



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PHILIPPINE VETERANS G.R. No. 217938
BANK, substituted by EAST
WEST BANKING
CORPORATION,*
Petitioner,

- versus -

BANK OF COMMERCE,
Respondent.
x-----x

COLLEGE ASSURANCE PLAN G.R. No. 217945
PHILIPPINES, INC.,
Petitioner, Present:

PERLAS-BERNABE, S.A.J.,
Chairperson,
HERNANDO,
INTING,
GAERLAN and
ROSARIO,** JJ.

- versus -

BANK OF COMMERCE,
Respondent.
x-----x

Promulgated:

SEP 15 2021

DECISION

INTING, J.:

* Per Resolution dated September 11, 2019, *rollo* (G.R. No. 217938), p. 547.
** Designated additional Member per Special Order No. 2835 dated July 15, 2021.

A decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect.¹ While there are recognized exceptions, the present case does not warrant a departure from the general rule.

Before the Court are the consolidated petitions for review² under Rule 45 of the Rules of Court filed by: (1) the Philippine Veterans Bank (PVB), docketed as G.R. No. 217938, and (2) the College Assurance Plan Philippines, Inc. (CAP), docketed as G.R. No. 217945, against the Bank of Commerce (BOC) both assailing the Court of Appeals (CA) Decision³ dated September 30, 2014 and the Resolution⁴ dated April 16, 2015 in CA-G.R. SP No. 130076. The CA Decision set aside the Order⁵ dated May 9, 2013 of Branch 149, Regional Trial Court (RTC), Makati City acting as a Rehabilitation Court.

The Antecedents

In 1991, CAP executed a trust agreement with Trust Service Group of Boston Bank of the Philippines, later renamed as BOC. Pursuant to the trust agreement, CAP, through BOC, subscribed to Series A and Series B preferred shares of BOC.⁶

On August 26, 2005, CAP filed a petition for rehabilitation before the RTC of Makati City, docketed as SP Proc. Case No. M-6144. Mamerto A. Marcelo, Jr. (Marcelo) was appointed as Rehabilitation Receiver, while PVB became CAP's new trustee bank.⁷

On April 22, 2008, BOC redeemed Series A and Series B preferred shares held by CAP with the approval of the Monetary Board of the *Bangko Sentral ng Pilipinas* (BSP).⁸

¹ *Keppel Cebu Shipyards, Inc. & Pioneer Insurance and Surety Corp.*, 695 Phil 169, 188 (2012).

² *Rollo* (G.R. No. 217938), pp. 7-29 and *rollo* (G.R. No. 217945), pp. 9-39.

³ *Rollo* (G.R. No. 217945), pp. 43-53; penned by Associate Justice Zenaida T. Galapate-Laguilles with Associate Justices Mariflor P. Punzalan Castillo and Amy C. Lazaro-Javier (now a Member of the Court), concurring.

⁴ *Id.* at 55-56.

⁵ *Id.* at 93-96; signed by Presiding Judge Cesar O. Untalan.

⁶ *Id.* at 43-44.

⁷ *Id.* at 44 and 117.

⁸ *Id.* at 44.

The Order dated April 24, 2008.

On April 24, 2008, the Rehabilitation Court issued an Order⁹ directing BOC to remit to PVB the accrued interest due on the previously redeemed shares.

The Rehabilitation Court held:

BOC, as former trustee bank, for quite a time did not pay the interest or did not consider the payment of interest due on these preferred shares. Thus, BOC is hereby ordered to remit now to the new trustee bank, Philippine Veterans Bank, the value of the preferred shares not later than 10 days from receipt of this order, otherwise, BOC shall pay the legal rate of interest of 12% per annum for every day of delay.

The trustee fee of BOC shall be paid out of the interest due and payable from said preferred shares, which had been long overdue and payable to CAP. The payment of the net interest due and payable to the preferred shares shall be paid and remitted to the trustee bank not later than 30 days from receipt of this order; otherwise, the same shall earn interest at 12% per annum.

SO ORDERED.¹⁰

BOC thereafter filed a Motion for Partial Reconsideration¹¹ manifesting that before it could declare dividends, it must first seek the approval of the BSP pursuant to BSP Circular No. 241, Series of 2000,¹² which provides that “*no dividend shall be declared or paid on redeemable shares in the absence of sufficient undivided profits, free surplus and approval of the BSP.*”¹³

On May 29, 2008, the Rehabilitation Court issued an Order noting BOC’s Motion for Partial Reconsideration. It stated that it sent a letter, that same day, to the BSP asking advice regarding the declaration of dividends; and that pending receipt of the BSP’s comment thereon, the

⁹ *Id.* at 117.

¹⁰ *Id.*

¹¹ *Id.* at 118-124.

¹² With the subject, “To Impose Stricter Conditions for the Issuance of Redeemable Shares by Applicant Bank,” dated April 27, 2000.

