

**APOLLO M. SALUD, AS ATTORNEY-IN-FACT FOR ITS
STOCKHOLDERS, IN HIS BEHALF AND FOR AND IN BEHALF OF THE
RURAL BANK OF MUNTINLUPA, INC., HON. VICENTE R. CAMPOS,
PRESIDING JUDGE, RE...**

G.R. No. 71630. August 19, 1986

Ponente: NARVASA, J.

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NARVASA, J.:

The Rural Bank of Muntinlupa, Inc. and its stockholders (hereafter collectively referred to simply as the Muntinlupa Bank) have petitioned this Court for a writ of certiorari to annul two (2) resolutions of the Intermediate Appellate Court dated January 4, 1985 and July 23, 1985 upon the theory that said resolutions are so far contrary to the provisions of Section 29 of the Central Bank Act[1] and relevant rulings of this Court as to constitute grave abuse of discretion.

The provision in question reads as follows:

"SEC. 29. Proceedings upon insolvency. - Whenever, upon examination by the head of the appropriate supervising and examining department or his examiners or agents into the condition of any banking institution, 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, 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 banking institution.

"The Monetary Board shall thereupon determine within sixty days whether the institution may be recognized 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 redemption 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 banking institution 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 the banking institution. The court shall have jurisdiction in the same proceedings to adjudicate disputed claims against the bank and enforce individual liabilities of the stockholders and do all that is necessary to preserve the assets of the banking 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, 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 banking institution 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 bank and he may, in the name of the banking institution, institute such actions as may be necessary in the appropriate court to collect and recover accounts and assets of the banking 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 plain-ly 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 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.

"Insolvency, under this Act, shall be understood to mean the inability of a banking institution 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 caused by extraordinary demands induced by financial panic commonly evidenced by a run on the banks in the banking community.

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

As will be noted, whenever it shall appear prima facie that a banking institution is in "a condition of insolvency" or so situated "that its continuance in business would involve probable loss to its depositors or creditors," the Monetary Board has authority:

First, to forbid the institution to do business and appoint a receiver therefor; and

Second, to determine, within 60 days, whether or not:

- 1) the institution may be reorganized and rehabilitated to such an extent as to be permitted to resume business with safety to depositors, creditors and the general public; or
- 2) it is indeed insolvent or cannot resume business with safety to depositors, creditors and the general public, and public interest requires that it be liquidated.

In this latter case (i.e., the bank can no longer resume business with safety to depositors, creditors and the public, etc.) its liquidation will be ordered and a liquidator appointed by the Monetary Board. The Central Bank shall thereafter file a petition in the Regional Trial Court praying for the Court's assistance in the liquidation of the bank.

It is noteworthy that the actions of the Monetary Board in this regard are explicitly declared to be "final and executory." They may not be set aside or even restrained or enjoined by the court, except only upon "convincing proof that the action is plainly arbitrary and made in bad faith."

It was on the basis of this Section 29, expressly invoked, that on April 6, 1982, a "Petition for Assistance in the Liquidation of the Rural Bank of Muntinlupa, Inc." was filed with the Court of First Instance at Pasay City by the Central Bank and the designated Liquidator, Consolacion Odra.[2] The petition alleged that on the strength of said provision, the Monetary Board had adopted two (2) resolutions, viz:

1)

Resolution No. 213 (February 3, 1978), forbidding the Muntinlupa Bank to do business and designating Consolacion Odra its statutory receiver; and

2)

Resolution No. 1523 (August 28, 1981), ordering liquidation of the Muntinlupa Bank after confirmation that it was insolvent and could not resume business with safety to all concerned, and that public interest did require said liquidation.

The petition prayed that the Court "approve petitioners' request for assistance," that it render such assistance in fact, and also that it "grant such other reliefs as may be just and equitable."

Against this petition, docketed as Sp. Proc. No. 9697, Muntinlupa Bank filed a pleading denominated "OPPOSITION." [3] It pleaded the following defenses, or grounds of objection, viz:

1)

The liquidation of Muntinlupa Bank decreed by the Monetary Board under Section 29 was premature and void, because Section 28-A of the same Central Bank Act mandates that prior to liquidation, it is the Central Bank's "primordial duty to reorganize the management (of Muntinlupa Bank) and to restore its viability";

2)

The action of liquidation was "arbitrary and in bad faith" because (a) contrary to the actuality that Muntinlupa Bank is still capable of rehabilitation, and (b) inconsistent with prior actions of the Central Bank of rehabilitating "similarly distressed banks, the Republic Bank and the Overseas Bank of Manila, among several others" (citing Central Bank vs. Court of Appeals, July 27, 1981).

