Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

GRANDHOLDINGS INVESTMENTS (SPV-AMC), INC.,
Petitioner,

- versus -

COURT OF APPEALS, TJR INDUSTRIAL CORPORATION, PETER C. YU, CONCEPCION C. YU, ANTONIO SIAO INHOK and THELMA SIAO INHOK,
Respondents.

G.R. No. 221271

Present:

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

Promulgated:

19 JUN 2019

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DECISION

REYES, J. JR., *J.*:

This is a Petition for *Certiorari* under Rule 65 of the Rules of Court seeking to annul the Resolutions dated April 21, 2015[1] and September 9, 2015[2] of the Court of Appeals (CA) in CA-G.R. CV No. 96926, *"Philippine National Bank v. TJR Industrial Corporation,"* denying the motion for substitution filed by Grandholdings Investments (SPV-AMC), Inc. (petitioner), a corporation organized as a special purpose vehicle (SPV) created under Republic Act (R.A.) No. 9182, otherwise known as "The Special Purpose Vehicle Act of 2002."

The instant petition arose from a complaint for sum of money filed by Allied Bank against TJR Industrial Corporation, Peter C. Yu, Concepcion Yu, Antonio Siao Inhok, and Thelma Siao Inhok (private respondents) before the Regional Trial Court (RTC) of Makati City, Branch 136, for failure to

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[1] Penned by Associate Justice Danton Q. Bueser, with Associate Justices Apolinario D. Bruselas, Jr. and Edwin D. Sorongon, concurring; *rollo*, pp. 18-21.

[2] Id. at 23-24.

pay their loan obligations covered by Promissory Note Nos. 9625891, 9700123, 9702681, 9708795, 9708930, and 9711461 (subject PNs) in the total amount of ₱13,800,000.00.[3]

On May 12, 2008, Allied Bank executed a Deed of Assignment[4] assigning to petitioner all its rights, title and interest over its non-performing loans (NPLs) including the subject PNs.

On October 28, 2009, the Bangko Sentral ng Pilipinas (BSP) issued a Certificate of Eligibility (of Non-Performing Assets)[5] stating, among others, that Allied Bank is qualified as a financial institution having non-performing assets (NPAs) in accordance with R.A. No. 9182, as amended by R.A. No. 9343,[6] and its implementing rules and regulations (IRR). The certificate also indicates that the transfer/sale of Allied Bank's NPAs to petitioner has been approved by the BSP and that such transfer appears to be in the nature of a "true sale" under R.A. No. 9182.

On March 29, 2011, the RTC rendered a Decision[7] ordering private respondents to solidarily pay Allied Bank the amount of ₱13,800,000.00 with interest from January 26, 2000 until full payment. On January 17, 2013 Allied Bank merged with the Philippine National Bank, the latter being the surviving entity.

Aggrieved thereby, private respondents appealed before the CA.

In a letter[8] dated April 3, 2014, Rosauro C. Macalagay, General Manager of petitioner, informed TJR Industrial Corporation that petitioner is now the creditor of its loan account in lieu of Allied Bank and demanded payment of the obligation within 30 days from receipt thereof.

During the pendency of the appeal, petitioner filed a Motion for Substitution dated November 11, 2014 pursuant to the Deed of Assignment executed in its favor. Private respondents filed their Opposition (To the Motion for Substitution filed by Grandholdings Investment [SPV-AMC, Inc.]) contending that petitioner cannot be substituted as plaintiff-appellee in the absence of proof that there was compliance with the notice requirement set forth in Section 12(a), Article III of R.A. No. 9182.

On April 21, 2015, the CA denied the motion.

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3 Id. at 27.
4 Id. at 25-26.
5 Id. at 31-33.
6 AN ACT AMENDING REPUBLIC ACT NO. 9182, OTHERWISE KNOWN AS THE SPECIAL PURPOSE VEHICLE ACT OF 2002 FOR THE PURPOSE OF ALLOWING THE ESTABLISHMENT AND REGISTRATION OF NEW SPVS AND FOR OTHER PURPOSES.
7 *Rollo*, pp. 28-30.
8 Id. at 34.

Petitioner moved for the reconsideration of the April 21, 2015 Resolution, but the same was denied in its September 9, 2015 Resolution.

Hence, this Petition for *Certiorari* alleging grave abuse of discretion by the CA in rendering the assailed resolutions on the ground of non-compliance with the notice requirement of R.A. No. 9182.