¹³ *Rollo* (G.R. No. 217945), p. 44.

resolution of BOC's motion shall be held in abeyance.¹⁴

The Letter¹⁵ dated May 29, 2008 of Presiding Judge Cesar O. Untalan to the Legal Department of the BSP reads:

[CAP] had preferred shares in the [BOC] amounting to P150,000,000.00, which was held-in-trust to BOC. Considering the appointment of a new trustee bank of [CAP], the said preferred shares were ordered transferred to the new trustee bank. BOC however had already paid said preferred shares. However, it appears that BOC did not pay any interest on said preferred shares from date of purchase to date of redemption. Thus, this Court would like to request your good office to comment on the matter and enlighten this Court with respect to the procedure of payment of said interest on preferred shares. BOC has already computed the interest due therein in the sum of P174,271,495.00 as of February 2008 before BOC redeemed the preferred shares; but BOC is now saying that payment of interest shall be subject to BSP prior approval.¹⁶

*The BSP Letter dated
September 9, 2008.*

In a Letter¹⁷ dated September 9, 2008, the BSP replied:

We refer to your letter dated 29 May 2008, x x x, requesting comments on the procedure of payment of interest on Bank of Commerce's preferred shares formerly owned by College Assurance Plan Inc.

Please be informed that Section X136.4 of the Manual of Regulations for Banks provides the reporting and verification of dividend declaration, as follows:

1. Declaration of dividends shall be reported by the bank concerned to the Bangko Sentral ng Pilipinas (BSP) for verification;
2. Pending verification, the bank concerned shall not make any announcement or communication on the declaration of dividends nor shall any payment be

¹⁴ *Id.* at 130.

¹⁵ *Id.* at 131.

¹⁶ *Id.*

¹⁷ *Id.* at 132-133.

made thereon; and

3. In any case, the declaration may be announced and the dividend paid, if after thirty (30) banking days from the date the report herein shall have been received by the BSP, no advice against such declaration has been received by the bank concerned;

In addition, before the bank concerned may declare dividends, it shall meet the requirements prescribed by law and banking rules and regulations. x x x¹⁸

The Order dated September 24, 2008.

Guided by the letter of the BSP, the Rehabilitation Court on September 24, 2008 denied BOC's Motion for Partial Reconsideration holding that, in order to declare dividends, only a report to the BSP, not approval of the latter, is required.¹⁹ Also, after 30 banking days from the date the required report shall have been received by the BSP and no advice against such declaration was received by the bank, the latter may announce and pay the dividend.²⁰

The Order reads:

It appears from the letter/comment of BSP that under Section X136.4 of the Manual of Regulations for Banks, only a report on declaration of dividends is required and not approval by the BSP. If after thirty (30) banking days from the date the report required shall have been received by the BSP and no advice against such declaration was received by the bank, the latter may announce and pay the dividend.

In view of the foregoing, the motion for partial reconsideration (of the Order dated 24 April 2008) filed by Bank of Commerce is hereby DENIED for lack of merit. The Order dated April 24, 2008 is hereby reiterated.

x x x x

SO ORDERED.²¹

¹⁸ *Id.* at 132.

¹⁹ *Id.* at 134.

²⁰ *Id.*

²¹ *Id.*

In compliance with the Rehabilitation Court's Order, the BOC's Board of Directors issued on December 16, 2008 a Board Resolution setting up a new Sinking Fund for the payment of the dividends.²²

On September 28, 2009, BOC sent a letter-request to the BSP for the approval of payment of accrued dividends from the new Sinking Fund that it set up.²³

Meanwhile, on May 14, 2010, PVB entered into a Settlement Agreement²⁴ with BOC for the payment of the dividends through the previously set up Sinking Fund. BOC and PVB thereafter signed an Escrow Agreement²⁵ where it was agreed that BOC shall deliver ₱113,000,000.00 to PVB as the appointed escrow agent.²⁶

*The BSP Letter-Denial dated
November 14, 2011*

On November 14, 2011, the BSP, in response to BOC's letter dated September 28, 2009, denied the application for the payment of the accrued dividends.²⁷ It stated that since 2008, BOC had been reporting negative surplus/retained earnings due to the huge losses it incurred from its holdings of structured products, among others. It added that BOC had also been cited for unsafe and unsound practices for its holdings in unauthorized structured investments and in the accounting and credit areas in the last two most recent examinations.²⁸

To quote:

This refers to Bank of Commerce's (BOC) letter dated September 28, 2009 x x x: requesting approval to pay out the outstanding amount in the sinking fund, representing dividends declared on previously redeemed shares, to its preferred shareholders.

²² *Id.* at 45.

²³ *Id.* at 142-143.

²⁴ *Id.* at 144-154.

²⁵ *Id.* at 155-165.

²⁶ *Id.* at 46.

²⁷ See Letter-Denial dated November 14, 2011, *id.* at 166.

²⁸ *Id.* at 46 and 166.

Section 57 of R.A. No. 8791 as Implemented by Sections X136 and X126.5 of the Manual of Regulations for Banks (MORB), provide, among others, that a bank shall only declare or pay dividends if it has adequate accumulated profits, sufficient net amounts available for dividends and has not committed major violations.

Since 2008, BOC had been reporting negative surplus/retained earnings due to the huge amount of losses it incurred from its holdings of structured products, among others. Moreover, Bank had been cited for unsafe and unsound practices for its holdings in unauthorized structured investments and in the accounting and credit areas in the last 2 most recent examinations. While we recognize that there are on-going efforts to address these concerns, the results of the on-site examination as of 31 October 2010 showed no substantive evidence that these reforms have substantially improved the operations and risk management systems of the Bank. Hence, these supervisory concerns remain.

