

SECOND DIVISION

[G.R. No. 176438, January 24, 2011]

**PHILIPPINE DEPOSIT INSURANCE CORPORATION (PDIC),
PETITIONER, VS. PHILIPPINE COUNTRYSIDE RURAL BANK, INC.,
RURAL BANK OF CARMEN (CEBU), INC., BANK OF EAST ASIA
(MINGLANILLA, CEBU) INC., AND PILIPINO RURAL BANK
(CEBU), INC., RESPONDENTS.**

DECISION

MENDOZA, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court filed by the Philippine Deposit Insurance Corporation (*PDIC*) assailing the September 18, 2006 Decision of the Court of Appeals-Cebu (*CA-Cebu*), which granted the petition for injunction filed by respondents Philippine Countryside Rural Bank, Inc. (*PCRBI*), Rural Bank of Carmen (Cebu), Inc. (*RBCI*), Bank of East Asia (Minglanilla, Cebu), Inc. (*BEAI*), and Pilipino Rural Bank (Cebu), Inc. (*PRBI*), all collectively referred to as "Banks." The dispositive portion of the *CA-Cebu* decision reads:

WHEREFORE, in view of all the foregoing premises, the petition for injunction is hereby **GRANTED**. The respondent PDIC is restrained from further conducting investigations or examination on petitioners-banks without the requisite approval from the Monetary Board.

SO ORDERED.^[1]

In a resolution dated January 25, 2007, the *CA-Cebu* denied petitioner's motion for reconsideration for "lack of merit."^[2]

THE FACTS

On March 9, 2005, the Board of Directors of the PDIC (*PDIC Board*) adopted Resolution No. 2005-03-032^[3] approving the conduct of an investigation, in accordance with Section 9(b-l) of Republic Act (*R.A.*) No. 3591, as amended, on the basis of the Reports of Examination of the Bangko Sentral ng Pilipinas (*BSP*) on ten (10) banks, four (4) of which are respondents in this petition for review. The said resolution also created a Special Investigation Team to conduct the said investigation, with the authority to administer oaths, to examine, take and preserve testimony of any person relating to the subject of the investigation, and to examine pertinent bank records.

On May 25, 2005, the PDIC Board adopted another resolution, Resolution No. 2005-05-056,^[4] approving the conduct of an investigation on PCRBI based on a

Complaint-Affidavit filed by a corporate depositor, the Philippine School of Entrepreneurship and Management (*PSEMI*) through its president, Jacinto L. Jamero.

On June 3, 2005, in accordance with the two PDIC Board resolutions, then PDIC President and Chief Executive Officer Ricardo M. Tan issued the Notice of Investigation^[5] to the President or The Highest Ranking Officer of PCRBI.

On June 7, 2005, the PDIC Investigation Team personally served the Notice of Investigation on PCRBI at its Head Office in Pajo, Lapu-Lapu City.^[6]

According to PDIC, in the course of its investigation, PCRBI was found to have granted loans to certain individuals, which were settled by way of *dacion* of properties. These properties, however, had already been previously foreclosed and consolidated under the names of PRBI, BEAI and RBCI.^[7]

On June 15, 2005, PDIC issued similar notices of investigation to PRBI^[8] and BEAI.^[9]

The notices stated that the investigation was to be conducted pursuant to Section 9 (b-1) of the PDIC Charter and upon authority of PDIC Board Resolution No. 2005-03-032 authorizing the twelve (12) named representatives of PDIC to conduct the investigation.^[10]

The investigation was sought because the Banks were found to be among the ten (10) banks collectively known as "Legacy Banks." The Reports of General and Special Examinations of the BSP as of June 30, 2004, disclosed, among others, that the Legacy Banks were commonly owned and/or controlled by Legacy Plans Inc. (*now Legacy Consolidated Plans, Inc.*), and Celso Gancayco delos Angeles, Jr. and his family.^[11]

The notice of investigation was served on PRBI the next day, June 16, 2005.^[12]

On June 25, 2005, a separate notice of investigation^[13] was served on RBCI. The latter provided the PDIC Investigation Team with certified copies of the loan documents they had requested, until its president received an order directing him not to allow the investigation.^[14]

