

VICENTE T. TAN, VICTAN & COMPANY, INC., TRANSWORLD INVESTMENT CORPORATION, FIRST INTERNATIONAL INVESTMENT COMPANY, INC., FAR EAST PETROLEUM & MINERALS CORPORATION, AND PHILCONTR...

G.R. No. 90365. March 18, 1991

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

The petitioners ask the Court to set aside the Decision of the Court of Appeals[1] dismissing their complaint for reconveyance of shares of stock against the Central Bank. The facts as stated by the respondent court are accurate and we adopt the same. They are as follows:

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Civil Case No. 15707, entitled "Vicente T. Tan, et al vs. Central Bank of the Philippines, et al.", is an action for "Reconveyance of Shares of Stock with Damages and Restraining Order" wherein private respondent Vicente T. Tan sought to recover shares of stocks owned by him and his associates in Continental Bank which he had assigned to three corporations namely: Executive Consultants, Inc., Orobelt Property Management, Inc., and Antolum International Trading Corporation, as well as damages for the illegal closure of Continental Bank.

It appears from the record that on June 15, 1974, private respondent Tan was arrested by the military authorities pursuant to an Arrest, Search and Seizure Order (ASSO) issued by the then Secretary of National Defense on the basis of criminal charges filed against him before the PC Criminal Investigation Service for alleged irregular transactions at Continental Bank. At the time of his arrest, respondent Tan was neither a director nor an officer of said bank. Subsequently, three (3) other officers of Continental Bank, all with the rank of vice-presidents, were arrested. However, the bank's chairman of the board, Cornelio Balmaceda, and its President, Jose Moran, were not arrested, and in fact continued to run the operations of the bank.

Because of a possible bank run as a result of the arrests, the officers of Continental Bank requested an emergency loan to meet pending withdrawals of depositors. The Monetary Board approved the request on June 21, 1974 subject, however, to a verification of the bank's assets.

On June 24, 1974, the Director of petitioner's department of Commercial and Savings Banks, after conducting said verification, reported that Continental Bank's assets cannot meet its liabilities, since the latter exceeded the former by P67.260 million. The report also indicated that Continental Bank was insolvent and that its continuance in business would involve probable loss to its depositors and creditors, which are the two grounds mandated under Section 29 of Republic Act No. 265, otherwise known as the Central Bank Act, justifying the closure and placing under receivership of a bank.

On the basis of the report, petitioner ordered the closure of Continental Bank effective June 24, 1974 and designated the Director of its Department of Commercial and Savings Banks as receiver with instructions to take charge of the bank's assets pursuant to Sec. 29 of R.A. No. 265.

As also required by Section 29 of R.A. No. 265, a final report was submitted to the Monetary Board on August 12, 1974 by Feliciano A. Balajadia, the Supervising Bank Examiner, affirming the earlier report that Continental Bank was in an insolvent position and that its continuance in business may be detrimental to its creditors and depositors. The same report indicated, however, that the bank may be allowed to reorganize under an entirely new management subject to certain conditions foremost of which was the infusion of fresh funds into the bank.

While still under detention by the military, respondent Tan executed certain agreements on February 2, 1977, May 12, 1977 and July 5, 1977 transferring and assigning 359,615 shares of stock in Continental Bank, as well as other properties belonging to him and his affiliate firms, to Executive Consultants, Inc., Orobol Property Management, Inc. and Antolum International Trading Corporation in consideration of the assumption by these assignees of the liabilities and obligations of respondents Tan and his companies.

The assignees of respondents Tan and his companies rehabilitated Continental Bank and, in support thereof, respondent Tan wrote the petitioner on July 5, 1977 certifying on his own behalf and in behalf of the corporations owned and controlled by him, that they have no objection to the reopening and rehabilitation of Continental Bank under its new name, International Corporate Bank or Interbank.

Interbank reopened in 1977 and since then operated as a banking institution with controlling ownership thereof changing hands during the past decade.

On January 13, 1987, after the lapse of more than twelve (12) years, private respondents filed the present case of reconveyance of shares of stock with damages and restraining order before the respondent court. On March 3, 1987, petitioner filed a Motion to Dismiss dated February 27, 1987 on the grounds that the action is barred by the statute of limitations or prescription and that plaintiffs therein (private respondents herein) have no cause of action against the defendant (herein petitioner), as well as laches on the part of plaintiffs. On April 1, 1987, private respondents filed their Opposition to the Motion to Dismiss, to which petitioner filed its Reply dated April 10, 1987.