Petitioner argued that the loan account of TJR Industrial Corporation was validly assigned to it by Allied Bank pursuant to the provisions of R.A. No. 9182 since it was approved by the BSP. It averred that it has shown substantial compliance with the requirements under Section 12, to wit: 1) securing the approval of BSP for the transfer/sale of the account of TJR Industrial Corporation as shown by the certificate of eligibility; and 2) sending a letter-notice to the private respondents' last known address informing them of the fact of the sale and/or transfer of the NPLs. It asserted that by virtue of the valid assignment of NPLs by Allied Bank, it has become a transferee *pendente lite* having the right to be substituted as party-plaintiff in the case.[9]

For their part, private respondents countered that the CA did not gravely abuse its discretion in denying petitioner's motion for substitution since it merely complied with the clear and unequivocal mandate of R.A. No. 9182 that prior notice should be given to borrowers before there can be a valid assignment of NPLs to an SPV. They pointed out that their case is identical to the case of *Asset Pool A (SPV-AMC), Inc. v. Court of Appeals,*[10] where the Court denied the SPV's motion for substitution because it failed to prove compliance with the prior notice requirement.[11] They also noted that petitioner has the burden of proving compliance with the required notice and that it failed to discharge the same.[12] Finally, they stressed that Section 19, Rule 3 of the Rules of Court uses the word "may" indicating that in case of transfer of interest, the substitution of parties is not mandatory. It is therefore discretionary upon the court to allow or disallow the substitution or joinder by the transferee. The private respondents emphasized that the decision of the CA was arrived at in consideration of the law, and hence, may not be assailed.[13]

The petition is meritorious.

An aggrieved party who resorts to the filing of a special civil action for *certiorari* under Rule 65 of the Rules of Court bears the burden to show the jurisdictional error or grave abuse of discretion committed by the public respondent. The Court shall grant the petition and order the annulment or modification of the assailed resolutions, decisions, and/or order of the public

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9 Id. at 9.
10 597 Phil. 663 (2009).
11 Comment and Opposition, *rollo*, pp. 59-60.
12 Id. at 60-61.
13 Id. at 63-64.

respondent only upon a clear demonstration of "capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, such as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross so as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law."[14]

The CA denied petitioner's motion for substitution because no evidence was offered to prove that there was compliance with the prior notice requirement imposed by Section 12 of R.A. No. 9182, which provides:

> SEC. 12. *Notice and Manner of Transfer of Assets.* –
>
> (a) No transfer of NPLs to an SPV shall take effect unless the FI concerned shall give prior notice, pursuant to the Rules of Court, thereof to the borrowers of the NPLs and all persons holding prior encumbrances upon the assets mortgaged or pledged. Such notice shall be in writing to the borrower by registered mail at their last known address on file with the FI. The borrower and the FI shall be given a period of at most ninety (90) days upon receipt of notice, pursuant to the Rules of Court, to restructure or renegotiate the loan under such terms and conditions as may be agreed upon by the borrower and the FIs concerned.
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> (b) The transfer of NPAs from an FI to an SPV shall be subject to prior certification of eligibility as NPA by the appropriate regulatory authority having jurisdiction over its operations which shall issue its ruling within forty-five (45) days from the date of application by the FI for eligibility.
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> (c) After the sale or transfer of the NPLs, the transferring FI shall inform the borrower in writing at the last known address of the fact of the sale or transfer of the NPLs.

The CA emphasized that petitioner did not adduce evidence to prove that private respondents were notified prior to, or even after the execution of the Deed of Assignment. Consequently, the transfer of the NPLs to petitioner cannot take effect. In so ruling, the CA appears to have overlooked Section 12(a) of the law which explicitly imposes upon the financial institution concerned (Allied Bank) the duty to inform its borrowers (private respondents) about the transfer of the NPLs. It is a condition that the transferring financial institution should first satisfy for the deed of assignment to fully produce legal effects. Hence, contrary to private respondents' contention, petitioner is under no obligation to notify the borrowers of the impending transfer of NPLs considering that it merely assumes the rights and obligations of Allied Bank in collecting and restructuring its NPLs. The duty to conform to the notice requirement rests

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[14] *Tua v. Mangrobang*, 725 Phil. 208, 223 (2014).

solely upon the financial institution concerned which conveyed its NPLs to the SPV. It is Allied Bank which carries the burden of proving that its borrowers have been acquainted with the terms of the deed of assignment, as well as the legal effect of the transfer of the NPLs.

