



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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THIRD DIVISION

PHILIPPINE DEPOSIT INSURANCE CORPORATION, **G.R. No. 273001**
INSURANCE CORPORATION,

Petitioner, Present:

CAGUIOA, J., *Chairperson,*
 INTING,
 GAERLAN,
 DIMAAMPAO, and
 SINGH, JJ.

- versus -

APOLONIA L. ILIO and ARLAN T. JURADO, Promulgated:

Respondents. October 21, 2024

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D E C I S I O N

INTING, J.:

This resolves the Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court filed by Philippine Deposit Insurance Corporation (PDIC), the statutory receiver of LBC Development Bank (LBC Bank), assailing the Decision² dated November 13, 2023, and Resolution³ dated March 21, 2024, of the Court Appeals (CA) in CA-G.R. SP No. 168121 which dismissed the Petition for Review filed by PDIC and affirmed *in*

¹ *Rollo*, pp. 10–40.

² *Id.* at 50–69. Penned by Associate Justice Jennifer Joy C. Ong and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Geraldine C. Fiel-Macaraig of the Fourth Division, Court of Appeals, Manila.

³ *Id.* at 71–73. Penned by Associate Justice Jennifer Joy C. Ong and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Geraldine C. Fiel-Macaraig of the Fourth Division, Court of Appeals, Manila.

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toto the Resolution⁴ dated January 22, 2021 of the Monetary Board of the Bangko Sentral ng Pilipinas (BSP).

The BSP Monetary Board denied PDIC's appeal for lack of merit and affirmed the Resolutions dated March 6, 2018,⁵ and September 14, 2017,⁶ of the Office of Special Investigation of the BSP (OSI-BSP).

Antecedents

LBC Bank is an affiliate of LBC Express, Inc. (LBC Express). Their parent company was LBC Development Corporation and has interlocking directors from 2005 to 2010, namely: Santiago G. Araneta (Santiago), Juan Carlos G. Araneta (Juan Carlos), Fernando G. Araneta (Fernando), Carlos G. Araneta (Carlos), and Joseph Jeffrey B. Rodriguez (Rodriguez).⁷

In 2005, LBC Bank and LBC Express entered into a Remittance Service Agreement (RSA) which was annually renewed and amended accordingly until LBC Bank's closure in 2011. Under the RSA, LBC Bank would service the remittance transactions for and on behalf of LBC Express through its facility structure and Automated Teller Machine network. In return, LBC Express would pay service fees for every remittance transaction at the rates fixed by the parties. The service fees were covered by monthly billing statements prepared and signed by Arlan T. Jurado (respondent Jurado), a cashier at the LBC Bank's Treasury Department, and countersigned by Ofelia F. Cuevas (Cuevas), the Head of the Treasury Department.⁸

PDIC alleged that the Board of Directors and officers of LBC Bank never enforced payment from LBC Express from January 2005 to August 2011 and as a result, LBC Express' unpaid service fees ballooned to PHP 1,824,686,644.00, excluding interest, penalties, and or surcharges. It further argued that the net income of LBC Express steadily grew through

⁴ *Id.* at 970–980. Penned by BSP Senior Assistant Governor and General Counsel Elmore O. Capule.

⁵ *Id.* at 936–952. Penned by Legal Officer IV Russell I. Gerona and recommended by Deputy Directors Michael C. Fonacier and Marie Sally Grace K. Quirino. Approved by Director Jose R. Fajardo.

⁶ *Id.* at 906–928. Penned by Legal Officer IV Russell I. Gerona and recommended by Deputy Directors Michael C. Fonacier and Marie Sally Grace K. Quirino. Approved by Director Jose R. Fajardo.

⁷ *Id.* at 908.

⁸ *Id.* at 51–52.

the unyielding assistance and at the expense of LBC Bank, which reported losses in its 2009 Audited Financial Statements (AFS).⁹

Due to LBC Bank's failure to enforce payment of service fees due from LBC Express, PDIC filed an administrative complaint for violation of Section 21(f)¹⁰ of Republic Act No. 3591,¹¹ as amended¹² (PDIC Charter), in relation to BSP Circular No. 341,¹³ series of 2002, as amended by BSP Circular No. 640,¹⁴ series of 2009, against the aforementioned interlocking directors of the two corporations and the following bank officers of LBC Bank: (1) Ma. Eliza G. Berenguer (Berenguer), the Chairman, President and Chief Executive Officer of LBC Bank; (2) Cuevas; (3) respondent Jurado; and (3) respondent Apolonia L. Ilio (respondent Ilio).¹⁵ According to PDIC, their acts or omissions caused undue injury and material loss to LBC Bank's depositors and creditors.¹⁶

⁹ *Id.* at 53.

