

**BANCO FILIPINO SAVINGS AND MORTGAGE BANK, PETITIONER, VS.
THE MONETARY BOARD, CENTRAL BANK OF THE PHILIPPINES, JOSE
B. FERNANDEZ, CARLOTA P. VALENZUELA, ARNULFO B.
AURELLANO AND...**

G.R. No. 70054. December 11, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This refers to nine (9) consolidated cases concerning the legality of the closure and receivership of petitioner Banco Filipino Savings and Mortgage Bank (Banco Filipino for brevity) pursuant to the order of respondent Monetary Board. Six (6) of these cases, namely, G.R. Nos. 68878, 77255-58, 78766, 81303, 81304 and 90473 involve the common issue of whether or not the liquidator appointed by the respondent Central Bank (CB for brevity) has the authority to prosecute as well as to defend suits, and to foreclose mortgages for and in behalf of the bank while the issue on the validity of the receivership and liquidation of the latter is pending resolution in G.R. No. 70054. Corollary to this issue is whether the CB can be sued to fulfill financial commitments of a closed bank pursuant to Section 29 of the Central Bank Act. On the other hand, the other three (3) cases, namely, G.R. Nos. 70054, which is the main case, 78767 and 78894 all seek to annul and set aside M.B. Resolution No. 75 issued by respondents Monetary Board and Central Bank on January 25, 1985.

The antecedent facts of each of the nine (9) cases are as follows:

G.R. No. 68878

This is a motion for reconsideration, filed by respondent Celestina Pahimuntung, of the decision promulgated by this Court on April 8, 1986, granting the petition for review on certiorari and reversing the questioned decision of respondent appellate court, which annulled the writ of possession issued by the trial court in favor of petitioner.

The respondent-movant contends that the petitioner has no more personality to continue prosecuting the instant case considering that petitioner bank was placed under receivership since January 25, 1985 by the Central Bank pursuant to the resolution of the Monetary Board.

G.R. Nos. 77255-58

Petitioners Top Management Programs Corporation (Top Management for brevity) and Pilar Development Corporation (Pilar Development for brevity) are corporations engaged in the business of developing residential subdivisions.

Top Management obtained a loan of P4,836,000 from Banco Filipino as evidenced by a promissory note dated January 7, 1982 payable in three years from date. The loan was secured by real estate mortgage in its various properties in Cavite. Likewise, Pilar Development obtained loans from Banco Filipino between 1982 and 1983 in the principal amounts of P6,000,000, P7,370,000 and P5,300,000 with maturity dates on December 28, 1984,

January 5, 1985 and February 16, 1984, respectively. To secure the loan, Pilar Development mortgaged to Banco Filipino various properties in Dasmariñas, Cavite.

On January 25, 1985, the Monetary Board issued a resolution finding Banco Filipino insolvent and unable to do business without loss to its creditors and depositors. It placed Banco Filipino under receivership of Carlota Valenzuela, Deputy Governor of the Central Bank.

On March 22, 1985, the Monetary Board issued another resolution placing the bank under liquidation and designating Valenzuela as liquidator. By virtue of her authority as liquidator, Valenzuela appointed the law firm of Sycip, Salazar, et al. to represent Banco Filipino in all litigations.

On March 26, 1985, Banco Filipino filed the petition for certiorari in G.R. No. 70054 questioning the validity of the resolutions issued by the Monetary Board authorizing the receivership and liquidation of Banco Filipino.

In a resolution dated August 29, 1985, this Court in G.R. No. 70054 resolved to issue a temporary restraining order, effective during the same period of 30 days, enjoining the respondents from executing further acts of liquidation of the bank; that acts such as receiving collectibles and receivables or paying off creditors' claims and other transactions pertaining to normal operations of a bank are not enjoined. The Central Bank is ordered to designate a comptroller for Banco Filipino.

Subsequently, Top Management failed to pay its loan on the due date. Hence, the law firm of Sycip, Salazar, et al. acting as counsel for Banco Filipino under authority of Valenzuela as liquidator, applied for extra-judicial foreclosure of the mortgage over Top Management's properties. Thus, the Ex-Officio Sheriff of the Regional Trial Court of Cavite issued a notice of extra-judicial foreclosure sale of the properties on December 16, 1985.

On December 9, 1985, Top Management filed a petition for injunction and prohibition with the respondent appellate court docketed as CA-G.R. SP No. 07892 seeking to enjoin the Regional Trial Court of Cavite, the ex-officio sheriff of said court and Sycip, Salazar, et al. from proceeding with foreclosure sale.

Similarly, Pilar Development defaulted in the payment of its loans. The law firm of Sycip, Salazar et al. filed separate applications with the ex-officio sheriff of the Regional Trial Court of Cavite for the extra-judicial foreclosure of mortgage over its properties.

Hence, Pilar Development filed with the respondent appellate court a petition for prohibition with prayer for the issuance of a writ of preliminary injunction docketed as CA-G.R. SP Nos. 08962-64 seeking to enjoin the same respondents from enforcing the foreclosure sale of its properties. CA-G.R. SP Nos. 07892 and 08962-64 were consolidated and jointly decided.

On October 30, 1986, the respondent appellate court rendered a decision dismissing the aforementioned petitions.

Hence, this petition was filed by the petitioners Top Management and Pilar Development alleging that Carlota Valenzuela, who was appointed by the Monetary Board as liquidator of Banco Filipino, has no authority to proceed with the foreclosure sale of petitioners' properties on the ground that the resolution of the issue on the validity of the closure and liquidation of Banco Filipino is still pending with this Court in G.R. 70054.

G.R. No. 78766

Petitioner El Grande Development Corporation (El Grande for brevity) is engaged in the business of developing residential subdivisions. It was extended by respondent Banco Filipino a credit accommodation to finance its housing program. Hence, petitioner was granted a loan in the amount of P8,034,130.00 secured by real estate mortgages on its various estates located in Cavite.

On January 15, 1985, the Monetary Board forbade Banco Filipino to do business, placed it under receivership and designated Deputy Governor Carlota Valenzuela as receiver. On March 22, 1985, the Monetary Board confirmed Banco Filipino's insolvency and designated the receiver Carlota Valenzuela as liquidator.

When petitioner El Grande failed to pay its indebtedness to Banco Filipino, the latter thru its liquidator, Carlota Valenzuela, initiated the foreclosure with the Clerk of Court and Ex-officio sheriff of RTC Cavite. Subsequently, on March 31, 1986, the ex-officio sheriff issued the notice of extra-judicial sale of the mortgaged properties of El Grande scheduled on April 30, 1986.

In order to stop the public auction sale, petitioner El Grande filed a petition for prohibition with the Court of Appeals alleging that respondent Carlota Valenzuela could not proceed with the foreclosure of its mortgaged properties on the ground that this Court in G.R. No. 70054 issued a resolution dated August 29, 1985, which restrained Carlota Valenzuela from acting as liquidator and allowed Banco Filipino to resume banking operations only under a Central Bank comptroller.

On March 2, 1987, the Court of Appeals rendered a decision dismissing the petition.

Hence this petition for review on certiorari was filed alleging that the respondent court erred when it held in its decision that although Carlota P. Valenzuela was restrained by this Honorable Court from exercising acts in liquidation of Banco Filipino Savings & Mortgage Bank, she was not legally precluded from foreclosing the mortgage over the properties of the petitioner through counsel retained by her for the purpose.

G.R. No. 81303

On November 8, 1985, petitioner Pilar Development Corporation (Pilar Development for brevity) filed an action against Banco Filipino, the Central Bank and Carlota Valenzuela for specific performance, docketed as Civil Case No. 12191. It appears that the former management of Banco Filipino appointed Quisumbing & Associates as counsel for Banco Filipino. On June 12, 1986 the said law firm filed an answer for Banco Filipino which confessed judgment against Banco Filipino.