The respondent court (trial court) resolved the motion to dismiss in favor of private respondent(s) in an Order dated May 15, 1987, which stated among other things:

"As to the prescription of an action based on implied or constructive trust, the Supreme Court held that it prescribes in ten years x x x.

"As alleged in the complaint, plaintiffs were fraudulently divested of their Continental Bank shares in 1977. Consequently, the ten-year prescription period has not yet lapsed.

"Plaintiffs likewise are not guilty of laches. xxx

"With regards (sic) to the second ground, this Court finds that the allegations in the complaint, passed the test laid down in *Ruiz v. Court of Appeals*, G.R. No. 29213, Oct. 21, 1977, 79 SCRA 525, 534; regarding sufficiency of ultimate facts. A valid judgment can be rendered upon the facts alleged in the complaint (which are deemed admitted for purposes of the Motion to Dismiss) in accordance with the prayer of this complaint." (p. 4, Petition)

Not satisfied with the Order petitioner filed a Motion for Reconsideration of the same, alleging that the grounds of prescription and laches were raised principally in connection with private respondents' claim for damages, while the ground of no cause of action was raised in connection with private respondents' claim for reconveyance. In spite of petitioner's arguments, the Motion for Reconsideration was denied by the respondent court in its Order of August 12, 1987. Hence, the (sic) petition for certiorari.[2]

The issues, as the petitioners point out, are as follows:

1. Whether or not petitioners' action for damages against respondent is barred by prescription under Section

29 of Republic Act No. 265.

2. Assuming, arguendo, that the action is not barred by prescription under Section 29 of Republic Act No. 265, whether or not the action for damages is barred by prescription under Article 1146 of the Civil Code.

3. Whether or not the complaint states a cause of action against respondent for the reconveyance of petitioners' shareholdings in the former Continental Bank under the doctrine of constructive trust.[3]

On the issue of prescription, the holding of the Court of Appeals is that prescription is a bar, under Section 29 of Republic Act No. 265, the Central Bank Act, 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 therewith, in writing, to inform the Monetary Board of the facts, and the Board, upon finding the statements of the department head to be true, shall forthwith forbid the institution to do business in the Philippines and shall designate an official of the Central Bank 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, and exercising all the power necessary for these purposes including, but not limited to, bringing suits and foreclosing mortgages in the name of the banking institution.

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At any time within ten days after the Monetary Board has taken charge of the assets of any banking institution, such institution may apply to the court of First Instance for an order requiring the Monetary Board to show cause why its designated official should not be enjoined from continuing such charge of its assets, and the court may direct the Board to refrain from further proceedings and to surrender charge of its assets."[4]

The respondent court also held that assuming, as the petitioners maintained (and still maintain in this petition), that the complaint is for tort, Article 1146 of the Civil Code, providing as follows:

ART. 1146. The following actions must be instituted within four years:

- (1) Upon an inquiry to the rights of the plaintiff;
- (2) Upon a quasi-delict.[5]

is in any case, a bar.

Its ruling is that since the petitioners' action was commenced on January 13, 1987, or more than twelve years from June 24, 1974, the date the Central Bank ordered the closure of Continental Bank, the same had prescribed, whether under Section 29 of the Central Bank Act or under Article 1146 of the Civil Code.

On the issue of cause of action, the Court of Appeals is of the opinion that the complaint states no cause of action, since the Central Bank is not one of the assignees of the shares the petitioners are seeking to recover, and hence, no reconveyance is possible against it.

The petitioners now argue that prescription has not set in; that the ten-day period prescribed by Section 29 of Republic Act No. 265 refers to acts of the Monetary Board in taking over a bank's assets; that their complaint is in the nature of an action for tort against the Central Bank arising from its alleged forcible divestment of their shares in the Continental Bank; that the period during which they were detained under a martial law government constitutes fuerza mayor which interrupted prescription under Article 1146 of the Civil Code; and that their action for reconveyance is to enforce a constructive trust with the Central Bank as "indirect owner" (of the shares of

stock), which must allegedly account therefor.

