



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

**APEX HOLDINGS, INC.,
BANCRIGHTS INC., LEAD
BANCFUND HOLDINGS, INC.,
ASIA WIDE REFRESHMENTS
CORPORATION, MEDCO
ASIA INVESTMENT
CORPORATION, ZEST-O
CORPORATION, HARMONY
BANCSHARES HOLDINGS,
INC., EXCALIBUR
HOLDINGS, INC., and
ALFREDO M. YAO,**

Petitioners,

G.R. No. 214866

Present:

CARPIO, *J.*, Chairperson,
PERALTA,
PERLAS-BERNABE,
CAGUIOA, and
REYES, JR., *JJ.*

Promulgated:

02 OCT 2017

- versus -

**BANGKO SENTRAL NG
PILIPINAS and PHILIPPINE
DEPOSIT INSURANCE
CORPORATION,**

Respondents.

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DECISION

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*¹ filed by petitioners Apex Bancrights Holdings, Inc., Lead Bancfund Holdings, Inc., Asia Wide Refreshments Corporation, Medco Asia Investment Corporation, Zest-O Corporation, Harmony Bancshares Holdings, Inc., Excalibur Holdings, Inc., and Alfredo M. Yao (petitioners) assailing the Decision² dated January 21, 2014 and the Resolution³ dated October 10, 2014 of the

¹ *Rollo*, pp. 49-90.

² *Id.* at 9-29. Penned by Associate Justice Eduardo B. Peralta, Jr. with Associate Justices Magdangal M. De Leon and Stephen C. Cruz, concurring.

³ *Id.* at 43-47.

Court of Appeals in CA-G.R. SP No. 129674, which affirmed Resolution No. 571 dated April 4, 2013 of the Monetary Board of respondent *Bangko Sentral ng Pilipinas* (BSP) ordering the liquidation of the Export and Industry Bank (EIB).

The Facts

Sometime in July 2001, EIB entered into a three-way merger with Urban Bank, Inc. (UBI) and Urbancorp Investments, Inc. (UII) in an attempt to rehabilitate UBI which was then under receivership.⁴ In September 2001, following the said merger, EIB itself encountered financial difficulties which prompted respondent the Philippine Deposit Insurance Corporation (PDIC) to extend financial assistance to it. However, EIB still failed to overcome its financial problems, thereby causing PDIC to release in May 2005 additional financial assistance to it, conditioned upon the infusion by EIB stockholders of additional capital whenever EIB's adjusted Risk Based Capital Adequacy Ratio falls below 12.5%. Despite this, EIB failed to comply with the BSP's capital requirements, causing EIB's stockholders to commence the process of selling the bank.⁵

Initially, Banco de Oro (BDO) expressed interest in acquiring EIB. However, certain issues derailed the acquisition, including BDO's unwillingness to assume certain liabilities of EIB, particularly the claim of the Pacific Rehouse Group against it. In the end, BDO's acquisition of EIB did not proceed and the latter's financial condition worsened. Thus, in a letter⁶ dated April 26, 2012, EIB's president and chairman voluntarily turned-over the full control of EIB to BSP, and informed the latter that the former will declare a bank holiday on April 27, 2012.⁷

On April 26, 2012, the BSP, through the Monetary Board, issued Resolution No. 686⁸ prohibiting EIB from doing business in the Philippines and placing it under the receivership of PDIC, in accordance with Section 30 of Republic Act No. (RA) 7653, otherwise known as "The New Central Bank Act."⁹ Accordingly, PDIC took over EIB.¹⁰

In due course, PDIC submitted its initial receivership report to the Monetary Board which contained its finding that EIB can be rehabilitated or permitted to resume business; *provided*, that a bidding for its rehabilitation would be conducted, and that the following conditions would be met: (a)

⁴ See *id.* at 54 and 215.

⁵ *Id.* at 11.

⁶ *Id.* at 302.

⁷ *Id.* at 11.

