Rafael De la Cruz, a petition for Assistance in the Liquidation of Libmanan Bank. The petition was docketed as SP-111 (pp. 39-40, Rollo). Libmanan Bank, through its resident-Manager and the members of its Board of Directors opposed the Central Bank's petition.

On September 23, 1981, Libmanan Bank filed in the same Court of First Instance of Camarines Sur, Branch III, a separate complaint for prohibition, mandamus and injunction (Civil Case No. 1309), against the Central Bank, et al. (herein petitioners), praying the Court to enjoin and dismiss the liquidation proceeding (Sp. Proc. No. 111) on the ground that the Central Bank gravely abused its discretion in ordering the liquidation of said rural Bank.

On December 24, 1981, the Central Bank, through its house counsel, filed a motion for extension of time to file its responsive pleading in Civil Case No. 1309 (Annex G, p. 42, Rollo). On January 12, 1982, the Solicitor General entered his appearance in the case as counsel for the Central Bank, and asked for a second extension of time to file a responsive pleading (Annex I, p. 42, Rollo).

On January 15, 1982, respondent Judge issued the questioned order in Civil Case No. 1309, restraining the respondent Central Bank from "closing the petitioner (rural) bank and from performing its customary banking business; to restore the control and management of the bank to its Board of Directors; and to desist from liquidating its assets until ordered otherwise by this Court" (p. 42, Rollo). On January 29, 1982, respondent Judge modified this order by requiring the parties in Civil Case No. 1309 to "refrain from any act or acts which will tend to disturb the state in which the parties were found before the complaint was filed" (p. 25, Rollo).

On January 25, 1982, Libmanan Bank filed an ex parte motion to declare the CB in default (Annex J, p. 42, Rollo).

On February 11, 1982, the Solicitor General filed a third motion for extension (up to March 1, 1982) of the period to file a responsive pleading in Civil Case No. 1309 (Annex K, p. 43, Rollo).

On February 15, 1982, he filed a Motion to Dismiss Civil Case No. 1309 on the ground that respondent Judge had no jurisdiction over a special civil action for prohibition, mandamus and injunction against the Central Bank and that the petition was defective in form because it was not properly verified (Annex L, p. 43, Rollo). On March 1, 1982, Judge De la Cruz denied the motion to dismiss and gave the Central Bank ten (10) days to file its answer (Annex C, p. 44, Rollo).

On March 19, 1982, the Central Bank filed in the Supreme Court a Motion for Extension to file a petition for certiorari, prohibition and mandamus, and a separate manifestation in the lower court notifying Judge De la Cruz of the CB's intention to elevate the case to this Court and requesting Judge De la Cruz to desist from taking any further action in Civil Case No. 1309.

On March 31, 1982, Judge De la Cruz declared the CB, et al. in default for failure to file a responsive pleading to the petition in Civil Case No. 1309. He pointed out that “the projected move to bring the court’s denial of the motion to dismiss to the Supreme Court on certiorari did not stop the period given to the respondents to answer” (Annex D, p. 72, Rollo).

On April 20, 1982, respondent Judge granted Libmanan Bank’s ex parte motion dated March 29, 1982 for authority to withdraw money from its bank deposits (Annex E, p. 45, Rollo).

Hence, the present recourse.

The main issue raised by the petition is whether or not respondent Judge acted with grave abuse of discretion or without or in excess of his jurisdiction in issuing the questioned orders, namely:

Annex A - order of January 15, 1982 restraining the Central Bank from closing the rural bank and ordering return of management and control to the Board of Directors.

Annex B - order of January 29, 1982 restraining the Central Bank from disturbing status quo before the complaint was filed.

Annex C - order of March 1, 1982 denying Central Bank’s motion to dismiss.

Annex D - order of March 31, 1982 declaring Central Bank in default.

Annex E - order of April 20, 1982 authorizing Libmanan Bank to withdraw money from its bank deposits.

The answer is yes.

The authority for the receivership of Libmanan Bank is found in Section 29 of the Central Bank Act (P.D. 1827), which provides:

“SECTION 29. Proceedings upon insolvency - Whenever, upon examination by the head of the appropriate supervising or examining department or his examiners of agents into the condition of any bank or non-bank financial intermediary performing quasi-banking functions, it shall be disclosed that the condition of the same is one of insolvency, or that its continuance in business would involve probable loss to its depositors or creditors, it shall be the duty of the department head concerned forthwith, in writing, to inform the Monetary Board of the facts, and the Board may, upon finding the statements of the department head to be true forbid the institution to do business in the Philippines and shall designate an official of the Central Bank or a person of recognized competence in banking or finance as receiver to immediately take charge of its assets and liabilities, as expeditiously as possible collect and gather all the assets and administer the same for the benefit of its creditors, exercising all the powers necessary for these purposes including, but not limited to, bringing suits and foreclosing mortgages in the name of the bank or non-bank financial intermediary performing quasi-banking functions.