The first question refers to prescription. In this connection, we are not disposed to accept the ruling of the Court of Appeals that under Republic Act No. 265, the action has prescribed, and that in any event, assuming that Republic Act No. 265 is inapplicable, Article 1146 of the Civil Code is nonetheless a bar. With respect to Republic Act No. 265, the Court notes that the statute talks of enjoining the Monetary Board from taking charge of a bank's assets. The Court also notes, however, that the Monetary Board has since relinquished possession of Continental Bank's assets, and the controlling ownership of the bank has passed from hand to hand in the course of the decade. It has likewise since reopened under a new name, International Corporate Bank, and a new management. Clearly, and as a perusal of the petitioners' complaint confirms, the petitioners are not asking for an injunction against the Monetary Board and the Board has since in fact ceased from performing any act in connection with Continental Bank or its successor bank.

From a reading of the complaint, we can not either say that Article 1146 is a deterrent, because although the same, coincidentally, avers intimidation employed by the martial law administration in taking over Continental Bank, an act that suggests "quasi-delict," the same is preeminently one for reconveyance of the shares of stock subject of that takeover, and not on account of any injury to the petitioners' rights. We quote:

WHEREFORE, plaintiffs respectfully pray that judgment be rendered:

A. Upon the filing of this Complaint, this Honorable Court issue a restraining order directing defendant National Development Company, its agents, representatives or such other persons acting under its authority and direction to desist and refrain from disposing or otherwise transferring the shares of stock in question.

B. After due hearing:

1. Ordering the defendants to reconvey, restore and/or re-assign to plaintiffs all the latter's controlling shareholdings in the former Continental Bank (now renamed INTERBANK) in the same proportion as it was at the time of its fraudulent acquisition including such incremental shares of stock that should have been acquired by the plaintiffs had they been granted the opportunity to exercise their right to pre-emption to the new issues of shares of stock as a consequence of the subsequent increases in the authorized capital stock of said bank and all stocks dividends declared since the reopening of Continental Bank under the name INTERBANK;

2. Ordering the defendant Central Bank of the Philippines to pay the plaintiffs moral damages including attorney's fees and litigation expenses in an amount that may be proved during the trial.

Plaintiffs likewise pray for such other reliefs and remedies as this Honorable Court may deem just and equitable in the premises.[6]

As the petitioners in fact very vehemently maintain in the present petition, the cause of action is predicated on "reconveyance of petitioners' shareholdings in the former Continental Bank under the doctrine of constructive trust." [7]

At any rate, actions on tort--assuming that the complaint is one for tort--prescribe in four years under, as aforesaid, Article 1146 of the Code. That Article 1149--which refers to "periods not fixed in this Code or other laws"--is the applicable provision becomes therefore untenable because, please note, Article 1146 speaks of "injury to the rights of the plaintiff" and "quasi-delict"--specific legal nomenclatures for tort--assuming, again, that the action is for tort. The Court does not see how Article 1149 can therefore enter into the picture.

Please note also that in the case of *Allied Banking Corporation vs. Court of Appeals*, [8] we specifically held that an action against the Central Bank for "tortious interference," that is, in closing and liquidating a bank, proscribes in four years from the date of closure. In that case--which is one for tort--we held that Article 1146 is the

applicable law.

Be that as it may, and assuming *ex gratia argumenti* that Article 1149 were applicable, it still would not have rescued the petitioners since that meant that they had until 1982 at most, within which to institute a claim. Prescription would still have been a bar.

The next question is whether or not any action for reconveyance has nevertheless prescribed, on the bases of provisions governing reconveyance.

The rule anent prescription on recovery of movables (shares of stock in this case) is expressed in Article 1140 of the Civil Code, which we quote:

Art. 1140. Actions to recover movables shall prescribe eight years from the time the possession thereof is lost, unless the possessor has acquired the ownership by prescription for a less period, according to article 1132, and without prejudice to the provisions of articles 559, 1505, and 1133.

As it provides, Article 1140 is subject to the provisions of Articles 1132 and 1133 of the Code, governing acquisitive prescription, in relation to Articles 559 and 1505 thereof. Under Article 1132:

Art. 1132. The ownership of movables prescribes through uninterrupted possession for four years in good faith.

The ownership of personal property also prescribes through uninterrupted possession for eight years, without need of any other condition.

With regard to the right of the owner to recover personal property lost or of which he has been illegally deprived, as well as with respect to movables acquired in a public sale, fair, or market, or from a merchant's store the provisions of articles 559 and 1505 of this Code shall be observed.

acquisitive prescription sets in after uninterrupted possession of four years, provided there is good faith, and upon the lapse of eight years, if bad faith is present. Where, however, the thing was acquired through a crime, the offender can not acquire ownership by prescription under Article 1133, which we quote:

Art. 1133. Movables possessed through a crime can never be acquired through prescription by the offender.