⁸ See BSP Memorandum No. M-2012-022 dated April 26, 2012 issued by Deputy Governor Nestor A. Espenilla, Jr.

⁹ Approved on June 14, 1993.

¹⁰ *Rollo*, p. 12.

there are qualified interested banks that will comply with the parameters for rehabilitation of a closed bank, capital strengthening, liquidity, sustainability and viability of operations, and strengthening of bank governance; and (b) all parties (including creditors and stockholders) agree to the rehabilitation and the revised payment terms and conditions of outstanding liabilities.¹¹ Accordingly, the Monetary Board issued Resolution No. 1317 on August 9, 2012 noting PDIC's initial report, and its request to extend the period within which to submit the final determination of whether or not EIB can be rehabilitated. Pursuant to the rehabilitation efforts, a public bidding was scheduled by PDIC on October 18, 2012, but the same failed as no bid was submitted. A re-bidding was then set on March 20, 2013 which also did not materialize as no bids were submitted.¹²

On April 1, 2013, PDIC informed BSP that EIB can hardly be rehabilitated.¹³ Based on PDIC's report that EIB was insolvent, the Monetary Board passed Resolution No. 571 on April 4, 2013 directing PDIC to proceed with the liquidation of EIB.¹⁴

On April 29, 2013, petitioners, who are stockholders representing the majority stock of EIB,¹⁵ filed a petition for *certiorari*¹⁶ before the CA challenging Resolution No. 571. In essence, petitioners blame PDIC for the failure to rehabilitate EIB, contending that PDIC: (a) imposed unreasonable and oppressive conditions which delayed or frustrated the transaction between BDO and EIB; (b) frustrated EIB's efforts to increase its liquidity when PDIC disapproved EIB's proposal to sell its MRT bonds to a private third party and, instead, required EIB to sell the same to government entities; (c) imposed impossible and unnecessary bidding requirements; and (d) delayed the public bidding which dampened investors' interest.¹⁷

In defense, PDIC countered¹⁸ that petitioners were already estopped from assailing the placement of EIB under receivership and its eventual liquidation since they had already surrendered full control of the bank to the BSP as early as April 26, 2012.¹⁹ For its part, BSP maintained²⁰ that it had ample factual and legal bases to order EIB's liquidation.²¹

¹¹ See *id.*

¹² See *id.* at 12-13.

¹³ *Id.* at 13.

¹⁴ *Id.*

¹⁵ See *id.* at 157-159.

¹⁶ Dated April 26, 2013. *Id.* at 156-183.

¹⁷ See *id.* at 171-174. See also *id.* at 13-14.

¹⁸ See comment dated June 3, 2013; *id.* at 475-509.

¹⁹ See *id.* at 493.

²⁰ See Comment/Opposition dated June 10, 2013; *id.* at 561-575.

²¹ *Id.* at 562. See also *id.* at 24.

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The CA Ruling

In a Decision²² dated January 21, 2014, the CA dismissed the petition for lack of merit. It ruled that the Monetary Board did not gravely abuse its discretion in ordering the liquidation of EIB pursuant to the PDIC's findings that the rehabilitation of the bank is no longer feasible. In this regard, the CA held that there is nothing in Section 30 of RA 7653 that requires the Monetary Board to make its own independent factual determination on the bank's viability before ordering its liquidation. According to the CA, the law only provides that the Monetary Board "shall notify in writing the board of directors of its findings and direct the receiver to proceed with the liquidation of the institution,"²³ which it did in this case.

Undaunted, petitioners moved for reconsideration²⁴ which was, however, denied by the CA in its Resolution²⁵ dated October 10, 2014; hence, this petition.

The Issue Before the Court

The sole issue before the Court is whether or not the CA correctly ruled that the Monetary Board did not gravely abuse its discretion in issuing Resolution No. 571 which directed the PDIC to proceed with the liquidation of EIB.

The Court's Ruling

The petition is without merit.