Subsequently, PRBI and BEAI refused entry to their bank premises and access to their records and documents by the PDIC Investigation Team, upon advice of their respective counsels.^[16]

On June 16 and 17, 2005, Atty. Victoria G. Noel (Atty. Noel) of the Tiongson & Antenor Cruz Law Office sent letters to the PDIC^[17] informing it of her legal advice to PCRBI and BEAI not to submit to PDIC investigation on the ground that its investigatory power pursuant to Section 9(b-1) of R.A. No. 3591, as amended (*An Act Establishing The Philippine Deposit Insurance Corporation, Defining Its Powers And Duties And For Other Purposes*), cannot be differentiated from the examination powers accorded to PDIC under Section 8, paragraph 8 of the same law, under which, prior approval from the Monetary Board is required.

On June 17, 2005, PDIC General Counsel Romeo M. Mendoza sent a reply to Atty. Noel stating that "PDIC's investigation power, as distinguished from the examination power of the PDIC under Section 8 of the same law, does not need prior approval of the Monetary Board."^[18] PDIC then urged PRBI and BEAI "not to impede the conduct of PDIC's investigation" as the same "constitutes a violation of the PDIC Charter for which PRBI and BEAI may be held criminally and/or administratively liable."^[19]

On June 27 and 28, 2005, the Banks, through counsel, sought further clarification from PDIC on its source of authority to conduct the impending investigations and requested that PDIC refrain from proceeding with the investigations.^[20]

Simultaneously, the Banks wrote to the Monetary Board requesting a clarification on the parameters of PDIC's power of investigation/examination over the Banks and for an issuance of a directive to PDIC not to pursue the investigations pending the requested clarification.^[21]

On June 28, 2005, PRBI and BEAI again received letters from PDIC, dated June 24, 2005, which appeared to be final demands on them to allow its investigation.^[22] PRBI and BEAI replied that letters of clarification had been sent to PDIC and the Monetary Board.^[23] Pending action on such requests, PDIC was requested to refrain from proceeding with the investigation.^[24]

Notwithstanding, on July 11, 2005, the Banks received a letter, dated July 8, 2005, from the PDIC General Counsel reiterating its position that prior Monetary Board approval was not a pre-requisite to PDIC's exercise of its investigative power.^[25]

Not in conformity, on July 28, 2005, the Banks filed a *Petition for Declaratory Relief with a Prayer for the Issuance of a TRO and/or Writ of Preliminary Injunction (RTC Petition)* before the Regional Trial Court of Makati (RTC-Makati) which was docketed as Civil Case No. 05-697.^[26]

In the RTC Petition, the Banks prayed for a judgment interpreting Section 9(b-1) of the PDIC Charter, as amended, to require prior Monetary Board approval before PDIC could exercise its investigation/examination power over the Banks.^[27]

PDIC filed a motion to dismiss alleging that the RTC had no jurisdiction over the said petition since a breach had already been committed by the Banks when they received the notices of investigation, and because PDIC need not secure prior Monetary Board approval since "examination" and "investigation" are two different terms.^[28]

Later, the Banks withdrew their application for a temporary restraining order (*TRO*) reasoning that lower courts cannot issue injunctions against PDIC. Thus, the Banks instituted a petition for injunction with application for *TRO* and/or Preliminary Injunction (*CA-Manila petition*) before the Court of Appeals-Manila (*CA-Manila*). The case was docketed as CA-G.R. SPNo. 91038.^[29]

Even before the CA-Manila could rule on the application for a TRO and/or writ of preliminary injunction, the RTC-Makati dismissed the petition on the ground that there already existed a breach of law that isolated the case from the jurisdiction of the trial court.^[30]

The Banks filed a motion for reconsideration but it was denied by the RTC for lack of merit.^[31] On February 10, 2006, the Banks filed a notice of appeal^[32] which they later withdrew on February 28, 2006.^[33]

In view of the dismissal of the RTC-Makati petition, the CA-Manila dismissed the petition for injunction for being moot and academic. In its Decision, dated February 1, 2006,^[34] the CA-Manila wrote:

What remained for the petitioners to do was to litigate over the breach or violation by ordinary action, as the circumstances ensuing from the breach or violation warrant. The ordinary action may either be in the same case, if the RTC permitted the conversion, in which event the RTC may allow the parties to file such pleadings as may be necessary or proper, pursuant to Sec. 5, Rule 63; or the petitioners may file another action in the proper court (e.g. including the Court of Appeals, should injunction be among the reliefs to be sought) upon some cause of action that has arisen from the breach or violation.^[35]

Thereafter, on March 14, 2006, the Banks filed their *Petition for Injunction with Prayer for Preliminary Injunction*^[36] (CA-Cebu Petition) with the CA-Cebu (CA-Cebu).