In this regard, we regret to inform you that the Bank's request to declare and pay out dividends has been denied, pursuant to Section 57 of R.A. 8791 as implemented by Sections X136 and X126.5 of the MORB.²⁹

In a Letter³⁰ dated January 5, 2012, the BSP informed the Rehabilitation Court that it denied BOC's application to pay accrued dividends. It also clarified that in its reply to the court's inquiry (dated September 9, 2008), it referred to simple dividend declaration not related to redemption of preferred shares; and that the payment of dividends for redeemable preferred shares requires prior BSP approval pursuant to Section X126.5 of the Manual of Regulations for Banks (MORB).³¹

Motion for Execution.

On May 9, 2012, Marcelo and PVB filed a Motion for the Issuance of Writ of Execution³² of the Order dated April 24, 2008. The Rehabilitation Court thereafter directed BOC to schedule a meeting with Marcelo and the representatives of CAP to discuss the execution of the Order. However, no agreement was reached.³³

²⁹ *Id.* at 166.

³⁰ *Id.* at 167.

³¹ *Id.* at 46 and 167.

³² *Id.* at 168-169.

³³ *Id.* at 47.

The Ruling of the Rehabilitation Court

Resolving the motion for execution, the Rehabilitation Court, on May 9, 2013, issued an Order directing Marcelo and PVB to remove from the Escrow Account the amount equivalent to the interest due and payable to CAP.³⁴

It held:

WHEREFORE, premises considered, the Trustee Bank is hereby ordered to segregate the necessary amount equivalent to the interest of CAP on the said Escrow Account for payment of the interest due and payable on the redeemed preferred shares; and same segregated amount be credited to the trust account of the petitioner to meet its payment obligations due and payable to its plan holders as enrollment is forthcoming. The Trustee Bank is hereby further ordered to make the report to this Court within ten (10) days from the receipt of this order of the exact amount they have removed from the Escrow Account, as payment of the interest due and payable on the redeemed preferred shares, as partial payment of the interest due and payable on the said redeemed preferred shares.

The Receiver shall make a report to whom the amount segregated by the Trustee Bank and credit to the Trust Account of Petitioner, was actually paid.

SO ORDERED.³⁵

On May 20, 2013, PVB filed a Manifestation and Compliance³⁶ informing the Rehabilitation Court that the PVB Trust Management Group already transferred from Escrow Account No. 229 the amount of ₱90,703,943.92 shares of CAP and credited it to CAP's Trust Fund No. 81 on May 14, 2013.³⁷ The amount, in turn, had been released to CAP's planholders.³⁸

The proceedings before the CA.

BOC filed a Petition for Review³⁹ before the CA arguing that the Rehabilitation Court committed errors of fact and law in issuing the

³⁴ *Id.* at 93-96.

³⁵ *Id.* at 95.

³⁶ *Rollo* (G.R. No. 217938), pp. 289-290.

³⁷ *Id.* at 289; *rollo* (G.R. No. 217945), p. 48.

³⁸ *Rollo* (G.R. No. 217945), p. 30.

³⁹ *Rollo* (G.R. No. 217938), pp. 226-258.

Order dated May 9, 2013 which violated the BSP Letter-Denial issued to BOC, as well as Section 57 of the General Banking Law⁴⁰ and the MORB on dividend declaration. According to BOC, the violation of the General Banking Law and the MORB would subject the bank and its officers to criminal and administrative sanctions.⁴¹

PVB argued that the Order dated April 24, 2008 directing BOC to remit to PVB the dividends on preferred shares had already become final and executory in view of BOC's failure to file an appeal. Thus, the assailed Order dated May 9, 2013 was nothing but a reiteration of the final and executory decision.⁴²

CAP similarly asserted that the directive of the Rehabilitation Court had long become final and executory and the BSP's Letter-Denial dated November 14, 2011 denying BOC's application for the declaration of dividends is not enough basis for BOC to defy the Rehabilitation Court's order to pay. Also, the amount credited to CAP's trust account had already been released to plan holders. Thus, a reversal of the Order dated May 9, 2013 would greatly prejudice them.⁴³

The Ruling of the CA

On September 30, 2014, the CA rendered its Decision⁴⁴ granting BOC's petition, thus:

FOR THESE REASONS, the petition is GRANTED. The order of the Regional Trial Court, Branch 149, Makati City dated May 9, 2013 is hereby SET ASIDE. College Assurance Plan Philippines, Inc. is hereby directed to return to the Escrow Account the funds credited to its trust account.

SO ORDERED.⁴⁵

The CA held that the BSP's (1) denial of BOC's application to pay dividends and (2) subsequent advice regarding the need for BSP approval, as respectively embodied in the letters dated November 14,

⁴⁰ Republic Act No. 8791, approved on May 23, 2000.

⁴¹ *Rollo* (G.R. No. 217945), pp. 48-49.

⁴² *Id.* at 49.

⁴³ *Id.*

⁴⁴ *Id.* at 43-53.

⁴⁵ *Id.* at 53.

