G.R. No. 217938 – PHILIPPINE VETERANS BANK, substituted by EAST WEST BANKING CORP., *Petitioner*, *v.* **BANK OF COMMERCE**, *Respondent*.

G.R. No. 217945 – COLLEGE ASSURANCE PLAN PHILIPPINES, INC., *Petitioner*, *v.* **BANK OF COMMERCE**, *Respondent*.

Promulgated:

SEP 15 2021

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CONCURRING OPINION

PERLAS-BERNABE, *J.*:

I concur.

As correctly ruled by the *ponencia*, the Court of Appeals (CA) committed a reversible error when it treated the Bangko Sentral ng Pilipinas' (BSP) belated issuance of its letter[1] dated November 14, 2011 (denial letter) as a supervening event which would render the execution of the final and executory Orders dated April 24, 2008[2] and September 24, 2008[3] of the Regional Trial Court of Makati City, Branch 149 (Rehabilitation Court) "unjust, impossible, or inequitable," Accordingly, the immutability of the final judgment which was already executed in this case must remain undisturbed.

It is well-settled that the "principle of immutability of final judgments demands that once a judgment has become final, the winning party should not, through a mere subterfuge, be deprived of the fruits of the verdict. There are, however, recognized exceptions to the execution as a matter of right of a final and immutable judgment, one of which is the existence of a supervening event. '*A supervening event is a fact which transpires or a new circumstance which develops after a judgment has become final and executory*. This includes matters which the parties were unaware of prior to or during trial because they were not yet in existence at that time.' To be sufficient to stay or stop the execution, ***a supervening event must create a substantial change in the rights or relations of the parties which would render execution of a final judgment unjust, impossible or inequitable*** making it imperative to stay immediate execution in the interest of justice."[4]

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1 See *ponencia*, pp. 6-7.

2 See id. at 2-3.

3 See id. at 5.

4 *Remington Industrial Sales Corporation v Maricalum Mining Corporation*, 761 Phil. 284, 294 (2015); citations omitted.

Thus, to properly invoke the exception on supervening events, two things must be shown: (*a*) the fact constituting the supervening event must have transpired after the judgment has become final and executory, and should not have existed prior to such finality; and (*b*) **such event affects or changes the substance of the judgment and renders its execution inequitable**.[5]

In this regard, case law further instructs that **the party who alleges a supervening event to stay the execution should necessarily establish the facts by competent evidence; otherwise, it would become all too easy to frustrate the conclusive effects of a final and immutable judgment**.[6]

In this case, while the BSP's issuance of the denial letter indeed occurred after the Rehabilitation Court's assailed Orders had become final and executory and hence, "supervening" on this limited score, the said event **does not affect nor change the substance of the judgment so as to render its execution inequitable**. In fact, it is the reverse – to undo the already executed judgment in this case would result into an unjust and inequitable scenario, for the following reasons:

First, the execution of the Rehabilitation Court's final judgment was premised upon the guidance of the BSP itself that should it not issue any advice against the payment of accrued interest within 30 days from the bank's request for clearance, then the same shall be deemed approved.[7] As records disclose, it was roughly two (2) years from the time Bank of Commerce (BOC) requested BSP for clearance that the latter only issued the denial letter. Hence, during the interim, the parties already set up a Sinking Fund and signed an Escrow Agreement to facilitate the payment of such accrued interests. All of these incidents were clearly undertaken upon a reliance on the BSP's own effective representation (through its non-reply) that the release of the interests had no issues and hence, deemed approved.

Second, the BSP's denial letter is premised on the claim that BOC "had been reporting negative surplus/retained earnings due to the huge losses it incurred from its holdings of structured products, among others." However, no evidence was submitted to substantiate this allegation. Worse, BOC had previously admitted in July 2008 that it had "sufficient surplus and profits to pay the subject x x x interest."[8] The mere statement of BOC's alleged poor financial condition, without any proof whatsoever – and further coupled with an earlier admission to the contrary – negate any supposed deviation from the time-honored immutability rule. To reiterate, case law requires that "the party who alleges a supervening event to stay the execution should necessarily

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5 See *Mercury Drug Corporation v. Spouses Huang*, 817 Phil. 434, 454 (2017); citations omitted.

6 *Lomondot v. Balindong*, 763 Phil. 617 (2015), citing *Abrigo v. Flores*, 711 Phil. 251 (2013).

7 In a letter dated September 9, 2008 to the Rehabilitation Court, the BSP expressly stated that the proper procedure for the payment of such interest is as follows: *first*, the bank concerned must submit a report to the BSP requesting for clearance; and *second*, if the BSP does not issue any advice against such payment within 30 baking days from submission of the report, then the bank may already announce, and thereafter, proceed with said payment. (See *ponencia*, pp. 4-5)

8 *Rollo*, p. 95.

establish the facts by competent evidence; otherwise, it would become all too easy to frustrate the conclusive effects of a final and immutable judgment."[9]

Third, it is undisputed that the funds placed in escrow subject of BOC's appeal to the CA (*i.e.*, the ₱90,703,943.92, which, in turn, is the sole amount subject of the present petition) **were already released to College Assurance Plan Philippines, Inc. (CAP), which in turn, distributed the same to its policyholders.** The Court must not lose sight of the fact that CAP's policyholders availed of CAP's pre-need plans in order to fund their children's educational expenses. Logically, these amounts would have already been expended for the payment of tuition fees and other enrollment costs. As such, to affirm the CA's ruling is to punish the policyholders, who are parents that have entrusted their precious savings to CAP in the hopes of securing their children's future through education. Despite CAP's widely publicized downfall, CAP underwent Rehabilitation proceedings and, together with Philippine Veterans Bank, sought to recover as much as they could for the benefit of these individuals. These efforts bore fruit in the tune of ₱90,703,943.92 which were already released to the policyholders.

In view of the foregoing considerations, I vote to **GRANT** the instant petitions, and accordingly, **REVERSE** and **SET ASIDE** the Decision dated September 30, 2014 and the Resolution dated April 16, 2015 of the Court of Appeals in CA-G.R. SP No. 130076.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice

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9 *Lomondot v. Balindong*, 763 Phil. 617 (2015), citing *Abrigo v. Flores*, 711 Phil. 251 (2013).