On June 17, 1986, petitioner filed a second amended complaint. The Central Bank and Carlota Valenzuela, thru the law firm Sycip, Salazar, Hernandez and Gatmaitan filed an answer to the complaint.

On June 23, 1986, Sycip, et al., acting for all the defendants including Banco Filipino moved that the answer filed by Quisumbing & Associates for defendant Banco Filipino be expunged from the records. Despite opposition from Quisumbing & Associates, the trial court granted the motion to expunge in an order dated March 17, 1987. Petitioner Pilar Development moved to reconsider the order but the motion was denied.

Petitioner Pilar Development filed with the respondent appellate court a petition for certiorari and mandamus to annul the order of the trial court. The Court of Appeals rendered a decision dismissing the petition. A petition was filed with this Court but was denied in a resolution dated March 22, 1988. Hence, this instant motion for reconsideration.

G.R. No. 81304

On July 9, 1985, petitioner BF Homes Incorporated (BF Homes for brevity) filed an action with the trial court to compel the Central Bank to restore petitioner's financing facility with Banco Filipino.

The Central Bank filed a motion to dismiss the action. Petitioner BF Homes in a supplemental complaint impleaded as defendant Carlota Valenzuela as receiver of Banco Filipino Savings and Mortgage Bank.

On April 8, 1985, petitioner filed a second supplemental complaint to which respondents filed a motion to

dismiss.

On July 9, 1985, the trial court granted the motion to dismiss the supplemental complaint on the grounds (1) that plaintiff has no contractual relation with the defendants, and (2) that the Intermediate Appellate Court in a previous decision in AC-G.R. SP. No. 04609 had stated that Banco Filipino has been ordered closed and placed under receivership pending liquidation, and thus, the continuation of the facility sued for by the plaintiff has become legally impossible and the suit has become moot.

The order of dismissal was appealed by the petitioner to the Court of Appeals. On November 4, 1987, the respondent appellate court dismissed the appeal and affirmed the order of the trial court.

Hence, this petition for review on certiorari was filed, alleging that the respondent court erred when it found that the private respondents should not be the ones to respond to the cause of action asserted by the petitioner and the petitioner did not have any cause of action against the respondents Central Bank and Carlota Valenzuela.

G.R. No. 90473

Petitioner El Grande Development Corporation (El Grande for brevity) obtained a loan from Banco Filipino in the amount of P8,034,130.00, secured by a mortgage over its five parcels of land located in Cavite which were covered by Transfer Certificate of Title Nos. T-82187, T-109027, T-132897, T-148377, and T-79371 of the Registry of Deeds of Cavite.

When Banco Filipino was ordered closed and placed under receivership in 1985, the appointed liquidator of BF, thru its counsel Sycip, Salazar, et al. applied with the ex-officio sheriff of the Regional Trial Court of Cavite for the extrajudicial foreclosure of the mortgage constituted over petitioner's properties. On March 24, 1986, the ex-officio sheriff issued a notice of extrajudicial foreclosure sale of the properties of petitioner.

Thus, petitioner filed with the Court of Appeals a petition for prohibition with prayer for writ of preliminary injunction to enjoin the respondents from foreclosing the mortgage and to nullify the notice of foreclosure.

On June 16, 1989, respondent Court of Appeals rendered a decision dismissing the petition.

Not satisfied with the decision, petitioner filed the instant petition for review on certiorari.

G.R. No. 70054

Banco Filipino Savings and Mortgage Bank was authorized to operate as such under M.B. Resolution No. 223 dated February 14, 1963. It commenced operations on July 9, 1964. It has eighty-nine (89) operating branches, forty-six (46) of which are in Manila, with more than three (3) million depositors.

As of July 31, 1984, the list of stockholders showed the major stockholders to be: Metropolis Development Corporation, Apex Mortgage and Loans Corporation, Filipino Business Consultants, Tiu Family Group, LBH Inc. and Anthony Aguirre.

Petitioner Bank had an approved emergency advance of P119.7 million under M.B. Resolution No. 839 dated June 29, 1984. This was augmented with a P3 billion credit line under M.B. Resolution No. 934 dated July 27, 1984.

On the same date, respondent Board issued M.B. Resolution No. 955 placing petitioner bank under conservatorship of Basilio Estanislao. He was later replaced by Gilberto Teodoro as conservator on August 10, 1984. The latter submitted a report dated January 8, 1985 to respondent Board on the conservatorship of petitioner bank, which report shall hereinafter be referred to as the Teodoro report.

Subsequently, another report dated January 23, 1985 was submitted to the Monetary Board by Ramon Tiaoqui, Special Assistant to the Governor and Head, SES Department II of the Central Bank, regarding the major findings of examination on the financial condition of petitioner BF as of July 31, 1984. The report, which shall be referred to herein as the Tiaoqui Report contained the following conclusion and recommendation:

"The examination findings as of July 31, 1984, as shown earlier, indicate one of insolvency and illiquidity and further confirms the above conclusion of the Conservator.

"All the foregoing provides sufficient justification for forbidding the bank from engaging in banking.

"Foregoing considered, the following are recommended:

1. Forbid the Banco Filipino Savings & Mortgage Bank to do business in the Philippines effective the beginning of office January 1985, pursuant to Sec. 29 of R.A. No. 265, as amended;
2. Designate the Head of the Conservator Team at the bank, as Receiver of Banco Filipino Savings & Mortgage Bank, to immediately take charge of the assets and liabilities, as expeditiously as possible collect and gather all the assets and administer the same for the benefit of all the creditors, and exercise all the powers necessary for these purposes including but not limited to bringing suits and foreclosing mortgages in the name of the bank.
3. The Board of Directors and the principal officers from Senior Vice Presidents, as listed in the attached Annex 'A' be included in the watchlist of the Supervision and Examination Sector until such time that they shall have cleared themselves.
4. Refer to the Central Bank's Legal Department and Office of Special Investigation the report on the findings on Banco Filipino for investigation and possible prosecution of directors, officers and employees for activities which led to its insolvent position." (pp. 61-62, Rollo)

On January 25, 1985, the Monetary Board issued the assailed MB Resolution No. 75 which ordered the closure of BF and which further provides:

"After considering the report dated January 8, 1985 of the Conservator for Banco Filipino Savings and Mortgage Bank that the continuance in business of the bank would involve probable loss to its depositors and creditors, and after discussing and finding to be true the statements of the Special Assistant to the Governor and Head, Supervision and Examination Sector (SES) Department II as recited in his memorandum dated January 23, 1985, that the Banco Filipino Savings & Mortgage Bank is insolvent and that its continuance in business would involve probable loss to its depositors and creditors, and in pursuance of Sec. 29 of R.A. 265, as amended, the Board decided:

1. To forbid Banco Filipino Savings and Mortgage Bank and all its branches to do business in the Philippines;
2. To designate Mrs. Carlota P. Valenzuela, Deputy Governor as Receiver who is hereby directly vested with jurisdiction and authority to immediately take charge of the bank's assets and liabilities, and 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;
3. To designate Mr. Arnulfo B. Aurellano, Special Assistant to the Governor, and Mr. Ramon V. Tiaoqui, Special Assistant to the Governor and Head, Supervision and Examination Sector Department II, as Deputy Receivers who are likewise hereby directly vested with jurisdiction and authority to do all things necessary or proper to carry out the functions entrusted to them by the Receiver and otherwise to assist the Receiver in carrying out the functions vested in the Receiver by law or Monetary Board Resolutions;

4. To direct and authorize Management to do all other things and carry out all other measures necessary or proper to implement this Resolution and to safeguard the interests of depositors, creditors and the general public; and

5. In consequence of the foregoing, to terminate the conservatorship over Banco Filipino Savings and Mortgage Bank." (pp. 10-11, Rollo, Vol. I)

On February 2, 1985, petitioner BF filed a complaint docketed as Civil Case No. 9675 with the Regional Trial Court of Makati to set aside the action of the Monetary Board placing BF under receivership.