Please note that under the above Article, the benefits of prescription are denied to the offender; nonetheless, if the thing has meanwhile passed to a subsequent holder, prescription begins to run (four or eight years, depending on the existence of good faith).[9]

For purposes of extinctive prescription vis-a-vis movables, we therefore understand the periods to be:

- Four years, if the possessor is in good faith;
- Eight years in all other cases, except where the loss was due to a crime in which case, the offender can not acquire the movable by prescription, and an action to recover it from him is imprescriptible.

It is evident, for purposes of the complaint in question, that the petitioners had at most eight years within which to pursue a reconveyance, reckoned from the loss of the shares in 1977, when the petitioner Vicente Tan executed the various agreements in which he conveyed the same in favor of the Executive Consultants, Inc., Orobelt Property Management, Inc., and Antolum Trading Corporation.

We are hard put to say, in this regard, that the petitioners' action is after all, imprescriptible pursuant to the provisions of Article 1133 of the Civil Code, governing actions to recover loss by means of a crime. For one thing, the complaint was not brought upon this theory. For another, there is nothing there that suggests that the loss of the shares was indeed made possible by a criminal act, other than simple bad faith and probably abuse of

right:

18. By reason of the fraudulent acquisition by the Disini corporations (Executive Consultants, Inc., Orobelt Property Management, Inc. and Antolum International Trading Corporation) of the 359,615 shares mentioned in Paragraph 5 hereof, a constructive trust has been constituted on said shares in favor of plaintiffs, a "remedy to whatever knavery human ingenuity can invent";

19. The execution of the aforementioned Agreement and Supplemental Agreements paved the way for the re-opening of the Continental Bank on September 19, 1977 under a new name, INTERNATIONAL CORPORATE BANK (INTERBANK, for short) and under the new management of the Herdis Group, which became the owner of the controlling stocks by virtue of their fraudulent acquisition of the 359,615 shares mentioned in Paragraph 5 hereof; and it also paved the way for the release of Plaintiff Vicente T. Tan, his spouse and other officers of the Continental Bank from military custody on December 27, 1977 and the subsequent dismissal of the complaint for estafa thru falsification and violation of the Central Bank Act against said Plaintiff Tan and other officers of the Bank in compliance with the instructions of deposed President Ferdinand E. Marcos;

20. Without the infusion of fresh capital and after barely three (3) months of operation, INTERBANK's consolidated statement of financial condition as of December 29, 1977, which was published in Bulletin Today on January 31, 1978, showed a P22.42 million undivided profit and surplus which represented about 50% of the paid-up capital. Said financial statement is hereto attached as Annex "D";

21. In the special meeting of the shareholders of INTERBANK on April 24, 1978, the recommendation/declaration by the Board of Directors during its special meeting on April 14, 1978 of a 25.5% stock dividend on all fully paid shares as of April 12, 1978 was approved, subject to the approval of the Central Bank of the Philippines; however, the Central Bank allowed INTERBANK to declare only 23.71% stock dividend;

22. The new management then of INTERBANK totally ignored the existing rules and regulations of the Central Bank of the Philippines by milking dry the deposits with said INTERBANK through huge borrowings of the Disini Group of companies thereby pushing said Bank to the brink of total collapse had it not been for the huge infusion of funds by the Central Bank of the Philippines in the form of emergency loans and advances;

23. Since the Central Bank of the Philippines is prohibited to acquire shares of any kind and to participate in the ownership or management of any enterprise, either directly or indirectly, it assigned the emergency loans and advances extended to the INTERBANK to the National Development Company of (sic) which the latter executed the corresponding promissory note payable in 25 years, without interest, in favor of said Central Bank, and which loans and advances were converted into equity thereby enabling the National Development Corporation to acquire 99% of INTERBANK's outstanding shares of stock from the Disini Group, including the 359,615 shares mentioned in Paragraph 5 hereof, and the corresponding stock/cash dividends earned;

24. The defendant American Express Bank, Ltd. (AMEX) acquired from defendant National Development Company 40% of the outstanding shares of stock of INTERBANK but before AMEX (sic) acquisition of said interest, it was placed on notice of the infirmities of the transfer of the shares of plaintiffs in Continental Bank to the former owners of INTERBANK;