¹⁰ (f) The penalty of *prision mayor* or a fine of not less than Fifty thousand pesos (P50,000.00) but not more than Two million pesos (P2,000,000.00), or both, at the discretion of the court, shall be imposed upon any director, officer, employee or agent of a bank:

- 1) for any willful refusal to submit reports as required by law, rules and regulations;
- 2) any unjustified refusal to permit examination and audit of the deposit records or the affairs of the institution;
- 3) any willful making of a false statement or entry in any bank report or document required by the Corporation;
- 4) submission of false material information in connection with or in relation to any financial assistance of the Corporation extended to the bank;
- 5) splitting of deposits or creation of fictitious loans or deposit accounts.
Splitting of deposits occurs whenever a deposit account with an outstanding balance of more than the statutory maximum amount of insured deposit maintained under the name of natural or juridical persons is broken down and transferred into two or more accounts in the name/s of natural or juridical persons or entities who have no beneficial ownership on transferred deposits in their names within thirty (30) days immediately preceding or during a bank-declared bank holiday, or immediately preceding a closure order issued by the Monetary Board of the Bangko Sentral ng Pilipinas for the purpose of availing of the maximum deposit insurance coverage;
- 6) refusal to allow the Corporation to takeover a closed bank placed under its receivership or obstructing such action of the Corporation;
- 7) refusal to turn over or destroying or tampering bank records;
- 8) fraudulent disposal, transfer or concealment of any asset, property or liability of the closed bank under the receivership of the Corporation;
- 9) violation of, or causing any person to violate, the exemption from garnishment, levy, attachment or execution provided under this Act and the New Central Bank Act;
- 10) *any willful failure or refusal to comply with, or violation of any provision of this Act, or commission of any other irregularities and/or conducting business in an unsafe or unsound manner as may be determined by the Board of Directors* (Italics supplied)

¹¹ Charter of the Philippine Deposit Insurance Corporation. Approved on June 22, 1963.

¹² Amended by Republic Act No. 9302. Approved on July 27, 2004.

¹³ Deposit-Related Activities Which May Be Considered Unsafe and/or Unsound Banking Practices. Approved on August 6, 2002.

¹⁴ Activities Which May Be Considered Unsafe and Unsound Banking Practices. Approved on January 16, 2009.

¹⁵ *Rollo*, p. 906.

¹⁶ *Id.* at 909.

In her counter-affidavit dated June 20, 2016, respondent Ilio stated that she was the Head of the Finance Department of LBC Bank from 2006 until she was promoted to become the Vice President of the Finance Department sometime in 2009. She stressed that the Finance Department was not in charge of the billing and collection of service fees from LBC Express and that she was not involved in the negotiation and execution of the RSAs with LBC Express. She, however, recalled that LBC Express paid service fees every year and that based on a Consolidated Statement of Account dated July 6, 2011, its unpaid service fees as of May 2011 was PHP 665,819.80 while the current charges for June 2011 amounted to PHP 507,604.16 for a total amount of PHP 1,173,423.96.¹⁷ Stated otherwise, respondent Ilio questioned the correctness of the unpaid service fees as alleged by PDIC.

Meanwhile, respondent Jurado stated in his counter-affidavit dated June 20, 2016, that: (1) he was the supervisor at the Treasury Department of LBC Bank from September 2004 to September 2011; (2) his immediate supervisor was Cuevas; (3) the Treasury Department prepared billing statements for LBC Express from January 2005 to August 2011 for service fees under the RSA; (4) he prepared and signed the billing statements based on the instructions of Cuevas; (5) the collection and monitoring of service fees due from LBC Express was not the responsibility of the Treasury Department; and (6) he had no involvement in the execution of the RSAs.¹⁸

Ruling of the OSI-BSP

In the Resolution dated September 14, 2017, the OSI-BSP found *prima facie* case against Berenguer together with the interlocking directors of LBC Bank and LBC Express but dismissed the administrative complaint against Cuevas and respondents Ilio and Jurado for insufficiency of evidence. The dispositive portion read:

WHEREFORE, premises considered, this Office finds the existence of *prima facie* case, and hereby recommends that FORMAL CHARGES be FILED, against respondent directors Juan Carlos G. Araneta, Santiago G. Araneta, Fernando G. Araneta, Carlos G. Araneta, Ma. Eliza G. Berenguer and Joseph Jeffrey B. Rodriguez of LBC Development Bank, for violation of Section 56 of R.A. No. 8791, in relation to BSP Circular No. 341, Series of 2002, as amended, when

¹⁷ *Id.* at 911–912.