On February 28, 1985, petitioner filed with this Court the instant petition for certiorari and mandamus under Rule 65 of the Rules of Court seeking to annul the resolution of January 25, 1985 as made without or in excess of jurisdiction or with grave abuse of discretion, to order respondents to furnish petitioner with the reports of examination which led to its closure and to afford petitioner BF a hearing prior to any resolution that may be issued under Section 29 of R.A. 265, also known as Central Bank Act.

On March 19, 1985, Carlota Valenzuela, as Receiver and Arnulfo Aurellano and Ramon Tiaoqui as Deputy Receivers of Banco Filipino submitted their report on the receivership of BF to the Monetary Board, in compliance with the mandate of Sec. 29 of R.A. 265 which provides that the Monetary Board shall determine within sixty (60) days from date of receivership of a bank whether such bank may be reorganized/permitted to resume business or ordered to be liquidated. The report contained the following recommendation:

"In view of the foregoing and considering that the condition of the banking institution continues to be one of insolvency, i.e., its realizable assets are insufficient to meet all its liabilities and that the bank cannot resume business with safety to its depositors, other creditors and the general public, it is recommended that:

1. Banco Filipino Savings & Mortgage Bank be liquidated pursuant to paragraph 3, Sec. 29 of RA No. 265, as amended;
2. The Legal Department, through the Solicitor General, be authorized to file in the proper court a petition for assistance in the liquidation of the Bank;
3. The Statutory Receiver be designated as the Liquidator of said Bank; and
4. Management be instructed to inform the stockholders of Banco Filipino Savings & Mortgage Bank of the Monetary Board's decision to liquidate the Bank. (p. 167, Rollo, Vol. I)

On July 23, 1985, petitioner filed a motion before this Court praying that a restraining order or a writ of preliminary injunction be issued to enjoin respondents from causing the dismantling of BF signs in its main office and 89 branches. This Court issued a resolution on August 8, 1985 ordering the issuance of the aforesaid temporary restraining order.

On August 20, 1985, the case was submitted for resolution.

In a resolution dated August 29, 1985, this Court Resolved to direct the respondents Monetary Board and Central Bank to hold hearings at which the petitioner should be heard, and to terminate such hearings and submit its resolution within thirty (30) days. This Court further resolved to issue a temporary restraining order enjoining the respondents from executing further acts of liquidation of a bank. Acts such as receiving collectibles and receivables or paying off creditors' claims and other transactions pertaining to normal operations of a bank were not enjoined. The Central Bank was also ordered to designate a comptroller for the petitioner BF. This Court also ordered the consolidation of Civil Cases Nos. 8108, 9676 and 10183 in Branch 136 of the Regional Trial Court of Makati.

However, on September 12, 1985, this Court in the meantime suspended the hearing it ordered in its resolution of August 29, 1985.

On October 8, 1985, this Court submitted a resolution ordering Branch 136 of the Regional Trial Court of Makati then presided over by Judge Ricardo Francisco to conduct the hearing contemplated in the resolution of August 29, 1985 in the most expeditious manner and to submit its resolution to this Court.

In the Court's resolution of February 19, 1987, the Court stated that the hearing contemplated in the resolution of August 29, 1985, which is to ascertain whether substantial administrative due process had been observed by the respondent Monetary Board, may be expedited by Judge Manuel Cosico who now presides the court vacated by Judge Ricardo Francisco, who was elevated to the Court of Appeals, there being no legal impediment or justifiable reason to bar the former from conducting such hearing. Hence, this Court directed Judge Manuel Cosico to expedite the hearing and submit his report to this Court.

On February 20, 1988, Judge Manuel Cosico submitted his report to this Court with the recommendation that the resolutions of respondents Monetary Board and Central Bank authorizing the closure and liquidation of petition BF be upheld.

On October 21, 1988, petitioner BF filed an urgent motion to reopen hearing to which respondents filed their comment on December 16, 1988. Petitioner filed their reply to respondent's comment of January 11, 1989. After having deliberated on the grounds raised in the pleadings, this Court in its resolution dated August 3, 1989 declared that its intention as expressed in its resolution of August 29, 1985 had not been faithfully adhered to by the herein petitioner and respondents. The aforementioned resolution had ordered a hearing on the reports that led respondents to order petitioner's closure and its alleged pre-planned liquidation. This Court noted that during the referral hearing however, a different scheme was followed. Respondents merely submitted to the commissioner their findings on the examinations conducted on petitioner, affidavits of the private respondents relative to the findings, their reports to the Monetary Board and several other documents in support of their position while petitioner had merely submitted objections to the findings of respondents, counter-affidavits of its officers and also documents to prove its claims. Although the records disclose that both parties had not waived cross-examination of their deponents, no such cross-examination has been conducted. The reception of evidence in the form of affidavits was followed throughout, until the commissioner submitted his report and recommendations to the Court. This Court also held that the documents pertinent to the resolution of the instant petition are the Teodoro Report, Tiaoqui Report, Valenzuela, Aurellano and Tiaoqui Report and the supporting documents which were made as the bases by the reporters of their conclusions contained in their respective reports. This Court also Resolved in its resolution to re-open the referral hearing that was terminated after Judge Cosico had submitted his report and recommendation with the end in view of allowing petitioner to complete its presentation of evidence and also for respondents to adduce additional evidence, if so minded, and for both parties to conduct the required cross-examination of witnesses/deponents, to be done within a period of three months. To obviate all doubts on Judge Cosico's impartiality, this Court designated a new hearing commissioner in the person of former Judge Consuelo Santiago of the Regional Trial Court, Makati, Branch 149 (now Associate Justice of the Court of Appeals).

Three motions for intervention were filed in this case as follows: First, in G.R. No. 70054 filed by Eduardo Rodriguez and Fortunato M. Dizon, stockholders of petitioner bank for and on behalf of other stockholders of petitioner; second, in G.R. No. 78894, filed by the same stockholders, and, third, again in G.R. No. 70054 by BF Depositors' Association and others similarly situated. This Court, on March 1, 1990, denied the aforesaid motions for intervention.

On January 28, 1991, the hearing commissioner, Justice Consuelo Santiago of the Court of Appeals submitted her report and recommendation (to be hereinafter called, "Santiago Report") on the following issues stated therein as follows:

"1) Had the Monetary Board observed the procedural requirements laid down in Sec. 29 of R.A. 265, as amended to justify the closure of the Banco Filipino Savings and Mortgage Bank?

"2) On the date of BF's closure (January 25, 1985) was its condition one of insolvency or would its continuance in business involve probable loss to its depositors or creditors?"

The commissioner after evaluation of the evidence presented, found and recommended the following:

"1. That the TEODORO and TIAOQUI reports did not establish, in accordance with Sec. 29 of the R.A. 265, as amended, BF's insolvency as of July 31, 1984 or that its continuance in business thereafter would involve probable loss to its depositors or creditors. On the contrary, the evidence indicates that BF was solvent on July 31, 1984 and that on January 25, 1985, the day it was closed, its insolvency was not clearly established;

"2. That consequently, BF's closure on January 25, 1985, not having satisfied the requirements prescribed under Sec. 29 of RA 265, as amended, was null and void;

"3. That accordingly, by way of correction, BF should be allowed to re-open subject to such laws, rules and regulations that apply to its situation."

Respondents thereafter filed a motion for leave to file objections to the Santiago Report. In the same motion, respondents requested that the report and recommendation be set for oral argument before the Court. On February 7, 1991, this Court denied the request for oral argument of the parties.