25. That despite said notice, AMEX proceeded to convert, with the approval of Central Bank of the Philippines, its exposures to the Philippine government into equity in INTERBANK;

26. Defendant Central Bank of the Philippines, which may be considered indirect owner of INTERBANK under the foregoing arrangement, and defendants National Development Company and AMEX having actual or constructive notice of the fraudulent acquisition by the aforementioned three corporations acting as fronts of

Herminio Disini of the 359,615 shares of stock of plaintiffs, are obligated under the principle of constructive trust to reconvey to plaintiffs their original controlling shareholdings in the then Continental Bank including the corresponding stock/cash dividends earned;

27. Were it not for the acts complained of in this case, plaintiffs would have retained the right to said shareholdings and they could have exercised their pre-emption rights to new issues of stock as a consequence of the increases of capitalization of INTERBANK;

28. In view of the evident arbitrariness and bad faith of the Central Bank as adverted to above, which caused Plaintiff's Vicente T. Tan being divested of his huge investment and virtually all his assets, said Plaintiff Tan has been subjected to physical suffering, mental anguish, besmirched reputation and social humiliation; hence, defendant Central Bank is liable for moral damages.[10]

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Since the complaint was filed on January 13, 1987, ten years more or less after the petitioners transferred the shares in question, it is clear that the petitioners have come to court too late.

We can not accept the petitioners' contention that the period during which authoritarian rule was in force had interrupted prescription and that the same began to run only on February 25, 1986, when the Aquino government took power. It is true that under Article 1154:

ART. 1154. The period during which the obligee was prevented by a fortuitous event from enforcing his right is not reckoned against him.[11]

fortuitous events have the effect of tolling the period of prescription. However, we can not say, as a universal rule, that the period from September 21, 1972 through February 25, 1986 involves a force majeure. Plainly, we can not box in the "dictatorial" period within the term without distinction, and without, by necessity, suspending all liabilities, however demandable, incurred during that period, including perhaps those ordered by this Court to be paid. While this Court is cognizant of acts of the last regime, especially political acts, that might have indeed precluded the enforcement of liability against that regime and/or its minions, the Court is not inclined to make quite a sweeping pronouncement, considering especially the unsettling effects such a pronouncement is likely to bring about. It is our opinion that claims should be taken on a case-to-case basis. This selective rule is compelled, among others, by the fact that not all those imprisoned or detained by the past dictatorship were true political oppositionists, or, for that matter, innocent of any crime or wrongdoing. Indeed, not a few of them were manipulators and scoundrels.

The petitioner Vicente Tan claims that from June, 1974 through December, 1977, he was under detention; that sometime in August, 1977, the Central Bank lodged six criminal cases against him, along with several others, with Military Commission No. 5 in connection with alleged violation of the Central Bank Act, falsification of documents, and estafa, that while in detention, he was made to execute various agreements in which he conveyed the shares of stock in question; and that "[u]nder the foregoing factual setting...it would be foolhardy on the part of petitioners to institute...[any] action for reconveyance..."[12]

The records show, however, that although under detention, Vicente Tan:

- Commenced, in July, 1976, Civil Case No. 103359 of the defunct Court of First Instance of Manila, "to mandatorily enjoin the Central Bank as receiver of Continental Bank, to takeover from 'NISA' the control and management and assets of Vicente Tan and his affiliate corporations;"[13]
- Was ably represented by competent counsel, Atty. Norberto Quisumbing, throughout;[14]
- Filed with this Court a petition to stop the trial of the criminal cases pending against him with the Military

Commission No. 5 and succeeded in obtaining a temporary restraining order.

On top of those facts abovementioned, he:

- Asked the Court of First Instance to order the Central Bank "to proceed to rehabilitate Continental Bank by extending to it such emergency loans and advances as may be needed for its rehabilitation..."[15]
- Wrote, on July 15, 1977, the Central Bank expressing his approval in the reopening and rehabilitation of Continental Bank.[16]

We are, therefore, convinced, from Vicente Tan's very behavior, that detention was not an impediment to a judicial challenge, and the fact of the matter was that he was successful in obtaining judicial assistance. Under these circumstances, we can not declare detention, or authoritarian rule for that matter, as a fortuitous event insofar as he was concerned, that interrupted prescription.