On March 15, 2006, the CA-Cebu issued a resolution granting the Bank's application for a TRO. This enjoined the PDIC, its representatives or agents or any other persons or agency assisting them or acting for and in their behalf from conducting examinations/investigations on the Banks' head and branch offices without securing the requisite approval from the Monetary Board of BSP.^[38]

During the pendency of the CA-Cebu petition, PDIC filed with this Court a *Petition for Certiorari, Prohibition and Mandamus with Prayer for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction* under Rule 65 docketed as G.R. No. 173370.^[39] It alleged that the CA-Cebu committed grave abuse of discretion amounting to lack or excess of jurisdiction in taking cognizance of the Banks' petition, and in issuing a TRO and a writ of preliminary injunction.^[40]

On July 31, 2006, this Court issued a resolution dismissing the petition for *certiorari* in G.R. No. 173370. The Resolution reads:

Considering the allegations, issues and arguments adduced in the petition for certiorari, prohibition and mandamus with prayer for preliminary injunction and/or restraining order dated 19 July 2006, the Court resolves to DISMISS the petition for failure to sufficiently show that the questioned resolution of the Court of Appeals is tainted with grave

abuse of discretion. Moreover, the petition failed to conform with Rule 65 and other related provisions of the 1997 Rules of Civil Procedure, as amended, governing petitions for certiorari, prohibition and mandamus filed with the Supreme Court, since petitioner failed to submit a verified statement of material date of receipt of the assailed resolution dated 16 May 2006 in accordance with Section 4, Rule 65 in relation to the second paragraph of Section 3, Rule 46. In any event, the petition is premature since no motion for reconsideration of the questioned resolution of the Court of Appeals was filed prior to the availment of this special civil action and there are no sufficient allegations to bring the case within the recognized exceptions to this rule.^[41]

On September 18, 2006, after both parties had submitted their respective memoranda, the CA-Cebu rendered a decision granting the writ of preliminary injunction,^[42] pertinent portions of which read:

[A]fter undergoing a series of amendments, the controlling law with respect to PDIC's power to conduct examination of banks is- prior approval of the Monetary Board is a condition *sine qua non* for PDIC to exercise its power of examination. To rule otherwise would disregard the amendatory law of the PDIC's charter.

The Court is not also swayed by the contention of respondent that what it seeks to conduct is an investigation and not an examination of petitioners' transactions, hence prior approval of the Monetary Board is a mere surplusage.

The ordinary definition of the words "examination" and "investigation" would lead one to conclude that both pertain to the same thing and there seems to be no fine line differentiating one from the other. Black's Law Dictionary defines the word "investigate" as "to examine and inquire into with care and accuracy; to find out by careful inquisition; examination and the word "examination" as an investigation. In Collin's Dictionary of Banking and Finance, the word "investigation" is defined as an "examination to find out what is wrong."

In the case of *Anti-Graft League of the Philippines, Inc. vs. Hon. Ortega, et. al*,^[43] the Supreme Court using Ballentine's Law Dictionary defines an "investigation" as an inquiry, judicial or otherwise, for the discovery or collection of facts concerning the matter or matters involved. Such common definitions would show that there is really nothing to distinguish between these two (2) terms as to support the PDIC view differentiating Section 9 (b-i) from paragraph 8, Section 8 of the PDIC Charter.

In the realm of the PDIC rules, specifically under Section 3 of PDIC Regulatory Issuance No. 2205-02^[44] "investigation" is defined as: Investigation shall refer to fact-finding *examination*, study, inquiry, for determining whether the allegations in a complaint or findings in a final report of examination may properly be the subject of an administrative, criminal or civil action.