On February 25, 1991, respondents filed their objections to the Santiago Report. On March 5, 1991, respondents submitted a motion for oral argument alleging that this Court is confronted with two conflicting reports on the same subject, one upholding on all points the Monetary Board's closure of petitioner, (Cosico Report dated February 19, 1988) and the other (Santiago Report dated January 25, 1991) holding that petitioner's closure was null and void because petitioner's insolvency was not clearly established before its closure; and that such a hearing on oral argument will therefore allow the parties to directly confront the issues before this Court.

On March 12, 1991 petitioner filed its opposition to the motion for oral argument. On March 20, 1991, it filed its reply to respondents' objections to the Santiago Report.

On June 18, 1991, a hearing was held where both parties were heard on oral argument before this Court. The parties, having submitted their respective memoranda, the case is now submitted for decision.

G.R. No. 78767

On February 2, 1985, Banco Filipino filed a complaint with the trial court docketed as Civil Case No. 9675 to annul the resolution of the Monetary Board dated January 25, 1985, which ordered the closure of the bank and placed it under receivership.

On February 14, 1985, the Central Bank and the receivers filed a motion to dismiss the complaint on the ground that the receivers had not authorized anyone to file the action. In a supplemental motion to dismiss, the Central Bank cited the resolution of this Court dated October 15, 1985 in G.R. No. 65723 entitled, "Central Bank et al. v. Intermediate Appellate Court" whereby We held that a complaint questioning the validity of the receivership established by the Central Bank becomes moot and academic upon the initiation of liquidation proceedings.

While the motion to dismiss was pending resolution, petitioner herein Metropolis Development Corporation

(Metropolis for brevity) filed a motion to intervene in the aforestated civil case on ground that as a stockholder and creditor of Banco Filipino, it has an interest in the subject of the action.

On July 19, 1985, the trial court denied the motion to dismiss and also denied the motion for reconsideration of the order later filed by Central Bank. On June 5, 1985, the trial court allowed the motion for intervention.

Hence, the Central Bank and the receivers of Banco Filipino filed a petition for certiorari with the respondent appellate court alleging that the trial court committed grave abuse of discretion in not dismissing Civil Case No. 9675.

On March 17, 1986, the respondent appellate court rendered a decision annulling and setting aside the questioned orders of the trial court, and ordering the dismissal of the complaint filed by Banco Filipino with the trial court as well as the complaint in intervention of petitioner Metropolis Development Corporation.

Hence this petition was filed by Metropolis Development Corporation questioning the decision of the respondent appellate court.

G.R. No. 78894

On February 2, 1985, a complaint was filed with the trial court in the name of Banco Filipino to annul the resolution of the Monetary Board dated January 25, 1985 which ordered the closure of Banco Filipino and placed it under receivership. The receivers appointed by the Monetary Board were Carlota Valenzuela, Arnulfo Aurellano and Ramon Tiaoqui.

On February 14, 1985, the Central Bank and the receivers filed a motion to dismiss the complaint on the ground that the receiver had not authorized anyone to file the action.

On March 22, 1985, the Monetary Board placed the bank under liquidation and designated Valenzuela as liquidator and Aurellano and Tiaoqui as deputy liquidators.

The Central Bank filed a supplemental motion to dismiss which was denied. Hence, the latter filed a petition for certiorari with the respondent appellate court to set aside the order of the trial court denying the motion to dismiss. On March 17, 1986, the respondent appellate court granted the petition and dismissed the complaint of Banco Filipino with the trial court.

Thus, this petition for certiorari was filed with the petitioner contending that a bank which has been closed and placed under receivership by the Central Bank under Section 29 of RA 265 could file suit in court in its name to contest such acts of the Central Bank, without the authorization of the CB-appointed receiver.

After deliberating on the pleadings in the following cases:

1. In G.R. No. 68878, the respondent's motion for reconsideration;
2. In G.R. Nos. 77255-58, the petition, comment, reply, rejoinder and sur-rejoinder;
3. In G.R. No. 78766, the petition, comment, reply and rejoinder;
4. In G.R. No. 81303, the petitioner's motion for reconsideration;
5. In G.R. No. 81304, the petition, comment and reply;

Finally, in G.R. No. 90473, the petition, comment and reply,

We find the motions for reconsideration in G.R. Nos. 68878 and 81303 and the petitions in G.R. Nos. 77255--58, 78766, 81304 and 90473 devoid of merit.

Section 29 of the Republic Act No. 265, as amended, known as the Central Bank Act, provides that when a bank is forbidden to do business in the Philippines and placed under receivership, the person designated as receiver shall immediately take charge of the bank's assets and liabilities, as expeditiously as possible, collect and gather all the assets and administer the same for the benefit of its creditors, and represent the bank personally or through counsel as he may retain in all actions or proceedings for or against the institution, exercising all the powers necessary for these purposes including, but not limited to, bringing and foreclosing mortgages in the name of the bank. If the Monetary Board shall later determine and confirm that the banking institution is insolvent or cannot resume business with safety to depositors, creditors and the general public, it shall, if public interest requires, order its liquidation and appoint a liquidator who shall take over and continue the functions of the receiver previously appointed by the Monetary Board. The liquidator may, in the name of the bank and with the assistance of counsel as he may retain, institute such actions as may be necessary in the appropriate court to collect and recover accounts and assets of such institution or defend any action filed against the institution.

When the issue on the validity of the closure and receivership of Banco Filipino bank was raised in G.R. No. 70054, the pendency of the case did not diminish the powers and authority of the designated liquidator to effectuate and carry on the administration of the bank. In fact, when We adopted a resolution on August 25, 1985 and issued a restraining order to respondents Monetary Board and Central Bank, We enjoined merely further acts of liquidation. Such acts of liquidation, as explained in Sec. 29 of the Central Bank Act are those which constitute the conversion of the assets of the banking institution to money or the sale, assignment or disposition of the same to creditors and other parties for the purpose of paying the debts of such institution. We did not prohibit however acts such as receiving collectibles and receivables or paying off creditors' claims and other transactions pertaining to normal operations of a bank. There is no doubt that the prosecution of suits for collection and the foreclosure of mortgages against debtors of the bank by the liquidator are among the usual and ordinary transactions pertaining to the administration of a bank. Neither did Our order in the same resolution dated August 25, 1985 for the designation by the Central Bank of a comptroller for Banco Filipino alter the powers and functions of the liquidator insofar as the management of the assets of the bank is concerned. The mere duty of the comptroller is to supervise accounts and finances undertaken by the liquidator and to determine the propriety of the latter's expenditures incurred in behalf of the bank. Notwithstanding this, the liquidator is still empowered under the law to continue the functions of the receiver in preserving and keeping intact the assets of the bank in substitution of its former management, and to prevent the dissipation of its assets to the detriment of the creditors of the bank. These powers and functions of the liquidator in directing the operations of the bank in place of the former management or former officials of the bank include the retaining of counsel of his choice in actions and proceedings for purposes of administration.

Clearly, in G.R. Nos. 68878, 77255-58, 78766 and 90473, the liquidator by himself or through counsel has the authority to bring actions for foreclosure of mortgages executed by debtors in favor of the bank. In G.R. No. 81303, the liquidator is likewise authorized to resist or defend suits instituted against the bank by debtors and creditors of the bank and by other private persons. Similarly, in G.R. No. 81304, due to the aforesaid reasons, the Central Bank cannot be compelled to fulfill financial transactions entered into by Banco Filipino when the operations of the latter were suspended by reason of its closure. The Central Bank possesses those powers and functions only as provided for in Sec. 29 of the Central Bank Act.

While We recognize the actual closure of Banco Filipino and the consequent legal effects thereof, on its operations, We cannot uphold the legality of its closure and thus, find the petitions in G.R. Nos. 70054, 78767 and 78894 impressed with merit. We hold that the closure and receivership of petitioner bank, which was ordered by respondent Monetary Board on January 25, 1985, is null and void.