“The Monetary Board shall thereupon determine within sixty days whether the institution may be reorganized or otherwise placed in such a condition so that it may be permitted to resume business with safety to its depositor and creditors and the general public and shall prescribe the conditions under which such resumption of business shall take place as well as the time for fulfillment of such conditions. In such case, the expenses and fees in the collection and administration of the assets of the institution shall be determined by the board and shall be paid to the Central Bank out of the assets of such banking institution.

“If the Monetary Board shall determine and confirm within the said period that the bank or non-bank financial intermediary performing quasi-banking functions is insolvent or cannot resume business with safety to its depositors, creditors and the general public, it shall, if the public interest requires, order its liquidation, indicate

the manner of its liquidation and approve a liquidation plan. The Central Bank shall, by the Solicitor General, file a petition in the Court of First Instance reciting the proceedings which have been taken and praying the assistance of the court in the liquidation of such institution. The court shall have jurisdiction in the same proceedings to adjudicate disputed claims against the bank or non-bank financial intermediary performing quasi-banking functions and enforce individual liabilities of the stockholders and do all that is necessary to preserve the assets of such institution and to implement the liquidation plan approved by the Monetary Board. The Monetary Board shall designate an official of the Central Bank, or a person of recognized competence in banking or finance, as liquidator who shall take over the functions of the receiver previously appointed by the Monetary Board under this Section. The liquidator shall, with all convenient speed, convert the assets of the bank or non-bank financial intermediary performing quasi-banking functions to money or sell, assign or otherwise dispose of the same to creditors and other parties for the purpose of paying the debts of such institution and he may, in the name of the bank or non-bank financial intermediary performing quasi-banking functions, institute such actions as may be necessary in the appropriate court to collect and recover accounts and assets of such institution.”

“The provisions of any law to the contrary notwithstanding the actions of the Monetary Board under this Section and the second paragraph of Section 34 of this Act shall be final and executory, and can be set aside by the court only if there is convincing proof that the action is plainly arbitrary and made in bad faith. No restraining order or injunction shall be issued by the court enjoining the Central Bank from implementing its actions under this Section and the second paragraph of Section 34 of this Act, unless there is convincing proof that the action of the Monetary Board is plainly arbitrary and made in bad faith and the petitioner or plaintiff files with the clerk or judge of the court in which the action is pending a bond executed in favor of the Central Bank, in an amount to be fixed by the Court. The restraining order or injunctions shall be refused or, if granted, shall be dissolved upon filing by the Central Bank of a bond, which shall be in the form of cash or Central Bank cashier’s check, in an amount twice the amount of the bond of the petitioner or plaintiff conditioned that it will pay the damages which the petitioner or plaintiff may suffer by the refusal or the dissolution of the injunction. The provisions of Rule 58 of the New Rules of Court insofar as they are applicable and not inconsistent with the provisions of this Section shall govern the issuance and dissolution of the restraining order or injunction contemplated in this Section.

“Insolvency under this Act, shall be understood to mean the inability of a bank or non-bank financial intermediary performing quasi-banking functions to pay its liabilities as they fall due in the usual and ordinary course of business: Provided, however, That this shall not include the inability to pay of an otherwise non-insolvent bank or non-bank financial intermediary performing quasi-banking functions caused by extraordinary demands induced by financial panic commonly evidenced by a run on the bank or non-bank financial intermediary performing quasi-banking functions in the banking community.

“The appointment of a conservator under Section 28-A of this Act or the appointment of a receiver under this Section shall be vested exclusively with the Monetary Board, the provision of any law, general or special, to the contrary notwithstanding.” (Underscoring supplied.)

It is noteworthy that the actions of the Monetary Board in proceedings on insolvency are explicitly declared by law to be “final and executory.” They may not be set aside, or restrained, or enjoined by the courts, except upon “convincing proof that the action is plainly arbitrary and made in bad faith” (Salud vs. Central Bank of the Philippines, 143 SCRA 590).

Respondent Judge acted in plain disregard of the fourth paragraph of Section 29 of the Central Bank Act, when he restrained the petitioners from closing and liquidating the Rural Bank of Libmanan, prevented them from performing their functions, and ordered them to return the management and control of the rural bank to its board of directors (p. 51, Rollo) without receiving convincing proof that the action of the CB was plainly arbitrary and

made in bad faith. As stated therein, the basis of the questioned order dated January 15, 1982, were:

1. that he did not receive any of petitioners' formal motions for extension of time to file their responsive pleading;
2. that he had read the petition filed in Civil Case No. 1309; and
3. that there were good reasons shown in said petition (p. 52, Rollo).