¹⁸ *Id.* at 912.

they omitted and/or failed to enforce payment of service fees against LBC Express, Inc., thereby conducting the business of banking in an unsafe or unsound manner.

The administrative complaint against respondent officers Ofelia F. Cuevas, Apolonio L. Ilio and Arlan T. Jurado, former officers of LBC Development Bank, are hereby DISMISSED for insufficiency of evidence.¹⁹

The OSI-BSP ruled that the omission of the directors of LBC Bank to cause the collection of unpaid service fees against LBC Express caused undue injury to the bank and gave unwarranted benefits to LBC Express. Anent the bank officers in the case, however, the OSI-BSP held that there is no sufficient evidence to hold them administratively liable.²⁰

According to OSI-BSP, bank officers shall promote good governance by ensuring that policies approved by the Board of Directors and adopted across the bank, citing Section 142.3²¹ of the BSP's 2016 Manual of Regulations for Banks (2016 MorB). Thus, it held that bank officers cannot be expected to do what the Board of Directors did not set and approve, which is in the case, the vigorous enforcement of unpaid service fees against LBC Express.²²

PDIC, Juan Carlos, Santiago, Fernando, and Rodriguez moved for the reconsideration of the OSI-BSP's Resolution dated September 14, 2014, but the latter denied their respective motions in the Resolution dated March 6, 2018.

¹⁹ *Id.* at 925–927.

²⁰ *Id.* at 923–925.

²¹ § X142.3 *Duties and responsibilities of officers.*

(1) To set the tone of good governance from the top. Bank officers shall promote the good governance practices within the bank by ensuring that policies on governance as approved by the board of directors are consistently adopted across the bank.

(2) To oversee the day-to-day management of the bank. Bank officers shall ensure that bank's activities and operations are consistent with the bank's strategic objectives, risk strategy, corporate values and policies as approved by the board of directors. They shall establish a bank-wide management system characterized by strategically aligned and mutually reinforcing performance standards across the organization.

(3) To ensure that duties are effectively delegated to the staff and to establish a management structure that promotes accountability and transparency. Bank officers shall establish measurable standards, initiatives and specific responsibilities and accountabilities for each bank personnel. Bank officers shall oversee the performance of these delegated duties and responsibilities and shall ultimately be responsible to the board of directors for the performance of the bank.

(4) To promote and strengthen checks and balances systems in the bank. Bank officers shall promote sound internal controls and avoid activities that shall compromise the effective dispense of their functions. Further, they shall ensure that they give due recognition to the importance of the internal audit, compliance and external audit functions.

²² *Rollo*, p. 925.

Unconvinced, PDIC filed an appeal with the BSP Monetary Board.²³

Ruling of the BSP Monetary Board

In the Resolution dated January 22, 2021, the BSP Monetary Board denied PDIC's appeal for lack of merit. It held that the corporate powers of a bank shall be exercised, its business conducted, and all its property, shall be controlled and held by its Board of Directors.

The BSP Monetary Board noted that Cuevas and respondents Ilio and Jurado were only officers of LBC Bank; thus, they cannot be expected to enforce and collect payments of service fees without specific instructions from the bank's Board of Directors. The BSP Monetary Board found that there is no evidence that Cuevas, and respondents Ilio and Jurado, have authority to file a collection suit against LBC Express.²⁴

Still unconvinced, PDIC filed a Petition for Review under Rule 43 of the Rules of Court with the CA assailing the Resolution dated January 22, 2021, of the BSP Monetary Board.