It is a well-recognized principle that administrative and discretionary functions may not be interfered with by the courts. In general, courts have no supervising power over the proceedings and actions of the administrative departments of the government. This is generally true with respect to acts involving the exercise of judgment or discretion, and findings of fact. But when there is a grave abuse of discretion which is equivalent to a capricious and whimsical exercise of judgment or where the power is exercised in an arbitrary or despotic manner, then there is a justification for the courts to set aside the administrative determination reached (*Lim, Sr. v. Secretary of Agriculture and Natural Resources*, L-26990, August 31, 1970, 34 SCRA 751).

The jurisdiction of this Court is called upon, once again, through these petitions, to undertake the delicate task of ascertaining whether or not an administrative agency of the government, like the Central Bank of the Philippines and the Monetary Board, has committed grave abuse of discretion or has acted without or in excess of jurisdiction in issuing the assailed order. Coupled with this task is the duty of this Court not only to strike down acts which violate constitutional protections or to nullify administrative decisions contrary to legal mandates but also to prevent acts in excess of authority or jurisdiction, as well as to correct manifest abuses of discretion committed by the officer or tribunal involved.

The law applicable in the determination of these issues is Section 29 of Republic Act No. 265, as amended, also known as the Central Bank Act, which provides:

"SEC. 29. Proceedings upon insolvency. -- Whenever, upon examination by the head of the appropriate supervising or examining department or his examiners or 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. The Board may, upon finding the statements of the department head to be true, forbid the institution to do business in the Philippines and 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 benefits of its creditors, and represent the bank personally or through counsel as he may retain in all actions or proceedings for or against the institution, exercising all the powers necessary for these purposes including, but not limited to, bringing 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 depositors 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 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 which may, when warranted, involve disposition of any or all assets in consideration for the assumption of equivalent liabilities. The liquidator designated as hereunder provided shall, by the Solicitor General, file a petition in the regional trial court reciting the proceedings which have been taken and praying the assistance of the court in the liquidation of such institutions. The court shall have jurisdiction in the same proceedings to assist in the adjudication of the disputed claims against the bank or non-bank financial intermediary performing quasi-banking functions and in the enforcement of individual liabilities of the stockholders and do all that is necessary to preserve the assets of

such institutions 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 and continue 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 banking institutions 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 and with the assistance of counsel as he may retain, institute such actions as may be necessary in the appropriate court to collect and recover accounts and assets of such institution or defend any action filed against the institution: Provided, However, That after having reasonably established all claims against the institution, the liquidator may, with the approval of the court, effect partial payments of such claims for assets of the institution in accordance with their legal priority.

"The assets of an institution under receivership or liquidation shall be deemed in custodia legis in the hands of the receiver or liquidator and shall from the moment of such receivership or liquidation, be exempt from any order of garnishment, levy, attachment, or execution.

"The provisions of any law to the contrary notwithstanding, the actions of the Monetary Board under this Section, Section 28-A, and the second paragraph of Section 34 of this Act shall be final and executory, and can be set aside by a court only if there is convincing proof, after hearing, that the action is plainly arbitrary and made in bad faith: Provided, That the same is raised in an appropriate pleading filed by the stockholders of record representing the majority of the capital stock within ten (10) days from the date the receiver takes charge of the assets and liabilities of the bank or non-bank financial intermediary performing quasi-banking functions or, in case of conservatorship or liquidation, within ten (10) days from receipt of notice by the said majority stockholders of said bank or non-bank financial intermediary of the order of its placement under conservatorship or liquidation. No restraining order or injunction shall be issued by any court enjoining the Central Bank from implementing its actions under this Section and the second paragraph of Section 34 of this Act in the absence of any convincing proof that the action of the Monetary Board is plainly arbitrary and made in bad faith and the petitioner or plaintiff files a bond, executed in favor of the Central Bank, in an amount to be fixed by the court. The restraining order or injunction 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.

"x x x."

Based on the aforequoted provision, the Monetary Board may order the cessation of operations of a bank in the Philippines and place it under receivership upon a finding of insolvency or when its continuance in business would involve probable loss to its depositors or creditors. If the Monetary Board shall determine and confirm within sixty (60) days that the bank is insolvent or can no longer resume business with safety to its depositors, creditors and the general public, it shall, if public interest will be served, order its liquidation.

Specifically, the basic question to be resolved in G.R. Nos. 70054, 78767 and 78894 is whether or not the Central Bank and the Monetary Board acted arbitrarily and in bad faith in finding and thereafter concluding that petitioner bank is insolvent, and in ordering its closure on January 25, 1985.

As We have stated in Our resolution dated August 3, 1989, the documents pertinent to the resolution of these petitions are the Teodoro Report, Tiaoqui Report, and the Valenzuela, Aurellano and Tiaoqui Report and the

supporting documents made as bases by the supporters of their conclusions contained in their respective reports. We will focus Our study and discussion however on the Tiaoqui Report and the Valenzuela, Aurellano and Tiaoqui Report. The former recommended the closure and receivership of petitioner bank while the latter report made the recommendation to eventually place the petitioner bank under liquidation. This Court shall likewise take into consideration the findings contained in the reports of the two commissioners who were appointed by this Court to hold the referral hearings, namely the report by Judge Manuel Cosico submitted February 20, 1988 and the report submitted by Justice Consuelo Santiago on January 28, 1991.

There is no question that under Section 29 of the Central Bank Act, the following are the mandatory requirements to be complied with before a bank found to be insolvent is ordered closed and forbidden to do business in the Philippines: Firstly, an examination shall be conducted by the head of the appropriate supervising or examining department or his examiners or agents into the condition of the bank; secondly, it shall be disclosed in the examination that the condition of the bank is one of insolvency, or that its continuance in business would involve probable loss to its depositors or creditors; thirdly, the department head concerned shall inform the Monetary Board in writing, of the facts; and lastly, the Monetary Board shall find the statements of the department head to be true.

Anent the first requirement, the Tiaoqui report, submitted on January 23, 1985, revealed that the finding of insolvency of petitioner was based on the partial list of exceptions and findings on the regular examination of the bank as of July 31, 1984 conducted by the Supervision and Examination Sector II of the Central Bank (p. 1, Tiaoqui Report).

On December 17, 1984, this list of exceptions and findings was submitted to the petitioner bank (p. 6, Tiaoqui Report). This was attached to the letter dated December 17, 1984, of examiner-in-charge Dionisio Domingo of SES Department II of the Central Bank to Teodoro Arcenas, president of petitioner bank, which disclosed that the examination of the petitioner bank as to its financial condition as of July 31, 1984 was not yet completed or finished on December 17, 1984 when the Central Bank submitted the partial list of findings of examination to the petitioner bank. The letter reads:

"In connection with the regular examination of your institution as of July 31, 1984, we are submitting herewith a partial list of our exceptions/findings for your comments.

"Please be informed that we have not yet officially terminated our examination (tentatively scheduled last December 7, 1984) and that we are still awaiting for the unsubmitted replies to our previous letters/requests. Moreover, other, findings/observations are still being summarized including the classification of loans and other risk assets. These shall be submitted to you in due time" (p. 810, Rollo, Vol. III; emphasis ours).

It is worthy to note that a conference was held on January 21, 1985 at the Central Bank between the officials of the latter and of petitioner bank. What transpired and what was agreed upon during the conference was explained in the Tiaoqui report.

"x x x The discussion centered on the substantial exposure of the bank to the various entities which would have a relationship with the bank; the manner by which some bank funds were made indirectly available to several entities within the group; and the unhealthy financial status of these firms in which the bank was additionally exposed through new funds or refinancing accommodation including accrued interest.