2011 and January 5, 2012, were supervening events that would justify the Rehabilitation Court's nullification of the execution of a final and executory judgment. According to the CA, these supervening circumstances affected the substance of the decision and render its execution impossible and inequitable. Taking into account BOC's negative surplus, the CA found that the payment of the dividends using BOC's funds in the Escrow Account not only violated the General Banking Law and the MORB but might also prejudice BOC's creditors and subject the bank and its officers to criminal and administrative sanctions.⁴⁶

Both PVB and CAP filed their respective Motions for Reconsideration, but these were denied in the CA Resolution dated April 16, 2015, *viz.*:

ACCORDINGLY, the separate motions filed by Philippine Veterans Bank and College Assurance Plan Philippines, Inc. are both DENIED for lack of merit.

SO ORDERED.⁴⁷

PVB is now before the Court asserting that:

THE COURT OF APPEALS ERRED IN SETTING ASIDE THE ORDER, DATED 9 MAY 2013, OF THE REHABILITATION COURT AND DIRECTING THE RETURN OF THE ESCROW ACCOUNT THE FUNDS CREDITED TO [CAP], CONSIDERING THAT:

- I. THE BACKDOOR ATTEMPT TO ANNUL THE EXECUTORY ORDERS, DATED 24 APRIL 2008 AND 24 SEPTEMBER 2008, SHOULD NOT BE ALLOWED NOT ONLY FOR BEING IN GROSS BREACH OF THE RULES OF PROCEDURE, BUT ALSO FOR BEING UNJUST, UNFAIR AND CONTRARY TO PUBLIC POLICY AND SOUND PRACTICE.
- II. THE PRESENT CASE IS AN EXCEPTION TO THE RULE THAT THERE IS NO VESTED RIGHT IN THE PURPORTED ERRONEOUS BSP LETTER, 9 SEPTEMBER 2008, ANNEX "H" HEREOF, RELIED UPON BY THE REHABILITATION COURT AND THE PARTIES HEREIN

⁴⁶ *Id.* at 50-53.

⁴⁷ *Id.* at 56.

CONSIDERING THAT THE NON-EXECUTION OF THE ORDERS, DATED 24 APRIL 2008 AND 24 SEPTEMBER 2008, IS UNJUST AND INEQUITABLE TO [CAP]'S PLANHOLDERS.

- III. IN ITS LETTER DATED 2 JULY 2008, ANNEX "G" HEREOF, RESPONDENT BOC HAD ALREADY ADMITTED THAT IT HAD SET ASIDE AN AMOUNT MORE THAN WHAT IS BEING CLAIMED BY [CAP] BUT FOR NO JUSTIFIABLE REASON, REFUSED TO PAY THE INTERESTS DUE TO [CAP] EVEN AFTER THE BSP HAD ISSUED ITS LETTER DATED 9 SEPTEMBER 2008 WHICH DID NOT ADVISE AGAINST SUCH DECLARATION.
- IV. THE MONEY ALREADY IN THE SINKING FUND AND PLACED IN ESCROW WILL NO LONGER BE COVERED BY THE LETTER OF THE BSP DATED 14 NOVEMBER 2011 BECAUSE IT HAD BEEN SET ASIDE LONG BEFORE THE ALLEGED CONDITIONS STATED IN THE SAID LETTER EXISTED.⁴⁸

PVB avers that BOC is estopped from questioning the orders issued by the Rehabilitation Court in 2008 which were immediately executory. It argues that BOC may not question these orders after already having partially performed them when it set up a Sinking Fund on December 16, 2008 and entered into a Settlement Agreement and an Escrow Agreement with PVB.⁴⁹

PVB also alleges that BOC admitted that the dividends/interests to be paid would greatly benefit the policyholders of CAP who are in dire need of funds for tuition fees. Balancing the interests of the parties, PVB contends that the right of the policy holders to the dividend/interests should be favored. It adds that the transfer of funds made by PVB from the Escrow Account in the amount of ₱90,703,943.92 share of CAP and credited to CAP Trust Fund may no longer be recalled for to do so would create undue burden on PVB which merely complied with the Rehabilitation Court's order. To PVB, the transfer of the amount does not constitute a mistake of payment because it is actually due to CAP; thus, its refund cannot be required and CAP has the right to retain it.⁵⁰

⁴⁸ *Rollo* (G.R. No. 217938), pp. 16-17.

⁴⁹ *Id.* at 18-20.

⁵⁰ *Id.* at 20-22.

PVB contends that in 2008, funds were available for the payment of the interest to CAP and there was no objection from the BSP with regard to the request for approval of the declaration of dividends upon request of BOC itself. There was, therefore, no reason for BOC to refuse to comply with the directive of the Rehabilitation Court to pay dividends/interest on the shares of CAP with reasonable dispatch. BOC, however, bid its time until it received the opinion of the BSP that would justify its contumacious refusal to comply with the Orders of the Rehabilitation Court.⁵¹

PVB further asserts that the preferred shares have long been redeemed by BOC. What is left to be paid are dividends or interest on these shares. By BOC's own admission in its Letter⁵² dated July 2, 2008, it had already set aside funds for these claims. Thus, PVB contends that insofar as the amount of ₱315,608,143.21 as of April 22, 2008 is concerned, BOC would now be holding this only in trust for CAP in satisfaction of its claims. Consequently, the amount that had long been set aside should no longer be subject of the Letter-Denial dated November 14, 2011 of the BSP.⁵³

CAP in its petition similarly argues that:

- A. The Rehabilitation Court's order directing BOC to pay the Accrued Dividends is already final, executory and immutable. The 14 November 2011 BSP letter does *not* constitute a supervening event.
- B. The subject fund in the Escrow Account had already been released to planholders. This produced a permanent and irrevocable discharge of the judgment.
- C. There is no risk that the payment of the Accrued Dividends would subject BOC and its officers to criminal and/or administrative sanctions.
- D. It would be the height of injustice for BOC to benefit from its own contumacious and brazen conduct, at the expense of innocent planholders.⁵⁴

⁵¹ *Id.* at 22-23.

