

## SECOND DIVISION

[ G.R. No. 178429, October 23, 2009 ]

### SECOND DIVISION JOSE C. GO, PETITIONER, VS. BANGKO SENTRAL NG PILIPINAS, RESPONDENT.

#### D E C I S I O N

**BRION, J.:**

Through the present petition for review on *certiorari*,<sup>[1]</sup> petitioner Jose C. Go (*Go*) assails the October 26, 2006 decision<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 79149, as well as its June 4, 2007 resolution.<sup>[3]</sup> The CA decision and resolution annulled and set aside the May 20, 2003<sup>[4]</sup> and June 30, 2003<sup>[5]</sup> orders of the Regional Trial Court (RTC), Branch 26, Manila which granted Go's motion to quash the Information filed against him.

#### THE FACTS

On August 20, 1999, an Information<sup>[6]</sup> for violation of Section 83 of Republic Act No. 337 (*RA 337*) or the General Banking Act, as amended by Presidential Decree No. 1795, was filed against Go before the RTC. The charge reads:

That on or about and during the period comprised between June 27, 1996 and September 15, 1997, inclusive, in the City of Manila, Philippines, **the said accused, being then the Director and the President and Chief Executive Officer of the Orient Commercial Banking Corporation (Orient Bank)**, a commercial banking institution created, organized and existing under Philippines laws, with its main branch located at C.M. Recto Avenue, this City, and taking advantage of his position as such officer/director of the said bank, did then and there **wilfully, unlawfully and knowingly borrow, either directly or indirectly, for himself or as the representative of his other related companies, the deposits or funds of the said banking institution and/or become a guarantor, indorser or obligor for loans from the said bank to others, by then and there using said borrowed deposits/funds of the said bank in facilitating and granting and/or caused the facilitating and granting of credit lines/loans and, among others, to the New Zealand Accounts loans** in the total amount of TWO BILLION AND SEVEN HUNDRED FIFTY-FOUR MILLION NINE HUNDRED FIVE THOUSAND AND EIGHT HUNDRED FIFTY-SEVEN AND 0/100 PESOS, Philippine Currency, **said accused knowing fully well that the same has been done by him without the written approval of the majority of the Board of Directors of said Orient Bank** and which approval the said accused deliberately failed to obtain and enter the same upon the records of said banking institution and to

transmit a copy of which to the supervising department of the said bank, as required by the General Banking Act.

CONTRARY TO LAW. [Emphasis supplied.]

On May 28, 2001, Go pleaded not guilty to the offense charged.

After the arraignment, both the prosecution and accused Go took part in the pre-trial conference where the marking of the voluminous evidence for the parties was accomplished. After the completion of the marking, the trial court ordered the parties to proceed to trial on the merits.

Before the trial could commence, however, Go filed on February 26, 2003<sup>[7]</sup> a motion to quash the Information, which motion Go amended on March 1, 2003.<sup>[8]</sup> **Go claimed that the Information was defective, as the facts charged therein do not constitute an offense under Section 83 of RA 337 which states:**

No director or officer of any banking institution shall either directly or indirectly, for himself or as the representative or agent of another, borrow any of the deposits of funds of such banks, nor shall he become a guarantor, indorser, or surety for loans from such bank, to others, or in any manner be an obligor for money borrowed from the bank or loaned by it, except with the written approval of the majority of the directors of the bank, excluding the director concerned. Any such approval shall be entered upon the records of the corporation and a copy of such entry shall be transmitted forthwith to the appropriate supervising department. The office of any director or officer of a bank who violates the provisions of this section shall immediately become vacant and the director or officer shall be punished by imprisonment of not less than one year nor more than ten years and by a fine of not less than one thousand nor more than ten thousand pesos.

The Monetary Board may regulate the amount of credit accommodations that may be extended, directly or indirectly, by banking institutions to their directors, officers, or stockholders. However, the outstanding credit accommodations which a bank may extend to each of its stockholders owning two percent (2%) or more of the subscribed capital stock, its directors, or its officers, shall be limited to an amount equivalent to the respective outstanding deposits and book value of the paid-in capital contribution in the bank. Provided, however, that loans and advances to officers in the form of fringe benefits granted in accordance with rules and regulations as may be prescribed by Monetary Board shall not be subject to the preceding limitation. (As amended by PD 1795)

In addition to the conditions established in the preceding paragraph, no director or a building and loan association shall engage in any of the operations mentioned in said paragraphs, except upon the pledge of shares of the association having a total withdrawal value greater than the amount borrowed. (As amended by PD 1795)

In support of his motion to quash, Go averred that based on the facts alleged in the Information, he was being prosecuted for borrowing the deposits or funds of the Orient Bank **and/or** acting as a guarantor, indorser or obligor for the bank's loans to other persons. The use of the word "and/or" meant that he was charged for being either a borrower or a guarantor, or for being both a borrower and guarantor. Go

claimed that the charge was not only vague, but also did not constitute an offense. He posited that Section 83 of RA 337 penalized only directors and officers of banking institutions who acted either as borrower or as guarantor, but not as both.