"Queried in the impact of these clean loans, on the bank solvency, Mr. Dizon (BF Executive Vice President) intimated that, collectively, these corporations have large undeveloped real estate properties in the suburbs which can be made answerable for the unsecured loans as well as the Central Bank's credit accommodations. A formal reply of the bank would still be forthcoming." (pp. 58-59, Rollo, Vol. I; emphasis ours)

Clearly, Tiaoqui based his report on an incomplete examination of petitioner bank and outrightly concluded therein that the latter's financial status was one of insolvency or illiquidity. He arrived at the said conclusion from the following facts: that as of July, 31, 1984, total capital accounts consisting of paid-in capital and other capital accounts such as surplus, surplus reserves and undivided profits aggregated P351.8 million; that capital adjustments, however, wiped out the capital accounts and placed the bank with a capital deficiency amounting to P334.956 million; that the biggest adjustment which contributed to the deficit is the provision for estimated losses on accounts classified as doubtful and loss which was computed at P600.4 million pursuant to the examination. This provision is also known as valuation reserves which was set up or deducted against the capital accounts of the bank in arriving at the latter's financial condition.

Tiaoqui however admits the insufficiency and unreliability of the findings of the examiner as to the setting up of recommended valuation reserves from the assets of petitioner bank. He stated:

"The recommended valuation reserves as bases for determining the financial status of the bank would need to be discussed with the bank, consistent with standard examination procedure, for which the bank would in turn reply. Also, the examination has not been officially terminated. (p. 7, Tiaoqui report; p. 59, Rollo, Vol. I)

In his testimony in the second referral hearing before Justice Santiago, Tiaoqui testified that on January 21, 1985, he met with officers of petitioner bank to discuss the advanced findings and exceptions made by Mr. Dionisio Domingo which covered 70%-80% of the bank's loan portfolio; that at that meeting, Fortunato Dizon (BF's Executive Vice President) said that as regards the unsecured loans granted to various corporations, said corporations had large undeveloped real estate properties which could be answerable for the said unsecured loans and that a reply from BF was forthcoming; that he (Tiaoqui) however prepared his report despite the absence of such reply; that he believed, as in fact it is stated in his report, that despite the meeting on January 21, 1985, there was still a need to discuss the recommended valuation reserves of petitioner bank and; that he however, did not wait anymore for a discussion of the recommended valuation reserves and instead prepared his report two days after January 21, 1985 (pp. 3313-3314, Rollo).

Records further show that the examination of petitioner bank was officially terminated only when Central Bank Examiner-in-charge Dionisio Domingo submitted his final report of examination on March 4, 1985.

It is evident from the foregoing circumstances that the examination contemplated in Sec. 29 of the CB Act as a mandatory requirement was not completely and fully complied with. Despite the existence of the partial list of findings in the examination of the bank, there were still highly significant items to be weighed and determined such as the matter of valuation reserves, before these can be considered in the financial condition of the bank. It would be a drastic move to conclude prematurely that a bank is insolvent if the basis for such conclusion is lacking and insufficient, especially if doubt exists as to whether such bases or findings faithfully represent the real financial status of the bank.

The actuation of the Monetary Board in closing petitioner bank on January 25, 1985 barely four days after a conference with the latter on the examiners' partial findings on its financial position is also violative of what was provided in the CB Manual of Examination Procedures. Said manual provides that only after the examination is concluded, should a pre-closing conference led by the examiner-in-charge be held with the officers/representatives of the institution on the findings/exception, and a copy of the summary of the findings/violations should be furnished the institution examined so that corrective action may be taken by them as soon as possible (Manual of Examination Procedures, General Instruction, p. 14). It is hard to understand how a period of four days after the conference could be a reasonable opportunity for a bank to undertake a responsive and corrective action on the partial list of findings of the examiner-in-charge.

We recognize the fact that it is the responsibility of the Central Bank of the Philippines to administer the monetary, banking and credit system of the country and that its powers and functions shall be exercised by the Monetary Board pursuant to Rep. Act. No. 265, known as the Central Bank Act. Consequently, the power and authority of the Monetary Board to close banks and liquidate them thereafter when public interest so requires is an exercise of the police power of the state. Police power, however, may not be done arbitrarily or unreasonably and could be set aside if it is either capricious, discriminatory, whimsical, arbitrary, unjust or is tantamount to a denial of due process and equal protection clauses of the Constitution (Central Bank v. Court of Appeals, Nos. L-50031-32, July 27, 1981, 106 SCRA 143).

In the instant case, the basic standards of substantial due process were not observed. Time and again, We have held in several cases, that the procedure of administrative tribunals must satisfy the fundamentals of fair play and that their judgment should express a well-supported conclusion.

In the celebrated case of *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635, this Court laid down several cardinal primary rights which must be respected in a proceeding before an administrative body.

However, as to the requirement of notice and hearing, Sec. 29 of RA 265 does not require a previous hearing before the Monetary Board implements the closure of a bank, since its action is subject to judicial scrutiny as provided for under the same law (*Rural Bank of Bato v. IAC*, G.R. No. 65642, October 15, 1984, *Rural Bank v. Court of Appeals*, G.R. 61689, June 20, 1988, 162 SCRA 288).

Notwithstanding the foregoing, administrative due process does not mean that the other important principles may be dispensed with, namely: the decision of the administrative body must have something to support itself and the evidence must be substantial. Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion (*Ang Tibay v. CIR*, supra). Hence, where the decision is merely based upon pieces of documentary evidence that are not sufficiently substantial and probative for the purpose and conclusion they are presented, the standard of fairness mandated in the due process clause is not met. In the case at bar, the conclusion arrived at by the respondent Board that the petitioner bank is in an illiquid financial position on January 23, 1985, as to justify its closure on January 25, 1985 cannot be given weight and finality as the report itself admits the inadequacy of its basis to support its conclusion.

The second requirement provided in Section 29, R.A. 265 before a bank may be closed is that the examination should disclose that the condition of the bank is one of insolvency.

As to the concept of whether the bank is solvent or not, the respondents contend that under the Central Bank Manual of Examination Procedures, Central Bank examiners must recommend valuation reserves, when warranted, to be set up or deducted against the corresponding asset account to determine the bank's true condition or net worth. In the case of loan accounts, to which practically all the questioned valuation reserves refer, the manual provides that:

1. For doubtful loans, or loans the ultimate collection of which is doubtful and in which a substantial loss is probable but not yet definitely ascertainable as to extent, valuation reserves of fifty per cent (50%) of the accounts should be recommended to be set up.
2. For loans classified as loss, or loans regarded by the examiner as absolutely uncollectible or worthless, valuation reserves of one hundred percent (100%) of the accounts should be recommended to be set up (p. 8, *Objections to Santiago report*).

The foregoing criteria used by respondents in determining the financial condition of the bank is based on Section 5 of RA 337, known as the General Banking Act which states:

"Sec. 5. The following terms shall be held to be synonymous and interchangeable:

x x x.

f. 'Unimpaired Capital and Surplus,' 'Combined capital accounts,' and 'Net worth,' which terms shall mean for the purposes of this Act, the total of the 'unimpaired paid-in capital, surplus, and undivided profits net of such valuation reserves as may be required by the Central Bank."

There is no doubt that the Central Bank Act vests authority upon the Central Bank and Monetary Board to take charge and administer the monetary and banking system of the country and this authority includes the power to examine and determine the financial condition of banks for purposes provided for by law, such as for the purpose of closure on the ground of insolvency stated in Section 29 of the Central Bank Act. But express grants of power to public officers should be subjected to a strict interpretation, and will be construed as conferring those powers which are expressly imposed or necessarily implied (Floyd Mechem, Treatise on the Law of Public Offices and Officers, p. 335).

In this case, there can be no clearer explanation of the concept of insolvency than what the law itself states. Sec. 29 of the Central Bank Act provides that insolvency under the Act, shall be understood to mean that "the realizable assets of a bank or a non-bank financial intermediary performing quasi-banking functions as determined by the Central Bank are insufficient to meet its liabilities."