We now come to the question: Did Allied Bank give prior notice to its borrowers about the transfer of the NPLs?

The existence of the certificate of eligibility in favor of Allied Bank supports an answer in the affirmative.

It bears to stress that in this case, petitioner has in its possession the Certificate of Eligibility (of Non-Performing Assets) issued by the BSP to Allied Bank. A certificate of eligibility refers to the document issued to banks and non-bank financial institutions performing quasi-banking functions (NBQBs) by the appropriate regulatory authority having jurisdiction over their operations as to the eligibility of their NPLs or real and other properties owned or acquired in settlement of loans and receivables for purposes of availing of the tax exemptions and privileges granted by R.A. No. 9182.[15] Before a bank or NBQB can transfer its NPAs to an SPV, it is required to file an application for eligibility of said NPAs in accordance with SPV Rule 12 of "The Implementing Rules and Regulations of the Special Purpose Vehicle (SPV) Act of 2002." The rule states:

> SPV Rule 12 – Notice and Manner of Transfer of Assets
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> x x x x
>
> (b) *Procedures on the Transfer of Assets to the SPV*
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> An FI that intends to transfer its NPAs to an SPV shall file an application for eligibility of said NPAs, in the prescribed format, with the Appropriate Regulatory Authority having jurisdiction over its operations. Said application shall be filed for each transfer of asset/s.
>
> The application by the FI for eligibility of its NPAs proposed to be transferred to an SPV shall be accompanied by a certification from the FI that:
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> (1) the assets to be sold/transferred are NPAs as defined under the SPV Act of 2002;
>
> (2) the proposed sale/transfer of said NPAs is under a True Sale;

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[15] THE IMPLEMENTING RULES AND REGULATIONS OF THE SPECIAL PURPOSE VEHICLE (SPV) ACT OF 2002, Rule 3(f) <www.bsp.gov.ph/regulations/laws/SPAV_IRR.pdf> (visited June 14, 2019).

(3) the notification requirement to the borrowers has been complied with; and

(4) the maximum 90-day period for renegotiation and restructuring has been complied with.

The above certification from the transferring FI shall be signed by a senior officer with a rank of at least Senior Vice President or equivalent provided such officer is duly authorized by the FI's board of directors; or the Country Head, in the case of foreign banks.

Items 3 and 4 above shall not apply if the NPL has become a ROPOA after June 30, 2002.

The application may also be accompanied by a certification from an independent auditor acceptable to the Commission in cases of financing companies and investment houses under [Rule 3(a)(3)] or from the Commission on Audit in the case of GFIs or GOCCs, that the assets to be sold or transferred are NPAs as defined under the Act. (Underscoring supplied)

On May 11, 2006, the BSP issued Memorandum No. M-2006-001[16] reiterating the above procedure and providing for specific guidelines for the grant of certificate of eligibility. Relevant portion of the Memorandum is quoted hereunder:

x x x x

4. The application shall be accompanied by a written certification signed by a senior officer with a rank of at least Senior Vice President or equivalent, who is authorized by the board of directors, or by the country head, in the case of foreign banks, that:

a. the assets to be sold/transferred are NPAs as defined under the SPV Act of 2002;

b. the proposed sale/transfer of said NPAs is under a true sale;

c. the notification requirement to the borrowers has been complied with; and

d. the maximum 90-day period for renegotiation and restructuring has been complied with.

Items c and d above shall not apply if the NPL has become a ROPOA after 30 June 2002. (Underscoring supplied)

It can be gleaned from the foregoing that the certificate of eligibility shall only be issued upon compliance with the requirements laid down in the

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[16] <www.bsp.gov.ph/regulations/regulations.asp?type=3&id=854> (visited June 14, 2019).

IRR and in Memorandum No. M-2006-001, one of which is that the application must be accompanied by a certification signed by the duly authorized officer of the bank or the NBQB that: 1) the assets to be transferred are NPAs; 2) the proposed transfer is under a true sale; 3) prior notice has been given to the borrowers; and that 4) the borrowers were given 90 days to restructure the loan with the bank or NBQB. Failure to comply with the requirements and adhere to the procedural guidelines will preclude the BSP from issuing the corresponding certificate of eligibility. Thus, it does not go against logic and reason to conclude that with the issuance of the certificate of eligibility, Allied Bank observed all the conditions, including the prior written notice requirement, and submitted all the necessary documents required by the SPV Law and its IRR. Ultimately, the transfer of the NPLs is valid and effective, and, thus, raised petitioner to the status of a transferee *pendente lite*.