To be sure, there is nothing in the petition which would remotely suggest, assuming that Vicente Tan could not have freely and intelligently acted during the period of martial rule, that his co-petitioners Victan & Company, Inc., Transworld Investment Corporation, First International Investment Company, Inc., Far East Petroleum & Minerals Corporation, and Philcontrust International Corporation, could not have similarly acted during the martial law regime and shortly thereafter. As far as they are therefore concerned, the Court has even better reason to invoke prescription because none of them acted and none now claims that it could not have acted.

On the question of cause of action, the Court notes that as the complaint itself avers, the petitioners' shares in the Continental Bank were assigned to the firms already above specified (which Herminio Dinisi allegedly controlled), and not to the Central Bank. It is therefore fairly obvious that if any claim for reconveyance may be prosecuted, it should be prosecuted against the Disini companies.

It is true that the Central Bank is alleged to be the "indirect owner,"[17] arising from certain loans supposedly facilitated by the Bank that enabled yet two other companies, the National Development Company and the American Express Bank, to acquire about ninety-nine percent of International Corporate Bank, subject to the conditionality that any transfer of shares shall be approved by the Central Bank. Clearly, however, if the Central Bank were "owner"--which as we shall see, it is not--it is "owner" only because it is preserving its money exposure to the National Development Corporation and the American Express Bank. It is not "owner" for reconveyance purposes, that is, as the trustee holding shares acquired by fraud or mistake. To say now that it is holding those shares as such a trustee, that is, as a result of the takeover of Continental Bank by the Disini companies, in spite of the fact that based on the records the bank now pertains to the NDC and American Express, is a mere conclusion of fact of the petitioners, the plaintiffs in the trial court.

We have held that:

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The subject Amended and Supplemental Complaint fail to meet the test. It should be noted that it charges PNB and NIDC with having assisted in the illegal creation and operation of defendant sugar mill. Granting, for the sake of argument, that, indeed, assistance in the "illegal" act was rendered, the same, however, is not supported by well-pleaded averments of facts. Nowhere is it alleged that defendants-appellees had notice, information or knowledge of any flaw, much less any illegality, in their co-defendants' actuations, assuming that there was such a flaw or illegality. This absence is fatal and buoys up instead the PNB-NIDC's position of lack of cause of action.

Although it is averred that the defendants' acts were done in bad faith, the Complaint does not contain any averment of facts showing that the acts were done in the manner alleged. Such a bare statement neither

establishes any right or cause of action on the part of the plaintiff-appellant. It is a mere conclusion of law not sustained by declarations of facts, much less admitted by defendants-appellees. It does not, therefore, aid in any wise the complaint in setting forth a cause of action. Defendants-appellees are not fairly apprised of the act or acts complained of.[18]

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As we indicated, the fact that the parties had stipulated that any transfer of the Interbank shares by the National Development Company shall be "subject to prior CB approval" does not make the Central Bank the owner. We said, it is a simple conditionality prescribed by the Central Bank in order to protect its money, a conditionality that is prescribed in many loans. It is not as if the arrangement had allowed the Central Bank to hold the Interbank shares in question and had left the National Development Company to act as a front.

In fine, the respondent court did not commit any reversible error.

WHEREFORE, the petition is DENIED. The Complaint in Civil Case No. 15707 of the Regional Trial Court, Branch 134, Makati, Metro Manila, is hereby DISMISSED.

Costs against the petitioners.

IT IS SO ORDERED.

Melencio-Herrera, (Chairman), and Regalado, JJ., concur.

Paras, J., see dissenting opinion.

Padilla, J., no part in the deliberations.

[1] CA-G.R. SP No. 12706; Nocon, Rodolfo, PJ., ponente; Cacdac, Jr., Bonifacio and Victor, Luis, JJ., Concurring.

[2] Decision, rollo, 38-40.

[3] Petition, rollo, 15-16.

[4] Decision, rollo, 41-42.

[5] CIVIL CODE, art. 1146.

[6] Rollo, id., 63-64.

[7] Id., 26.

[8] G.R. No. 85868, October 13, 1989, 178 SCRA 326.

[9] IV PARAS, CIVIL CODE OF THE PHILIPPINES ANNOTATED 30. (1985 ed.)

[10] Id., 58-62.

[11] CIVIL CODE, supra, art. 1154.

[12] Rollo, id., 24.

[13] Id., 275, 322.

[14] Id.; also 322.

[15] Id., 323.

[16] Id., 323-324.

[17] Id., 61.