Hence, the contention of the Central Bank that a bank's true financial condition is synonymous with the terms "unimpaired capital and surplus," "combined capital accounts" and net worth after deducting valuation reserves from the capital, surplus and unretained earnings, citing Sec. 5 of RA 337 is misplaced.

Firstly, it is clear from the law that a solvent bank is one in which its assets exceed its liabilities. It is a basic accounting principle that assets are composed of liabilities and capital. The term "assets" includes capital and surplus" (Exley v. Harris, 267 p. 970, 973, 126 Kan., 302). On the other hand, the term "capital" includes common and preferred stock, surplus reserves, surplus and undivided profits. (Manual of Examination Procedures, Report of Examination on Department of Commercial and Savings Banks, p. 3-C). If valuation reserves would be deducted from these items, the result would merely be the networth or the unimpaired capital and surplus of the bank applying Sec. 5 of RA 337 but not the total financial condition of the bank.

Secondly, the statement of assets and liabilities is used in balance sheets. Banks use statements of condition to reflect the amounts, nature and changes in the assets and liabilities. The Central Bank Manual of Examination Procedures provides a format or checklist of a statement of condition to be used by examiners as guide in the examination of banks. The format enumerates the items which will compose the assets and liabilities of a bank. Assets include cash and those due from banks, loans, discounts and advances, fixed assets and other property owned or acquired and other miscellaneous assets. The amount of loans, discounts and advances to be stated in the statement of condition as provided for in the manual is computed after deducting valuation reserves when deemed necessary. On the other hand, liabilities are composed of demand deposits, time and savings deposits, cashier's, manager's and certified checks, borrowings, due to head office, branches and agencies, other liabilities and deferred credits (Manual of Examination Procedure, p. 9). The amounts stated in the balance sheets or statements of condition including the computation of valuation reserves when justified, are based however, on the assumption that the bank or company will continue in business indefinitely, and therefore, the networth shown in the statement is in no sense an indication of the amount that might be realized if the bank or company were to be liquidated immediately (Prentice Hall Encyclopedic Dictionary of Business Finance, p. 48). Further, based on respondents' submissions, the allowance for probable losses on loans and discounts represents the amount set up against current operations to provide for possible losses arising from non-collection of loans and advances, and

this account is also referred to as valuation reserve (p. 9, Objections to Santiago report). Clearly, the statement of condition which contains a provision for recommended valuation reserves should not be used as the ultimate basis to determine the solvency of an institution for the purpose of termination of its operations.

Respondents acknowledge that under the said CB manual, CB examiners must recommend valuation reserves, when warranted, to be set up against the corresponding asset account (p. 8, Objections to Santiago report). Tiaoqui himself, as author of the report recommending the closure of petitioner bank admits that the valuation reserves should still be discussed with the petitioner bank in compliance with standard examination procedure. Hence, for the Monetary Board to unilaterally deduct an uncertain amount as valuation reserves from the assets of a bank and to conclude therefrom without sufficient basis that the bank is insolvent, would be totally unjust and unfair.

The test of insolvency laid down in Section 29 of the Central Bank Act is measured by determining whether the realizable assets of a bank are less than its liabilities. Hence, a bank is solvent if the fair cash value of all its assets, realizable within a reasonable time by a reasonable prudent person, would equal or exceed its total liabilities exclusive of stock liability; but if such fair cash value so realizable is not sufficient to pay such liabilities within a reasonable time, the bank is insolvent. (*Gillian v. State*, 194 N.E. 360, 363, 207 Ind. 661). Stated in other words, the insolvency of a bank occurs when the actual cash market value of its assets is insufficient to pay its liabilities, not considering capital stock and surplus which are not liabilities for such purpose (*Exley v. Harris*, 267 p. 970, 973, 126 Kan. 302; *Alexander v. Llewellyn*, Mo. App., 70 S.W. 2n 115, 117).

In arriving at the computation of realizable assets of petitioner bank, respondents used its books which undoubtedly are not reflective of the actual cash or fair market value of its assets. This is not the proper procedure contemplated in Sec. 29 of the Central Bank Act. Even the CB Manual of Examination Procedures does not confine examination of a bank solely with the determination of the books of the bank. The latter is part of auditing which should not be confused with examination. Examination appraises the soundness of the institution's assets, the quality and character of management and determines the institution's compliance with laws, rules and regulations. Audit is a detailed inspection of the institution's books, accounts, vouchers, ledgers, etc. to determine the recording of all assets and liabilities. Hence, examination concerns itself with review and appraisal, while audit concerns itself with verification (CB Manual of Examination Procedures, General Instructions, p. 5). This Court however, is not in the position to determine how much cash or market value shall be assigned to each of the assets and liabilities of the bank to determine their total realizable value. The proper determination of these matters by using the actual cash value criteria belongs to the field of fact-finding expertise of the Central Bank and the Monetary Board. Notwithstanding the fact that the figures arrived at by the respondent Board as to assets and liabilities do not truly indicate their realizable value as they were merely based on book value, We will however, take a look at the figures presented by the Tiaoqui Report in concluding insolvency as of July 31, 1984 and at the figures presented by the CB authorized deputy receiver and by the Valenzuela, Aurellano and Tiaoqui Report which recommended the liquidation of the bank by reason of insolvency as of January 25, 1985.

The Tiaoqui report dated January 23, 1985, which was based on partial examination findings on the bank's condition as of July 31, 1984, states that total liabilities of P5,282.1 million exceeds total assets of P4,947.2 million after deducting from the assets valuation reserves of P612.2 million. Since, as We have explained in our previous discussion that valuation reserves can not be legally deducted as there was no truthful and complete evaluation thereof as admitted by the Tiaoqui report itself, then an adjustment of the figures will show that the liabilities of P5,282.1 million will not exceed the total assets which will amount to P5,559.4 if the 612.2 million allotted to valuation reserves will not be deducted from the assets. There can be no basis therefore for both the conclusion of insolvency and for the decision of the respondent Board to close petitioner bank and place it under

receivership.

Concerning the financial position of the bank as of January 25, 1985, the date of the closure of the bank, the consolidated statement of condition thereof as of the aforesaid date shown in the Valenzuela, Aurellano and Tiaoqui report on the receivership of petitioner bank, dated March 19, 1985, indicates that total liabilities of 4,540.84 million does not exceed the total assets of 4,981.53 million. Likewise, the consolidated statement of condition of petitioner bank as of January 25, 1985 prepared by the Central Bank Authorized Deputy Receiver Artemio Cruz shows that total assets amounting to P4,981,522,996.22 even exceeds total liabilities amounting to P4,540,836,834.15. Based on the foregoing, there was no valid reason for the Valenzuela, Aurellano and Tiaoqui report to finally recommend the liquidation of petitioner bank instead of its rehabilitation.

We take note of the exhaustive study and findings of the Cosico report on the petitioner bank's having engaged in unsafe, unsound and fraudulent banking practices by the granting of huge unsecured loans to several subsidiaries and related companies. We do not see, however, that this has any material bearing on the validity of the closure. Section 34 of the RA 265, Central Bank Act empowers the Monetary Board to take action under Section 29 of the Central Bank Act when a bank "persists in carrying on its business in an unlawful or unsafe manner." There was no showing whatsoever that the bank had persisted in committing unlawful banking practices and that the respondent Board had attempted to take effective action on the bank's alleged activities. During the period from July 27, 1984 up to January 25, 1985, when petitioner bank was under conservatorship no official of the bank was ever prosecuted, suspended or removed for any participation in unsafe and unsound banking practices, and neither was the entire management of the bank replaced or substituted. In fact, in her testimony during the second referral hearing, Carlota Valenzuela, CB Deputy Governor, testified that the reason for petitioner bank's closure was not unsound, unsafe and fraudulent banking practices but the alleged insolvency position of the bank (TSN, August 3, 1990, p. 3315, Rollo, Vol. VIII).