⁵² *Id.* at 58-60.

⁵³ *Id.* at 23.

⁵⁴ *Rollo* (G.R. No. 217945), p. 22.

CAP also argues as follows:

There is no supervening event in the case that would justify the non-application of the immutability doctrine considering that a supervening event refers to a fact which transpires after judgment has become final and executory. The facts by which the BSP based its Letter-Denial dated November 14, 2011 were already in existence when the Rehabilitation Court issued its Orders dated April 24, 2008 and September 24, 2008.⁵⁵

There was no error in the 2008 Orders of the Rehabilitation Court and in the BSP's Letter dated September 9, 2008. BOC complied with its purported requirement of adequate accumulated profits in order to pay out its dividends.⁵⁶

The release to plan holders of the subject fund in the Escrow Account had produced a permanent and irrevocable discharge of the judgment. PVB already transferred ₱90,703,943.92 from the Escrow Account to CAP's Trust Fund pursuant to an order of the Rehabilitation Court. The ₱90,703,943.92, in turn, had been released to CAP's plan holders. To CAP, it would be the height of absurdity if these ultimate beneficiaries would be prejudiced and adversely affected by the BSP's subsequent disapproval when the funds released to them indisputably form part of the Trust Fund.⁵⁷

The payment of Accrued Dividends was done pursuant to a lawful order of the Rehabilitation Court; thus, the BOC and its officers cannot be subject to criminal or administrative sanctions.⁵⁸

BOC should not be allowed to benefit from its own contumacious conduct at the expense of innocent plan holders. BOC, instead of paying the Accrued Dividends, deliberately dragged its heels until its accumulated profits eventually declined, or had become a negative surplus. Marcelo and PVB were constrained to file a Motion for the Issuance of a Writ of Execution on May 9, 2012. By then, the amount due to CAP for the Accrued Dividends had already reached

⁵⁵ *Id.* at 23-26.

⁵⁶ *Id.* at 28.

⁵⁷ *Id.* at 28-30.

⁵⁸ *Id.* at 30-31.

₱235,254,050.59. Thus, the transfer of ₱90,703,943.92 from the Escrow Account to CAP's Trust Fund was just in partial satisfaction of BOC's long overdue obligation. The ₱90,703,943.92, in turn, had already been released to the ultimate beneficiaries thereof, namely, CAP's plan holders. This release was done not pursuant to an ordinary money judgment but to CAP's rehabilitation plan and for the benefit of CAP's plan holders. From May to July 2013, the subject funds were fully released to the plan holders who were in dire need of tuition money for the then-upcoming school year. It would be absurd to now direct CAP's plan holders to return the funds they received, or for CAP to raise another ₱90,703,943.92, and transfer this amount to the Escrow Account for the sole benefit of BOC. The assailed Decision will cause extreme prejudice to CAP's plan holders for BOC's sake. Unless the assailed Decision is reversed, BOC would succeed in evading payment of the Accrued Dividends and unjustly retain more than ₱200,000,000.00 at the expense of CAP's plan holders.⁵⁹

Both petitioners pray for the reversal and setting aside of the CA Decision dated September 30, 2014 and the Resolution dated April 16, 2015.⁶⁰

Meanwhile, BOC in its Comment⁶¹ asserts that the CA correctly ruled that the BSP denial is a supervening event which should suspend or nullify the execution of the orders of the Rehabilitation Court. It is also not estopped from questioning the 2008 Orders. It contends that the execution of the Orders of the Rehabilitation Court was ordered after the BSP already issued its denial which corrected and effectively superseded the erroneous 2008 BSP letter.⁶²

BOC claims that it complied with the terms of the agreement, among which was the obtainment of BSP approval before the payment of the Accrued Dividends. However, through no fault of BOC, the BSP issued its denial.⁶³

Finally, BOC asserts that the execution of the 2008 Orders of the Rehabilitation Court will open it and its officers and directors to criminal

⁵⁹ *Id.* at 31-34.

⁶⁰ *Id.* at 34; *rollo* (G.R. No. 217938), p. 24.

⁶¹ *Rollo* (G.R. No. 217945), pp. 400-428.

⁶² *Id.* at 413-422.

⁶³ *Id.* at 422.

and administrative liabilities for violating the MORB and banking laws. Given BOC's negative surplus, as well as the BSP denial, the payment of Accrued Dividends using BOC's funds in the Escrow Account would be tantamount to a violation of Sections X126.5⁶⁴ and X136⁶⁵ of the MORB.⁶⁶

PVB and CAP filed their respective replies reiterating their arguments.⁶⁷

The Issue

Whether the CA erred in reversing the Rehabilitation Court Order dated May 9, 2013 and in ordering CAP to return to the Escrow Account the funds credited to its trust account.