After a REPLY to the Opposition was in due course presented,[4] and then a REJOINDER to the reply,[5] the Regional Trial Court promulgated an ORDER on June 6, 1983[6] in which, deeming the OPPOSITION to be "tantamount to a Motion to Dismiss," it declared the actions taken by the Monetary Board to be arbitrary and dismissed the petition for assistance in liquidation for lack of merit. The Court opined that "based on the figures provided by the petitioners themselves," Muntinlupa Bank "had more assets as against liabilities" and hence could not, "under any circumstance, be considered in the state of insolvency." It also ruled that conservatorship under Section 28-A, and not liquidation under Section 29, was the appropriate and "mandatory" remedy.

Failing in two attempts to have this Order reconsidered,[7] the Central Bank and its Liquidator instituted in this Court a special civil action of certiorari and mandamus, under Rule 65 of the Rules of Court, praying that the Regional Trial Court's orders be annulled because "issued without or in excess of jurisdiction or with grave abuse of discretion," and that it be compelled to grant their application for assistance.[8]

The petition was referred to the Intermediate Appellate Court.[9]

The IAC rendered judgment on November 22, 1984.[10] It declared that:

1)

while the Monetary Board had power to determine "whether a rural bank's continuance in business would involve probable loss to its clients or creditors, etc.", the matter of "whether or not such findings by the Monetary Board is equipped with abuse in its issuance is subject to judicial inquiry," citing *Central Bank vs. Court of Appeals*;^[11]

2)

however, because the Regional Trial Court "dismissed outright the petition for assistance x x x on the basis of respondents' opposition" without a "hearing held for both parties to substantiate their allegations x x x in their respective pleadings," it had exceeded its authority.

On these premises, the Court "remanded (the case) to the respondent court for further proceedings."

But upon motion for reconsideration of the Central Bank and its Liquidator,^[12] the IAC "clarified, if not modified" its Decision. By a resolution dated January 4, 1985, after simply advertng to the motion for reconsideration which it found "to be in accordance with law and jurisprudence," it amended the dispositive part of its decision to read as follows:

"WHEREFORE, the challenged Orders dated June 6, 1983, October 20, 1983 and February 24, 1984, having been issued with a grave abuse of discretion, amounting to lack of, or in excess of jurisdiction, are hereby declared NULL and VOID.

This petition for certiorari is GRANTED and is hereby GIVEN DUE COURSE; The respondent court is ordered to approve the petition for Assistance in the Liquidation of the Rural Bank of Muntinlupa, Inc., in Sp. Proc. No. 9697 pending in his sala, and to assist in its liquidation.

With costs against the private respondents."^[13]

This resolution of January 4, 1985, and that of July 23, 1985 denying reconsideration,^[14] are now in turn assailed in this Court by Muntinlupa Bank on the ground that they were "issued without or in excess of jurisdiction or with grave abuse of discretion."^[15]

Essentially, Muntinlupa Bank's position is that under Section 29 of the Central Bank Act, as amended, the Regional Trial Court has jurisdiction to adjudicate the question of whether the action of the Monetary Board in directing its dissolution (instead of its rehabilitation) was in the premises, and in the language of the statute, "arbitrary and made in bad faith"; and therefore the Decision of the Intermediate Appellate Court of November 22, 1984^[16] remanding the case to the Regional Trial Court for hearing so that "both parties x x x (might) substantiate their allegations in their respective pleadings" on that precise question, was "in complete accord with the x x x law." Under said Decision, Muntinlupa Bank states:

" x x x it will be given an opportunity to adduce convincing proof that respondents' Monetary Board Resolution No. 213 directing dissolution of the bank was arbitrary and made in bad faith. x x x "^[17]

The Central Bank and its liquidator assert the contrary. According to them, a Regional Trial Court --- in which a petition for assistance in the liquidation of a rural bank is filed by the Central Bank pursuant to resolution of the Monetary Board --- has no jurisdiction of the issue of whether or not the Monetary Board resolution is "arbitrary and made in bad faith," where that issue is raised in the same proceeding either by an opposition or motion to dismiss. They argue that that issue may only be raised in a separate action or proceeding. They say that -

"x x x To raise the question of whether liquidation is justified in the assistance proceeding is to conduct a collateral attack on the liquidation. This can not be done. An attack on the validity of the liquidation must be made directly. A proceeding specifically for that purpose must be initiated. This is so because the factual basis

of the liquidation -- the insolvency of the bank -- has to have a full-blown hearing." [18]

The contention is untenable.