Finally, another circumstance which point to the solvency of petitioner bank is the granting by the Monetary Board in favor of the former a credit line in the amount of P3 billion along with the placing of petitioner bank under conservatorship by virtue of M.B. Resolution No. 955 dated July 27, 1984. This paved the way for the reopening of the bank on August 1, 1984 after a self-imposed bank holiday on July 23, 1984.

On emergency loans and advances, Section 90 of RA 265 provides two types of emergency loans that can be granted by the Central Bank to a financially distressed bank:

"Sec. 90. x x x. In periods of emergency or of imminent financial panic which directly threaten monetary and banking stability, the Central Bank may grant banking institutions extraordinary advances secured by any assets which are defined as acceptable security by a concurrent vote of at least five members of the Monetary Board. While such advances are outstanding, the debtor institution may not expand the total volume of its loans or investments without the prior authorization of the Monetary Board."

"The Central Bank may, at its discretion, likewise grant advances to banking institutions, even during normal periods, for the purpose of assisting a bank in a precarious financial condition or under serious financial pressures brought about by unforeseen events, or events which, though foreseeable, could not be prevented by the bank concerned. Provided, however, That the Monetary Board has ascertained that the bank is not insolvent and has clearly realizable assets to secure the advances. Provided, further, That a concurrent vote of at least five members of the Monetary Board is obtained." (Emphasis ours)

The first paragraph of the aforequoted provision contemplates a situation where the whole banking community is confronted with financial and economic crisis giving rise to serious and widespread confusion among the public, which may eventually threaten and gravely prejudice the stability of the banking system. Here, the emergency or financial confusion involves the whole banking community and not one bank or institution only. The second

situation on the other hand, provides for a situation where the Central Bank grants a loan to a bank with uncertain financial condition but not insolvent.

As alleged by the respondents, the following are the reasons of the Central Bank in approving the resolution granting the P3 billion loan to petitioner bank and the latter's reopening after a brief self-imposed banking holiday:

"WHEREAS, the closure by Banco Filipino Savings and Mortgage Bank of its Banking offices on its own initiative has worked serious hardships on its depositors and has affected confidence levels in the banking system resulting in a feeling of apprehension among depositors and unnecessary deposit withdrawals;

"WHEREAS, the Central Bank is charged with the function of administering the banking system;

"WHEREAS, the reopening of Banco Filipino would require additional credit resources from the Central Bank as well as an independent management acceptable to the Central Bank;

"WHEREAS, it is the desire of the Central Bank to rapidly diffuse the uncertainty that presently exists;

"x x x." (M.B. Min. No. 35 dated July 27, 1984 cited in Respondents' Objections to Santiago Report, p. 26; p. 3387, Rollo, Vol. IX; Emphasis ours).

A perusal of the foregoing "Whereas" clauses unmistakably show that the clear reason for the decision to grant the emergency loan to petitioner bank was that the latter was suffering from financial distress and severe bank "run" as a result of which it closed on July 23, 1984 and that the release of the said amount is in accordance with the Central Bank's full support to meet Banco Filipino's depositors' withdrawal requirements (Excerpts of minutes of meeting on MB Min. No. 35, p. 25, Rollo, Vol. IX). Nothing therein shows an extraordinary emergency situation exists affecting most banks, not only as regards petitioner bank. This Court thereby finds that the grant of the said emergency loan was intended from the beginning to fall under the second paragraph of Section 90 of the Central Bank Act, which could not have occurred if the petitioner bank was not solvent. Where notwithstanding knowledge of the irregularities and unsafe banking practices allegedly committed by the petitioner bank, the Central Bank even granted financial support to the latter and placed it under conservatorship, such actuation means that petitioner bank could still be saved from its financial distress by adequate aid and management reform, which was required by Central Bank's duty to maintain the stability of the banking system and the preservation of public confidence in it (Ramos v. Central Bank, No. L-29352, October 4, 1971, 41 SCRA 565).

In view of the foregoing premises, We believe that the closure of the petitioner bank was arbitrary and committed with grave abuse of discretion. Granting in gratia argumenti that the closure was based on justified grounds to protect the public, the fact that petitioner bank was suffering from serious financial problems should not automatically lead to its liquidation. Section 29 of the Central Bank provides that a closed bank may be reorganized or otherwise placed in such a condition that it may be permitted to resume business with safety to its depositors, creditors and the general public.

We are aware of the Central Bank's concern for the safety of Banco Filipino's depositors as well as its creditors including itself which had granted substantial financial assistance up to the time of the latter's closure. But there are alternatives to permanent closure and liquidation to safeguard those interests as well as those of the general public for the failure of Banco Filipino or any bank for that matter may be viewed as an irreversible decline of the country's entire banking system and ultimately, it may reflect on the Central Bank's own viability. For one thing, the Central Bank and the Monetary Board should exercise strict supervision over Banco Filipino. They should take all the necessary steps not violative of the laws that will fully secure the repayment of the total financial assistance that the Central Bank had already granted or would grant in the future.

ACCORDINGLY, decision is hereby rendered as follows:

1. The motion for reconsideration in G.R. Nos. 68878 and 81303, and the petitions in G.R. Nos. 77255--58, 78766, 81304 and 90473 are DENIED;
2. The petitions in G.R. No. 70054, 78767 and 78894 are GRANTED and the assailed order of the Central Bank and the Monetary Board dated January 25, 1985 is hereby ANNULLED AND SET ASIDE. The Central Bank and the Monetary Board are ordered to reorganize petitioner Banco Filipino Savings and Mortgage Bank and allow the latter to resume business in the Philippines under the comptrollership of both the Central Bank and the Monetary Board and under such conditions as may be prescribed by the latter in connection with its reorganization until such time that petitioner bank can continue in business with safety to its creditors, depositors and the general public.

SO ORDERED.

Narvasa, C.J., Gutierrez, Jr., Cruz, Bidin, and Regalado, JJ., concur.

Melencio-Herrera, J., see dissenting opinion.

Romero, J., join J. Griño-Aquino in her separate dissenting opinion.

Paras, Feliciano, Padilla, Davide, Jr., and Nocon, JJ., no part.

Banco Filipino Savings and Mortgage Bank vs Monetary Board : 70054 : December 11, 1991 : J. Melencio-Herrera : En Banc : Dissenting Opinion Clean 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";}

Dissenting Opinion

MELENCIO-HERRERA, J.:

I join Mme. Justice Carolina G. Aquino in her dissent and vote to deny the prayer, in G.R. No. 70054, to annul Monetary Board Resolution No. 75 placing Banco Filipino (BF) under receivership.

Even assuming that the BF was not, as alleged, in a literal state of insolvency at the time of the passage of said Resolution, there was a finding in the Teodoro report that, based on that Bank's illiquidity, to have allowed it to continue in operation would have meant probable loss to depositors and creditors. That is also a ground for placing the bank under receivership, as a first step, pursuant to Section 29 of the Central Bank Act (Rep. Act No. 265, as amended). The closure of BF, therefore, can not be said to have been arbitrary or made in bad faith. There was sufficient justification, considering its inability to meet the heavy withdrawals by its depositors and to pay its liabilities as they fell due, to forbid the bank from further engaging in banking.

The matter of reopening, reorganization or rehabilitation of BF is not within the competence of this Court to ordain but is better addressed to the Monetary Board and the Central Bank considering the latter's enormous infusion of capital into BF to the tune of approximately P3.5 Billion in total accommodations, after a thorough assessment of whether or not BF is, indeed, possessed, as it stoutly contends, of sufficient assets and capabilities with which to repay such huge indebtedness, and can operate without loss to its many depositors and creditors.

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