Ruling of the CA

In the Decision dated November 13, 2023, the CA denied PDIC's petition and affirmed the assailed BSP Monetary Board Resolution *in toto*. The CA ruled that as bank officers of LBC Bank, Cuevas and respondents Ilio and Jurado cannot question the wisdom of the LBC Board of Directors' policies which are presumed to have been made in accordance with sound corporate practices and governance. Thus, they cannot be personally faulted for LBC Bank's failure to collect unpaid service fees from LBC Express under the RSA.²⁵

The CA noted that the late Cuevas regularly informed the LBC Board of Directors about the unpaid service fees of LBC Express, however, such information remained unheeded, and no action was done

²³ *Id.* at 970.

²⁴ *Id.* at 978-980.

²⁵ *Id.* at 67.

by the LBC Board of Directors. Considering that PDIC failed to proffer evidence that respondents Ilio and Jurado were in charge of enforcing the RSA, the CA found no compelling reason to depart from the ruling of the BSP Monetary Board.²⁶

PDIC sought reconsideration of the CA's Decision, but the CA denied it in the Resolution dated March 21, 2024.

Hence, the present petition.

PDIC's Arguments

PDIC contends that the CA failed to recognize that bank officers have the duty (1) to uphold the inherent fiduciary obligations of a bank to the public and (2) to promote and strengthen the checks and balances systems in a bank independent of the specific policies set by the Board of Directors. Even assuming that respondents Ilio and Jurado have no obligation and authority to enforce the RSAs, their continued failure to report the unpaid billings constitutes *prima facie* evidence for administrative liability.²⁷

Issue

The core issue for the Court's resolution is whether the CA erred in affirming the assailed Resolution of the BSP Monetary Board *in toto*, which in turn, affirmed the Resolutions of the OSI-BSP finding that there is no *prima facie* case to hold respondents Ilio and Jurado administratively liable for the violation of Section 21(f) of PDIC Charter, in relation to BSP Circular Nos. 341, series of 2002, and 640, series of 2009.

Ruling of the Court

After review, the Court resolves to DENY the petition for lack of merit.

²⁶ *Id.* at 67-68.

²⁷ *Id.* at 23-24.

It is settled that a Rule 45 petition should only raise questions of law as the Court is not a trier of fact.²⁸ “A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts.”²⁹

The issue as to whether there is *prima facie* evidence to hold respondents Ilio and Jurado administratively liable for violation of Section 21(f) of PDIC Charter, in relation to BSP Circular Nos. 341, series of 2002, and 640, series of 2009 is a question of fact as it calls for the Court’s review of the evidence presented before the BSP. Thus, this factual question is beyond the scope of a Rule 45 petition.

More, the CA aptly ruled that as bank officers, respondents Ilio and Jurado cannot be faulted for LBC Bank’s failure to collect its unpaid service fees against LBC Express, i.e., filing of a collection suit.

Under Section 141.3³⁰ of the 2016 MorB (now Section 132³¹ of the 2021 MoRB), a bank can only exercise its corporate powers through its board of directors. Verily, distinction must be made between the board of directors of a bank and mere bank officers, such as respondents Ilio and Jurado.

It is elementary that “the power of a corporation to sue and be sued in any court is lodged with the board of directors that exercises its corporate powers”³²—“an individual corporate officer cannot solely exercise any corporate power pertaining to the corporation without authority from the board of directors.”³³ By no stretch of imagination

²⁸ *Alberto v. Spouses Flores*, 896 Phil. 625, 631 (2021).

²⁹ *Leoncio v. Vera*, 569 Phil 512, 516 (2008).

³⁰ § X141.3 Powers/responsibilities and duties of directors.

a. *Powers of the board of directors.* The corporate powers of a bank shall be exercised, its business conducted and all its property controlled and held, by its board of directors. The powers of the board of directors as conferred by law are original and cannot be revoked by the stockholders. The directors hold their office charged with the duty to exercise sound and objective judgment for the best interest of the bank.

³¹ 132 Board of Directors

Powers/Corporate powers of the board of directors. The corporate powers of an institution shall be exercised, its business conducted, and all its resources controlled through its board of directors. The powers of the board of directors as conferred by law are original and cannot be revoked by the stockholders. The directors shall hold their office charged with the duty to exercise sound and objective judgment for the best interest of the institution.

³² *Philippine Numismatic and Antiquarian Society v. Aquino*, 804 Phil. 508, 517 (2017).