The Court's Ruling

The petitions are meritorious.

Immutability of judgments.

It is a settled principle that once a judgment lapses into finality, it becomes immutable and unalterable. It can neither be modified nor disturbed in any manner even if the purpose of the modification is to correct perceived errors of fact or law.⁶⁸ This doctrine is founded on

⁶⁴ Section X126.5 of the Manual of Regulations for Banks (MORB) provides:

SECTION X126.5. Issuance of redeemable shares: conditions; certification and report: sanctions -

a. Conditions. Banks may issue redeemable shares subject to the following conditions:

x x x x

(3) The applicant bank after the issuance of redeemable shares shall apply with the following:

x x x x

(d) No dividend shall be declared or paid on redeemable shares in the absence of sufficient undivided profits, free surplus and approval of the BSP.

⁶⁵ SECTION X136 of the MORB provides:

SECTION X136. Dividends - Pursuant to Section 57 of R.A. No. 8791, no bank shall declare dividends greater than its accumulated net profits then on hand, deducting therefrom its losses and bad debts. Neither shall the bank declare dividends if, at the time of declaration, it has not complied with the provisions of Subsection X136.2.

⁶⁶ *Rollo* (G.R. No. 217945), p. 424.

⁶⁷ *Id.* at 444-459.

⁶⁸ *Mercury Drug Corp., et al. v. Sps. Huang et al.*, 817 Phil. 434, 445 (2017), citing *National*

considerations of public policy and sound practice that, at the risk of occasional errors, judgments must become final at some definite point in time.⁶⁹

The principle of immutability of final judgments stands as one of the pillars supporting a strong, credible, and effective court. It prohibits any alteration, modification or correction of final and executory judgments as what remains to be done is the purely ministerial enforcement or execution of the judgment.⁷⁰

There are, however, recognized exceptions. These are: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.⁷¹

Here, the CA upheld BOC's claim that the BSP's Letter-Denial dated November 14, 2011 which denied the application for declaration of dividends in favor of CAP was a supervening event that justified the nullification of the Rehabilitation Court's final and executory orders.

The Court does not agree.

Supervening events refer to acts that transpire *after* judgment has become final and executory or to new circumstances which developed *after* the judgment has acquired finality, including matters which the parties were not aware of prior to or during the trial as they were not yet in existence at that time.⁷²

Supervening events include matters which the parties were unaware of prior to or during the trial because they were not yet in existence at that time. To be sufficient to stay or stop the execution, the supervening event must create a substantial change in the rights or

Housing Authority v. Court of Appeals, et al., 731 Phil. 400, 405-406 (2014).

⁶⁹ *Davao ACF Bus Lines, Inc. v. Ang*, G.R. No. 218516, March 27, 2019.

⁷⁰ *Sps. Tubalno v. Sps. Dingal*, 770 Phil 556, 563 (2015).

⁷¹ *Mercury Drug Corp., et al. v. Sps Huang et al.*, *supra* note 65 at 446; *Rep. of the Phils. v. Heirs of Cirilo Gotengco*, 824 Phil. 568, 578 (2018), citing *FGU Insurance Corp. v. RTC of Makati, Br. 66, et al.*, 659 Phil. 117, 123 (2011).

⁷² *Natalia Realty, Inc. v. Court of Appeals*, 440 Phil. 1, 23 (2002), citing *Jose Clavano, Inc. v. Housing & Land Use Regulatory Board*, 428 Phil. 208, 228 (2002).

relations of the parties which would render the execution of a final judgment unjust, impossible, or inequitable making it imperative to stay immediate execution in the interest of justice.⁷³

In order to properly invoke this exception, the party must establish two conditions. *First*, the fact constituting the supervening event must have transpired after the judgment has become final and executory, and should not have existed prior to the finality of judgment. *Second*, it must be shown that the supervening event affects or changes the substance of the judgment and renders its execution inequitable.⁷⁴

In addition, the party who alleges a supervening event to stay the execution should necessarily establish the facts by competent evidence.⁷⁵

In the present case, aside from invoking the Letter-Denial dated November 14, 2011 of the BSP and claiming that it had negative surplus, BOC presented nothing more. These are clearly insufficient to overturn a final and executory judgment.

As observed by the esteemed Chairperson of the Second Division, Senior Associate Justice Estela M. Perlas-Bernabe:

x x x 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." x x x [T]he 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 establish the facts by competent evidence; otherwise, it would become all too easy to frustrate the conclusive effects of a final and immutable judgment."⁷⁶

⁷³ *Remington Industrial Sales Corp. v. Maricalum Mining Corp.*, 763 Phil. 284, 294 (2015), citing *Silverio, Jr. v. Filipino Business Consultants, Inc.*, 504 Phil 150, 162 (2005).

⁷⁴ *Mercury Drug Corp., et al. v. Sps Huang et al.*, *supra* note 65 at 454, citing *NPC Drivers and Mechanics Assoc., et al. v. The NPC, et al.*, 737 Phil. 210, 250 (2014).