True, the substitution of parties on account of a transfer of interest is not mandatory. Section 19, Rule 3 of the Rules of Court provides:

> SEC. 19. *Transfer of interest.* – In case of any transfer of interest, the action **may** be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. (Emphasis supplied)

The word "may" reflects the wide latitude and considerable leeway given to the court in ascertaining the propriety of substituting a party by another on account of a transfer of interest. Whether or not a change or substitution of party can take place is left to the sound discretion of the court. In *Heirs of Francisca Medrano v. De Vera*,[17] the Court even enunciated that the trial court is afforded such discretion because, after all, the interest of the transferee is already sufficiently represented and safeguarded by the participation of the transferor in the case. The Court expounded on the nature of a transferee *pendente lite*'s interest in *Cameron Granville 3 Asset Management, Inc. v. Chua*:[18]

> Indeed, a transferee *pendente lite* is a proper party that stands exactly in the shoes of the transferor, the original party. Transferees are bound by the proceedings and judgment in the case, such that there is no need for them to be included or impleaded by name. We have even gone further and said that the transferee is joined or substituted in the pending action by operation of law from the exact moment when the transfer of interest is perfected between the original party and the transferee.
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> Nevertheless, "[w]hether or not the transferee should be substituted for, or should be joined with, the original party is largely a matter of discretion." That discretion is exercised in pursuance of the paramount

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[17] 641 Phil. 228, 242 (2010).
[18] 795 Phil. 116, 123-124 (2016).

> consideration that must be afforded for the protection of the parties' interests and right to due process.

However, it is equally true that the discretionary nature of allowing the substitution or joinder by the transferee demands that the court's determination must be well-within the sphere of law, guided by applicable statutory principles, and supported by factual and legal bases.

The CA, in denying petitioner's motion for substitution, followed the ruling in *Asset Pool A (SPV-AMC), Inc. v. Court of Appeals*[19] which held:

> As the notice requirement under Section 12[,] Article III of the SPV Law was not amended, the same was still necessary to effect transfer of Non-Performing Loans to an SPV, like petitioner, to be effective. There being no compliance with such notice requirement at the time of the assignment to petitioner of the subject PN during the effectivity of the SPV [L]aw, as amended, it could not substitute BPI as party plaintiff-appellee. The appellate court's denial of petitioner's Motion was thus not attended with grave abuse of discretion. (Underscoring supplied)

The *Asset Pool* case bears apparent parallelism to the case at bench in that the SPVs in both cases did not adduce evidence to prove that the borrowers were notified prior to, or even after the execution of the deed of assignment. But the similarity ends there as the facts obtaining in this case are not on all fours with the *Asset Pool* case.

In *Asset Pool*, the CA gave weight to the fact that the SPV failed to prove that the bank filed an application for eligibility as NPA of the borrower's loan. It also failed to establish that the bank had given its borrowers a period of 90 days to restructure or renegotiate its loan. This, however, is in stark contrast with the instant case since petitioner was able to present the certificate of eligibility issued by the BSP recognizing Allied Bank's NPAs and approving their transfer/sale in favor of petitioner. The fact that Allied Bank was able to procure a certificate of eligibility of NPAs is a positive *indicia* that it has complied with all the conditions for its issuance and negates private respondents' allegation of absence of prior notice of the transfer/sale of the NPLs. Accordingly, the deed of assignment is valid; petitioner steps into the shoes of Allied Bank and succeeds to its rights and interests as private respondents' creditor. As such, petitioner has a valid right to ask the court that it be substituted as party-plaintiff especially when it sees that it would be able to better protect its interest if it would be named as party-plaintiff in the case.

Clearly, the CA committed grave abuse of discretion when it denied petitioner's motion for substitution.

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[19] Supra note 10, at 667.

WHEREFORE, the petition is **GRANTED.** The Resolutions dated April 21, 2015 and September 9, 2015 of the Court of Appeals in CA-G.R. CV No. 96926 are **REVERSED** and **SET ASIDE**.

SO ORDERED.

JOSE C. REYES, JR.
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

AMY C. LAZARO-JAVIER
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
Senior Associate Justice
Chairperson, Second Division

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.

LUCAS P. BERSAMIN
Chief Justice