³³ *Id.*, citing *Swedish Match Phils., Inc. v. The Treasurer of the City of Manila*, 713 Phil. 240, 247 (2013).

would the duties and responsibilities of a bank officer under Section 142.3 of the 2016 MoRB (now Section 134³⁴ of the 2021 MoRB) be construed so as to include the power and duty to file collection suits against a bank's debtors.

Here, the PDIC failed to proffer any evidence, such as a board resolution authorizing respondents Ilio and/or Jurado to file a collection suit against LBC Express on behalf of LBC Bank, in support of its contention that respondents Ilio, Head of LBC Banks' Finance Department; and Jurado, cashier at the LBC Bank's Treasury Department, have the obligation or duty to enforce the collection of LBC Express' unpaid service fees.³⁵ Even in cases of mismanagement where the wrongful acts were committed by the directors, the power or right to file a derivative suit on behalf of a corporation is with the stockholder.³⁶

Lastly, it is also worth noting that PDIC's complaint failed to state any specific act of omission by respondents Ilio and Jurado in relation to the RSAs executed between LBC Bank and LBC Express. It merely lumped the late Cuevas and respondents Ilio and Jurado with Berenguer and the interlocking directors of the two entities without specifically establishing the particular duty or responsibility which they neglected. "It is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof."³⁷

³⁴ 134 Officers

....
Duties and responsibilities of officers.

a. To set the tone of good governance from the top. Bank officers shall promote the good governance practices within the bank by ensuring that policies on governance as approved by the board of directors are consistently adopted across the bank.

b. To oversee the day-to-day management of the BSFI. Bank officers shall ensure that bank's activities and operations are consistent with the bank's strategic objectives, risk strategy, corporate values and policies as approved by the board of directors. They shall establish a bank-wide management system characterized by strategically aligned and mutually reinforcing performance standards across the organization.

c. To ensure that duties are effectively delegated to the staff and to establish a management structure that promotes accountability and transparency. Bank officers shall establish measurable standards, initiatives and specific responsibilities and accountabilities for each bank personnel. Bank officers shall oversee the performance of these delegated duties and responsibilities and shall ultimately be responsible to the board of directors for the performance of the bank.

d. To promote and strengthen checks and balances systems in the BSFI. Bank officers shall promote sound internal controls and avoid activities that shall compromise the effective dispense of their functions. Further, they shall ensure that they give due recognition to the importance of the internal audit, compliance and external audit functions.

³⁵ *Rollo*, pp. 979-980.

³⁶ *Cua, Jr. v. Tan*, 622 Phil. 661, 715-716 (2009).

³⁷ *GSIS v. Prudential Guarantee and Assurance, Inc.*, 721 Phil. 740, 753-754 (2013), citing *Real v. Belo*, 542 Phil. 109, 122 (2007).

In fine, PDIC failed to show any reversible error on the part of the CA when it affirmed the findings of the BSP Board of Governors that there is no *prima facie* case to hold respondents Ilio and Jurado administratively liable for the violation of Section 21(f) of PDIC Charter, in relation to BSP Circular No. 341, series of 2002, as amended by BSP Circular No. 640, series of 2009.

ACCORDINGLY, the Petition for Review on *Certiorari* is **DENIED**. The Decision dated November 13, 2023, and Resolution dated March 21, 2024, of the Court Appeals in CA-G.R. SP No. 168121 are **AFFIRMED**.

SO ORDERED.



HENRI JEAN PAUL B. INTING
Associate Justice

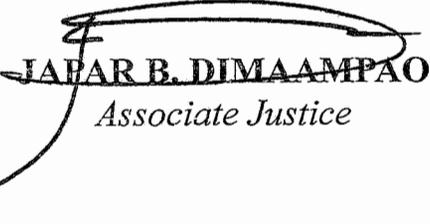
WE CONCUR:



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



SAMUEL H. GAERLAN
Associate Justice



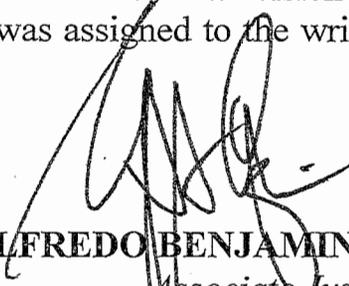
JAPAR B. DIMAAMPAO
Associate Justice



MARIA FILOMENA D. SINGH
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.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Article VIII, Section 13 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.



ALEXANDER G. GESMUNDO
Chief Justice