Section 30 of RA 7653 provides for the proceedings in the receivership and liquidation of banks and quasi-banks, the pertinent portions of which read:

Section 30. *Proceedings in Receivership and Liquidation.* – Whenever, upon report of the head of the supervising or examining department, the Monetary Board finds that a bank or quasi-bank:

- (a) is unable to pay its liabilities as they become due in the ordinary course of business: *Provided*, That this shall not include inability to pay caused by extraordinary demands induced by financial panic in the banking community;

²² Id. at 9-29.

²³ Id. at 28.

²⁴ See motion for reconsideration dated February 11, 2014; id. at 30-41.

²⁵ Id. at 43-47.

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- (b) has insufficient realizable assets, as determined by the *Bangko Sentral*, to meet its liabilities; or
- (c) cannot continue in business without involving probable losses to its depositors or creditors; or
- (d) has willfully violated a cease and desist order under Section 37 that has become final, involving acts or transactions which amount to fraud or a dissipation of the assets of the institution; in which cases, **the Monetary Board may summarily and without need for prior hearing forbid the institution from doing business in the Philippines and designate the Philippine Deposit Insurance Corporation as receiver of the banking institution.**

x x x x

The receiver shall immediately gather and take charge of all the assets and liabilities of the institution, administer the same for the benefit of its creditors, and exercise the general powers of a receiver under the Revised Rules of Court x x x[.]

If the receiver determines that the institution cannot be rehabilitated or permitted to resume business in accordance with the next preceding paragraph, the Monetary Board shall notify in writing the board of directors of its findings and direct the receiver to proceed with the liquidation of the institution. The receiver shall:

x x x x

The actions of the Monetary Board taken under this section or under Section 29 of this Act shall be final and executory, and may not be restrained or set aside by the court except on petition for *certiorari* on the ground that the action taken was in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction. The petition for *certiorari* may only be filed by the stockholders of record representing the majority of the capital stock within ten (10) days from receipt by the board of directors of the institution of the order directing receivership, liquidation or conservatorship.

The designation of a conservator under Section 29 of this Act or the appointment of a receiver under this section shall be vested exclusively with the Monetary Board. Furthermore, the designation of a conservator is not a precondition to the designation of a receiver. (Emphases and underscoring supplied)

It is settled that “[t]he 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, is subject to judicial inquiry. It may not be exercised 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.”²⁶ Otherwise stated and as culled from the above provision, the actions of the Monetary Board shall be final and executory and may not be restrained or set aside by the court except on petition for *certiorari* on the ground that the action taken was in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction. “There is grave abuse of discretion when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism.”²⁷

In line with the foregoing considerations, the Court agrees with the CA that the Monetary Board did not gravely abuse its discretion in ordering the liquidation of EIB through its Resolution No. 571.

To recount, after the Monetary Board issued Resolution No. 686 which placed EIB under the receivership of PDIC, the latter submitted its initial findings to the Monetary Board, stating that EIB can be rehabilitated or permitted to resume business; *provided*, that a bidding for its rehabilitation would be conducted, and that the following conditions would be met: (a) there are qualified interested banks that will comply with the parameters for rehabilitation of a closed bank, capital strengthening, liquidity, sustainability and viability of operations, and strengthening of bank governance; and (b) all parties (including creditors and stockholders) agree to the rehabilitation and the revised payment terms and conditions of outstanding liabilities.²⁸ However, the foregoing conditions for EIB’s rehabilitation “were not met because the bidding and re-bidding for the bank’s rehabilitation were aborted since none of the pre-qualified Strategic Third Party Investors (STPI) submitted a letter of interest to participate in the bidding,”²⁹ thereby resulting in the PDIC’s finding that EIB is already insolvent and must already be liquidated – a finding which eventually resulted in the Monetary Board’s issuance of Resolution No. 571.

In an attempt to forestall EIB’s liquidation, petitioners insist that the Monetary Board must first make its own independent finding that the bank could no longer be rehabilitated – instead of merely relying on the findings of the PDIC – before ordering the liquidation of a bank.³⁰

Such position is untenable.