Resolutions of the Monetary Board under Section 29 of the Central Bank Act -- e.g., forbidding banking institutions to do business on account of a "condition of insolvency" or because "its continuance in business would involve probable loss to depositors or creditors"; or appointing a receiver to take charge of the bank's assets and liabilities; or determining whether the banking institutions may be rehabilitated, or should be liquidated and appointing a liquidator towards this end -- are by law "final and executory," as earlier pointed out. But they "can be set aside by the court" on one specific ground, and that is, "if there is convincing proof that the action is plainly arbitrary and made in bad faith." The Central Bank concedes this power in "the court," but insists that that setting aside can not be done in the same proceeding for assistance in liquidation, but in a separate action instituted specifically for the purpose, as was the case in *Central Bank v. Court of Appeals*, [19] where -

" x x x the aggrieved parties (Fernandez and Jayme) filed a petition for certiorari, prohibition and mandamus precisely to annul and set aside the Monetary Board resolution directing the liquidation of the Provident Savings Bank x x x (and the) petition was heard by the then Court of First Instance of Manila jointly with the Petition for Assistance and Supervision in the Liquidation of the Provident Savings Bank. x x x" [20]

This Court perceives no reason whatever why 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, cannot be asserted as an affirmative defense [21] or a counterclaim [22] in the proceeding for assistance in liquidation, but only as a cause of action in a separate and distinct action. Nor can this Court see why "a full-blown hearing" on the issue is possible only if it is asserted as a cause of action, but not when set up by way of an affirmative defense, or a counterclaim. There is no provision of law which expressly or even by implication imposes the requirement for a separate proceeding exclusively occupied with adjudicating this issue. Moreover, to declare the issue as beyond the scope of matters cognizable in a proceeding for assistance in liquidation would be to engender that multiplicity of proceedings which the law abhors. Indeed, the failure to assert, as a ground of defense or objection to a proceeding for assistance in liquidation, the fact that the resolution of the Monetary Board authorizing the initiation of such a proceeding is "arbitrary and made in bad faith," would constitute a waiver thereof, conformably with the rule of "Waiver of Defenses," [23] to the effect 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," [24] 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." [25]

It is inconsequential that in the cited case of *Central Bank v. Court of Appeals*, there were two (2) separate proceedings. This was entirely fortuitous. It came about merely because by pure chance the petition to annul the Monetary Board resolution authorizing liquidation was filed ahead of the petition for assistance in liquidation. In fact, the two (2) proceedings were at the parties' instance jointly heard and decided, a certain indication of the intimate relationship in issues between said proceedings, if not in truth of the preferential nature of the question of whether or not the Monetary Board resolution was "plainly arbitrary and made in bad faith."

Central Bank v. Court of Appeals is not and cannot thus be regarded as supportive of the Central Bank's theory in the case at bar. On the contrary, it is opposed to that theory, for in that case, this Court in fact ruled that -

" x x x While the closure and liquidation of a bank may be considered an exercise of police power, the validity of such exercise of police power is subject to judicial inquiry and could be set aside if it is either capricious, discriminatory, whimsical, arbitrary, unjust or a denial of the due process and equal protection clauses of the Constitution. x x x" [26]

No reason exists to preclude determination of this question in the very proceeding for assistance in liquidation instituted pursuant to Section 29 of the Central Bank Act.

The Central Bank and its Liquidator also postulate, for the very first time, that the Monetary Board is among the "quasi-judicial x x x boards" whose judgments are within the exclusive appellate jurisdiction of the IAC;[27] hence, it is only said Court, "to the exclusion of the Regional Trial Courts," that may review the Monetary Board's resolutions.

The contention is utterly devoid of merit. The IAC has no appellate jurisdiction over resolutions or orders of the Monetary Board. No law prescribes any mode of appeal from the Monetary Board to the IAC. The contention is moreover inconsistent with the text of Section 29 of the Central Bank Act. It is inconsistent as well with the Central Bank's own theory in this case, which concedes original jurisdiction over the matter in the Regional Trial Court provided it is alleged as a cause of action in a suit distinct from a proceeding for assistance in liquidation.

WHEREFORE, the Resolutions of the Intermediate Appellate Court in AC-G.R. No. SP-03808 dated January 4, 1985 and July 23, 1985 are set aside, and the Decision dated November 22, 1984 is reinstated and affirmed. No costs.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, Cruz, and Paras, JJ., concur.

[1] RA 265, as amended by PD 1007 and PD 1771

[2] Rollo, pp. 25-31

[3] Rollo, pp. 32-41

[4] Rollo, pp. 42-47

[5] Rollo, pp. 48-53

[6] Rollo, pp. 54-56

[7] Rollo, pp. 57-85

[8] Rollo, pp. 86-104

[9] Rollo, p. 105

[10] Rollo, pp. 113-116

[11] 106 SCRA 143

[12] Rollo, pp. 117-122

[13] Rollo, pp. 125-126

[14] Rollo, pp. 139-140

[15] Petition, pp. 9-24, Rollo

[16] Rollo, pp. 113-116

[17] Rollo, p. 22

[18] Rollo, pp. 175-176

[19] 106 SCRA 142

[20] Rollo, pp. 168-169

[21] See Secs. 1 and 4(b), Rule 6, Rules of Court

[22] Sec. 6, Rule 6; Sec. 2, Rule 72, Rules of Court

[23] Sec. 2, Rule 9, Rules of Court

[24] Sec. 8, Rule 15

[25] See also Sec. 4, Rule 37

[26] 106 SCRA 143, 155

[27] Sec. 9 (3), BP Blg. 129

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