By using his own standards, instead of the standards set forth in Section 29 of the law, as basis for issuing a restraining order against the CB, respondent Judge committed a grave abuse of discretion tantamount to excess, or lack of jurisdiction. We held in *Rural Bank of Buhi, Inc. vs. Court of Appeals* (162 SCRA 288, 291):

“Evidently, the trial court acted merely on an incident and has acted merely on an incident and has not as yet inquired, as mandated by Section 29 of the Central Bank Act, into the merits of the claim that the Monetary Board's action is plainly arbitrary and made in bad faith. It has not appreciated certain facts which would render the remedy of liquidation proper and rehabilitation improper, involving as it does an examination of the probative value of the evidence presented by the parties properly belonging to the trial court and not properly cognizable on appeal.”

Respondent Judge acted with grave abuse of discretion in issuing the contested order dated January 15, 1982 enjoining the CB liquidator from closing the rural bank and requiring it to restore the management and control of the bank to its board of directors. It is a basic procedural postulate that a preliminary injunction should never be used to transfer the possession or control of a thing to a party who did not have such possession or control at the inception of the case (*Lasala vs. Fernandez*, 5 SCRA 79; *Emilia vs. Bado*, 28 SCRA 183). Its proper function is simply to maintain the status quo at the commencement of the action. The status quo at the time of filing Civil Case No. 1309 was that Libmanan Bank was under the control of the DRBSLA Director, with Consolation V. Odra, as liquidator appointed by the Central Bank.

Respondent Judge erred in denying the Central Bank's motion to dismiss the complaint for prohibition and mandamus (Civil Case No. 1309) filed by Libmanan Bank (Annex C, p. 71, Rollo). This Court in the case of *Rural Bank of Buhi, Inc. vs. Court of Appeals* (162 SCRA 288) and *Salud vs. Central Bank of the Phils.* (142 SCRA 590), ruled that a bank's claim that the resolution of the Monetary Board under Section 29 is plainly arbitrary and done in bad faith should be asserted as an affirmative defense or counter-claim in the proceedings for assistance in liquidation. It may be filed as a separate action if no petition for assistance in liquidation has been instituted yet.

“x x x a banking institution's claim that a resolution of the Monetary Board under Section 29 of the Central Bank Act should be set aside as plainly arbitrary and made in bad faith, may be asserted as an affirmative defense (Sections 1 and 4[b], Rule 6, Rules of Court) or a counterclaim (Section 6, Rule 6; Section 2, Rule 72 of the Rules of Court) in the proceeding for assistance in liquidation or as a cause of action in a separate and distinct action where the latter was filed ahead of the petition for assistance in liquidation (*Central Bank vs. Court of Appeals*, 106 SCRA 143).

Since the Central Bank's petition for assistance in liquidation had been filed on August 3, 1981 (Civil Case No. SP-111, Court of First Instance of Camarines Sur, Branch III), the Libmanan Bank's filing on September 23, 1981 of a complaint for prohibition and mandamus attacking the Central Bank's resolution appointing a receiver and liquidator for the bank should have been asserted as a counterclaim in SP-111 (pp. 39-40, Rollo), instead of as a separate special civil action for prohibition against the Central Bank. The separate action should have been either dismissed or consolidated with SP-111 for the law abhors multiplicity of suits. Failure of Libmanan Bank to assert in SP-111 the defense that the Monetary Board's receivership and liquidation resolution was “arbitrary and

made in bad faith,” constitutes a waiver of that defense conformably with the rule of “Waiver of Defense,” i.e., that “defenses and objections not pleaded either in a motion to dismiss or in the answer are (generally) deemed waived,” or the “Omnibus Motion Rule,” providing that “a motion attacking a pleading or a proceeding shall include all objections then available, and all objections not so included shall be deemed waived” (Salud vs. Central Bank of the Phils., 143 SCRA 590).

Respondent Judge abused his discretion, in authorizing the Libmanan Bank to withdraw funds from its deposits in other banks (Annex E, p. 26, Rollo). The Rural Bank had become insolvent as a result of mismanagement, frauds, irregularities and violations of banking laws, rules, and regulations by its officers (p. 62, Rollo). Its remaining assets should therefore be conserved to pay its creditors. Allowing the Rural Bank to withdraw its deposits in other banks would result in the further diminution and dissipation of its assets to the prejudice of its depositors and creditors, and to the unlawful advantage of the very officers who brought about the bank’s insolvency.

WHEREFORE, the petition for certiorari is GRANTED. The questioned orders dated January 15, 1982, January 29, 1982, March 1, 1982, March 31, 1982 and April 20, 1982 (Annexes A, B, C, D & E, respectively) of respondent Judge Rafael De la Cruz of the then Court of First Instance of Camarines Sur, Branch III, in Civil Case No. 1309 are REVERSED AND SET ASIDE. The temporary restraining order issued by this Court on July 19, 1982 is hereby made permanent. Respondent Court is ordered to dismiss Civil Case No. 1309. This order is immediately executory. Costs against respondent Rural Bank of Libmanan.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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