²⁶ *Miranda v. PDIC*, 532 Phil. 723, 730 (2006), citing *Banco Filipino Savings and Mortgage Bank v. Monetary Board*, G.R. Nos. 70054, 68878, 77255-58, 78766, 78767, 78894, 81303, 81304, 90473, December 11, 1991, 204 SCRA 767, 798.

²⁷ *City of General Santos v. Commission on Audit*, 733 Phil. 687, 697 (2014).

²⁸ *Rollo*, p. 12.

²⁹ *Id.* at 27.

³⁰ See *id.* at 24. See also *id.* at 79-88.

As correctly held by the CA, nothing in Section 30 of RA 7653 requires the BSP, through the Monetary Board, to make an independent determination of whether a bank may still be rehabilitated or not. As expressly stated in the afore-cited provision, once the receiver determines that rehabilitation is no longer feasible, the Monetary Board is simply obligated to: (a) notify in writing the bank's board of directors of the same; and (b) direct the PDIC to proceed with liquidation, viz.:

If the receiver determines that the institution cannot be rehabilitated or permitted to resume business in accordance with the next preceding paragraph, the Monetary Board shall notify in writing the board of directors of its findings and direct the receiver to proceed with the liquidation of the institution. x x x.

x x x x³¹

Suffice it to say that if the law had indeed intended that the Monetary Board make a separate and distinct factual determination before it can order the liquidation of a bank or quasi-bank, then there should have been a provision to that effect. There being none, it can safely be concluded that the Monetary Board is not so required when the PDIC has already made such determination. It must be stressed that the BSP (the umbrella agency of the Monetary Board), in its capacity as government regulator of banks, and the PDIC, as statutory receiver of banks under RA 7653, are the principal agencies mandated by law to determine the financial viability of banks and quasi-banks, and facilitate the receivership and liquidation of closed financial institutions, upon a factual determination of the latter's insolvency.³² Thus, following the maxim *verba legis non est recedendum* – which means “from the words of a statute there should be no departure” – a statute that is clear, plain, and free from ambiguity must be given its literal meaning and applied without any attempted interpretation,³³ as in this case.

In sum, the Monetary Board's issuance of Resolution No. 571 ordering the liquidation of EIB cannot be considered to be tainted with grave abuse of discretion as it was amply supported by the factual circumstances at hand and made in accordance with prevailing law and jurisprudence. To note, the “actions of the Monetary Board in proceedings on insolvency are explicitly declared by law to be ‘final and executory.’ They may not be set aside, or restrained, or enjoined by the courts, except upon ‘convincing proof that the action is plainly arbitrary and made in bad faith,’”³⁴ which is absent in this case.

³¹ See Section 30, RA 7653.

³² See *Miranda v. PDIC*, supra note 24 at 731.

³³ See *Bolos v. Bolos*, 648 Phil. 630, 637 (2010), citing *Padua v. People*, 581 Phil. 489, 500-501 (2008).

³⁴ *Miranda v. PDIC*, supra note 24, at 731, citing *Central Bank of the Philippines v. De la Cruz*, 269 Phil. 365, 374 (1990).

WHEREFORE, the petition is hereby **DENIED**. The Decision dated January 21, 2014 and the Resolution dated October 10, 2014 of the Court of Appeals in CA-G.R. SP No. 129674 are hereby **AFFIRMED**.

SO ORDERED.

MP. Bernabe
ESTELA M. BERLAS-BERNABE
Associate Justice

WE CONCUR:

Antonio T. Carpio
ANTONIO T. CARPIO
Associate Justice

Diosdado M. Peralta
DIOSDADO M. PERALTA
Associate Justice

Alfredo Benjamin S. Caguioa
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

Reyes
ANDRES B. REYES, JR.
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Antonio T. Carpio
ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**MARIA LOURDES P. A. SERENO**

Chief Justice