⁷⁵ *Heirs of Zosimo Q. Moravilla et al. v. Privaldo Tupas*, G.R. No. 192132, September 14, 2016, citing *Abrigo et al. v Flores, et al.*, 711 Phil. 251 (2013).

⁷⁶ Concurring Opinion of Senior Associate Justice Estela M. Perlas-Bernabe, p. 5, citing *Lomondot v. Balindong*, 763 Phil. 617 (2015), citing *Abrigo v. Flores*, 711 Phil. 251 (2013).

BSP's Authority

The BSP is the central authority that provides policies on money, banking, and credit, and supervises and regulates bank operations. Sections 1 and 3 of Republic Act No. 7653⁷⁷ (New Central Bank Act) provides:

Section 1. *Declaration of Policy.* — The State shall maintain a central monetary authority that shall function and operate as an independent and accountable body corporate in the discharge of its mandated responsibilities concerning money, banking and credit x x x.

x x x x

Section 3. *Responsibility and Primary Objective.* — The Bangko Sentral shall provide policy directions in the areas of money, banking, and credit. It shall have supervision over the operations of banks and exercise such regulatory powers as provided in this Act and other pertinent laws over the operations of finance companies and non-bank financial institutions performing quasi-banking functions, hereafter referred to as quasi-banks, and institutions performing similar functions.

The BSP's supervisory powers under the General Banking Law of 2000 include issuing rules, establishing standards for the operation of financial institutions based on sound business practice, and examining the institutions for compliance and irregularities, to wit:

Section 4. *Supervisory Powers.* — The operations and activities of banks shall be subject to supervision of the Bangko Sentral. "Supervision" shall include the following:

4.1. The issuance of rules of conduct or the establishment of standards of operation for uniform application to all institutions or functions covered, taking into consideration the distinctive character of the operations of institutions and the substantive similarities of specific functions to which such rules, modes or standards are to be applied;

⁷⁷ Approved on June 14, 1993.

- 4.2. The conduct of examination to determine compliance with laws and regulations if the circumstances so warrant as determined by the Monetary Board;
- 4.3. Overseeing to ascertain that laws and regulations are complied with;
- 4.4. Regular investigation which shall not be oftener than once a year from the last date of examination to determine whether an institution is conducting its business on a safe or sound basis: *Provided*, That the deficiencies/irregularities found by or discovered by an audit shall be immediately addressed;
- 4.5. Inquiring into the solvency and liquidity of the institution (2-D); or
- 4.6. Enforcing prompt corrective action.

In line with its supervisory powers, the BSP codified the rules, regulations, and policies in 1996 to implement the General Banking Law and other banking laws. The codification resulted in the MORB which serves as “*the principal source of banking regulations issued by the Monetary Board and the Governor of the BSP and shall be cited as the authority for enjoining compliance with the rules and regulations embodied therein.*”⁷⁸

It is precisely in recognition of BSP’s expertise and mandate that the Rehabilitation Court, in its Letter dated May 29, 2008, explicitly asked for BSP’s guidance before proceeding with BOC’s Motion for Partial Reconsideration. In the letter, the Rehabilitation Court repeatedly mentioned that it pertained to BOC’s redemption of “preferred shares.”

The BSP answered in its Letter dated September 9, 2008 that declaration of dividends shall be “*reported by the bank concerned to the BSP for verification*” and “*if after thirty (30) banking days...no advice against such declaration has been received by the bank concerned*” declaration may be announced and the dividend paid.⁷⁹

⁷⁸ See Dissenting Opinion of Associate Justice Marvic M.V.F. Leonen in *Hongkong Bank Independent Labor Union (HBILU) v. Hongkong and Shanghai Banking Corp. Limited*, 826 Phil. 816, 857 (2018).

⁷⁹ *Rollo* (G.R. No. 217945), p. 132.

Guided by the BSP's response, the Rehabilitation Court then issued its Order dated September 24, 2008 denying BOC's motion and reiterating its Order dated April 24, 2008.⁸⁰

Realizing its misstep, the BSP, in its Letter dated January 5, 2012 to the Rehabilitation Court "clarified" that its Letter dated September 9, 2008 pertained to "simple dividend declaration not related to redemption of preferred shares" and that the payment of dividends for redeemable preferred shares requires prior BSP approval pursuant to Section X126.5 of the MORB.⁸¹

It is unfortunate that when the Rehabilitation Court sought the BSP's guidance in May 2008, the advice it gave did not pertain to "preferred shares" which the court explicitly mentioned. Moreover, it took more than three years for the BSP to rectify its error. By then, the Orders of the Rehabilitation Court had already become final and executory and the judgment partially executed.

No exceptional circumstance in this case.

In exceptional cases, the Court has recognized justifications to suspend the strict adherence to rigid procedural rules like the doctrine of immutability. These are: (a) matters of life, liberty, honor or property; (b) the existence of special or compelling circumstances; (c) the merits of the case; (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (e) lack of any showing that the review sought is merely frivolous and dilatory; and (f) the other party will not be unjustly prejudiced thereby.⁸²

Here, not only has BOC already partially performed the orders of the Rehabilitation Court; the return of the funds already released to the plan holders would actually result in inequity and unfairness.