[18] Bacolod-Murcia Milling Co., Inc. v. First Farmers Milling Co., Inc., Etc., No. L-29041, March 24, 1981, 103 SCRA 436, 441-442.

DISSENTING OPINION

PARAS, J.:

I dissent.

The facts in this case are simple enough: Vicente T. Tan, one of the petitioners herein, was one of the principal stockholders of the former Continental Bank, located in Manila. At the time the Central Bank closed the Continental Bank for alleged bankruptcy, he was a stockholder of said Continental Bank. Because of the closure and incidents attendant thereto, he, among others, filed on January 13, 1987 an action in the Regional Trial Court of Makati asking a) for damages from the Central Bank; and b) for reconveyance of certain deeds of assignment which he had executed in favor of the private respondent. Respondent Central Bank filed a Motion to Dismiss because of a) alleged prescription and laches - regarding the claim for damages and b) the alleged failure of the complaint to state a cause of action against the Central Bank - regarding the action for reconveyance. The Regional Trial Court of Makati, Metro Manila, (Branch 134) denied the motion to dismiss in a resolution penned by Judge Ignacio M. Capulong. However, on appeal, the respondent Court of Appeals reversed the Regional Trial Court in a decision dated April 5, 1989. Hence this petition for review filed by Vicente T. Tan, et al. (who felt aggrieved) before Us purely on two (2) questions of law: a) what is the period for prescription in an action for damages filed against the Central Bank for alleged illegal closure of Continental Bank?; and b) does the complaint in the Regional Trial Court for reconveyance state a cause of action against the Central Bank?

We believe that the petition is meritorious on both counts, that is, a) the complaint filed before the Regional Trial Court had not prescribed, nor was there any laches on the part of petitioner Vicente T. Tan; and b) said complaint actually stated a cause of action against the Central Bank for reconveyance of the deeds of assignment involved in this case.

With reference to prescription, We state that the 10-day period in Sec. 29 of Republic Act 265 is not applicable because to Our mind, said period applies only when the purpose of the action is for the reopening (or for prevention of further closure) of the bank, not in an action for damages for the closure and subsequent actuations of the Central Bank incidental to said closure. The correct period is five (5) years under Art. 1149 of the Civil Code and not four years under Art. 1146 of the same Code. And from this period of five (5) years must be excluded the period during which the action could not be brought because of a force majeure (Art. 1154 of the Civil Code), as exemplified by the dictatorial regime which ruled the Philippines during the past administration. The period of prescription therefore should be counted from February 25, 1986 when the present administration of President Corazon C. Aquino took over the control of the government. The action having been brought on January 13, 1987, it is clear that counted from February 25, 1986, less than a year had elapsed, and therefore the action has not yet prescribed. Moreover, considering the additional fact that petitioner Vicente T. Tan was a detention prisoner up to the end of the former regime, it is likewise clear that he is not guilty of laches. While it may be said cavalier-like, that despite being a detention prisoner, Tan could have filed the action thru his lawyers, this is easier

said than done. Tan knew he had little chance of indication when the highest official of the land seemed to be his mortal enemy.

Anent the claim for reconveyance, it is evident from a reading of the complaint filed in the Regional Trial Court that the execution of the deeds of assignment was precipitated by the alleged illegal closure of the Continental Bank. Whether or not the closure of said bank was really illegal, and whether or not it was the Central Bank's fault that the execution of the deeds had been made is completely beside the point for it should be noted that this entire case was begun by a mere motion to dismiss, hence, there has been no hearing on the merits as yet. And herein lies one of the principal faults of the questioned decision, the resolution of the Court of Appeals, and the majority decision herein, namely, that it dwelt somehow on the merits of the case, particularly on whether or not the Central Bank was actually responsible for the execution of the deeds of assignment. The majority says they cannot understand how the Central Bank "precipitated" the fraudulent transfer to the assignees. This is completely irrelevant. Whether or not there was such a "precipitating," and how this was done, is beside the point. The fact is there is such a charge, such an allegation. Clearly, the complaint by itself states a cause of action. Be it remembered that there is a big difference between failure to state a cause of action and failure to prove lack of a valid cause of action. After all, this case will still be examined thoroughly on the merits after it is brought back to the Regional Trial Court.

I therefore vote for the reversal and setting aside of the appealed decision dated April 5, 1989 and the resolution dated September 20, 1989 both of the Court of Appeals as well as for the remanding of the case to the Regional Trial Court of Makati, Metro Manila, Branch 134 for further proceedings.

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