As noted by the CA, the BOC's Board of Directors issued on December 16, 2008 a Board Resolution setting up a new Sinking Fund

⁸⁰ *Id.* at 219.

⁸¹ *Id.* at 47.

⁸² *Lanto v. Commission on Audit, et al.*, 808 Phil. 1025, 1038 (2017), citing *Apo Fruits Corp., et al. v. Land Bank of the Phils.*, 647 Phil. 251, 289 (2010).

for the payment of the dividends, in compliance with the Rehabilitation Court's Order. It then entered into a Settlement Agreement with PVB on May 14, 2010 for the payment of the dividends through the previously set up Sinking Fund. BOC and PVB thereafter signed an Escrow Agreement wherein it was agreed that BOC would deliver ₱113,000,000.00 to PVB as the appointed escrow agent.⁸³

On May 20, 2013, PVB filed a Manifestation and Compliance informing the Rehabilitation Court that PVB Trust Management Group had already transferred from Escrow Account No. 229 the amount of ₱90,703,943.92 share of CAP and had credited it to CAP Trust Fund No. 81 on May 14, 2013, following the Order of the Rehabilitation Court.⁸⁴

On August 12, 2013, the court-appointed Rehabilitation Receiver, Marcelo, also submitted his Compliance stating that the total sum of ₱91,311,529.38 had been paid to qualified plan holders from June to August 2013. Attached to the Compliance was the list of all the names of qualified plan holders and the corresponding amounts disbursed from the Trust Fund and paid to each of them.⁸⁵

It should be recalled that CAP's trust fund was clearly established for the sole benefit of the plan holders.

As the Court explained in the 2018 case of *SEC v. CAP*,⁸⁶

x x x The trust fund x x x is established with a trustee under a trust agreement approved by the Securities and Exchange Commission to pay the benefits as provided in the pre-need plans.⁸⁷

The term "benefits," refers to the money or services which the pre-need company undertakes to deliver in the future to the plan holder or his beneficiary. In other words, the benefits refer to the payment made to the plan holders as stipulated in their pre-need plans.⁸⁸

⁸³ *Rollo* (G.R. No. 217945), pp. 45-46, 136-165.

⁸⁴ *Id.* at 48; *rollo* (G.R. No. 217938), p. 289.

⁸⁵ *Rollo* (G.R. No. 217938), p. 291; Marcelo explained that the difference in the amount transferred by the Trustee Bank from the Escrow Account and credited to CAP's Trust Fund and the actual amount paid was raised from other sources in the Trust Fund.

⁸⁶ *Securities and Exchange Commission (SEC), et al. v. College Assurance Plan Philippines, Inc.*, 827 Phil 339, 350-351 (2018).

⁸⁷ *Id.* at 350-351.

⁸⁸ *Id.* at 351.

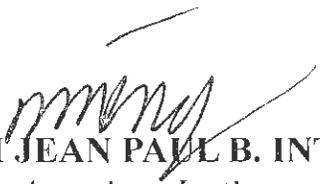
It should also be emphasized that the trust fund is established “to ensure the delivery of the guaranteed benefits and services provided under a pre-need plan contract.”⁸⁹

In the case at bar, the transfer made by PVB from the Escrow Account to the Trust Fund Account was done in compliance with the Rehabilitation Court’s Orders. From the Trust Fund, CAP thereafter released to its plan holders the amount of ₱90,703,943.92, from May to June 2013, in time for enrollment in that school year.⁹⁰ When Marcelo submitted his Compliance on August 12, 2013, the amount released to qualified plan holders reached ₱91,311,529.38.⁹¹

Both the PVB and CAP acted in obedience to the valid orders of the Rehabilitation Court which were valid and effective at the time petitioners carried out the ruling. The subsequent denial by the BSP to BOC’s request to declare dividends does not constitute a supervening event that would warrant a departure from the doctrine of immutability of final judgments.

WHEREFORE, the petitions are **GRANTED**. 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 are **REVERSED** and **SET ASIDE**.

SO ORDERED.


HENRI JEAN PAUL B. INTING
Associate Justice

⁸⁹ *Id.*

⁹⁰ *Rollo* (G.R. No. 217945), p. 33.

⁹¹ *Rollo* (G.R. No. 217938), p. 291.

WE CONCUR:

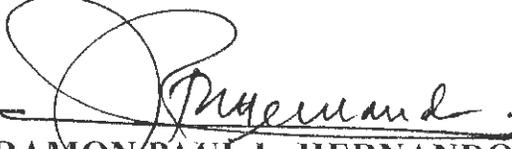
Please see Concurring Opinion

M. Bernabe

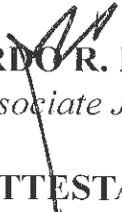
ESTELA M. PERLAS-BERNABE

Senior Associate Justice

Chairperson


RAMON PAUL L. HERNANDO
Associate Justice


SAMUEL H. GAERLAN
Associate Justice


RICARDO R. ROSARIO
Associate Justice

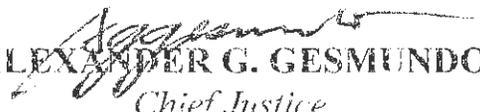
ATTESTATION

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.


ESTELA M. PERLAS-BERNABE
Senior 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.


ALEXANDER G. GESMUNDO
Chief Justice