Go further pointed out that the Information failed to state that his alleged act of borrowing and/or guarantying was not among the exceptions provided for in the law. According to Go, the second paragraph of Section 83 allowed banks to extend credit accommodations to their directors, officers, and stockholders, provided it is "limited to an amount equivalent to the respective outstanding deposits and book value of the paid-in capital contribution in the bank." Extending credit accommodations to bank directors, officers, and stockholders is not *per se* prohibited, unless the amount exceeds the legal limit. Since the Information failed to state that the amount he purportedly borrowed and/or guaranteed was beyond the limit set by law, Go insisted that the acts so charged did not constitute an offense.

Finding Go's contentions persuasive, the RTC granted Go's motion to quash the Information on May 20, 2003. It denied on June 30, 2003 the motion for reconsideration filed by the prosecution.

The prosecution did not accept the RTC ruling and filed a petition for *certiorari* to question it before the CA. The Information, the prosecution claimed, was sufficient. The word "and/or" did not materially affect the validity of the Information, as it merely stated a mode of committing the crime penalized under Section 83 of RA 337. Moreover, the prosecution asserted that the second paragraph of Section 83 (referring to the credit accommodation limit) cannot be interpreted as an exception to what the first paragraph provided. The second paragraph only sets borrowing limits that, if violated, render the bank, not the director-borrower, liable. A violation of the second paragraph of Section 83 - under which Go is being prosecuted - is therefore separate and distinct from a violation of the first paragraph. Thus, the prosecution prayed that the orders of the RTC quashing the Information be set aside and the criminal case against Go be reinstated.

On October 26, 2006, the CA rendered the assailed decision granting the prosecution's petition for *certiorari*.<sup>[9]</sup> The CA declared that the RTC misread the law when it decided to quash the Information against Go. It explained that the allegation that Go acted either as a borrower or a guarantor or as both borrower and guarantor merely set forth the different modes by which the offense was committed. It did not necessarily mean that Go acted both as borrower and guarantor for the same loan at the same time. It agreed with the prosecution's stand that the second paragraph of Section 83 of RA 337 is not an exception to the first paragraph. Thus, the failure of the Information to state that the amount of the loan Go borrowed or guaranteed exceeded the legal limits was, to the CA, an irrelevant issue. For these reasons, the CA annulled and set aside the RTC's orders and ordered the reinstatement of the criminal charge against Go. After the CA's denial of his motion for reconsideration,<sup>[10]</sup> Go filed the present appeal by *certiorari*.

## **THE PETITION**

In his petition, Go alleges that the appellate court legally erred in overturning the trial court's orders. He insists that the Information failed to allege the acts or omissions complained of with sufficient particularity to enable him to know the

offense being charged; to allow him to properly prepare his defense; and likewise to allow the court to render proper judgment.

Repeating his arguments in his motion to quash, Go reads Section 83 of RA 337 as penalizing a director or officer of a banking institution for either *borrowing* the deposits or funds of the bank, or *guaranteeing* or indorsing loans to others, but not for assuming *both* capacities. He claimed that the prosecution's shotgun approach in alleging that he acted as borrower and/or guarantor rendered the Information highly defective for failure to specify with certainty the specific act or omission complained of. To petitioner Go, the prosecution's approach was a clear violation of his constitutional right to be informed of the nature and cause of the accusation against him.

Additionally, Go reiterates his claim that credit accommodations by banks to their directors and officers are legal and valid, provided that these are limited to their outstanding deposits and book value of the paid-in capital contribution in the bank. The failure to state that he borrowed deposits and/or guaranteed loans beyond this limit rendered the Information defective. He thus asks the Court to reverse the CA decision to reinstate the criminal charge.

In its Comment,<sup>[11]</sup> the prosecution raises the same defenses against Go's contentions. It insists on the sufficiency of the allegations in the Information and prays for the denial of Go's petition.

## **THE COURT'S RULING**

**The Court does not find the petition meritorious and accordingly denies it.**

### ***The Accused's Right to be Informed***

Under the Constitution, a person who stands charged of a criminal offense has the right to be informed of the nature and cause of the accusation against him.<sup>[12]</sup> The Rules of Court, in implementing the right, specifically require that the acts or omissions complained of as constituting the offense, including the qualifying and aggravating circumstances, must be stated in ordinary and concise language, not necessarily in the language used in the statute, but in terms sufficient to enable a person of common understanding to know what offense is being charged and the attendant qualifying and aggravating circumstances present, so that the accused can properly defend himself and the court can pronounce judgment.<sup>[13]</sup> To broaden the scope of the right, the Rules authorize the quashal, upon motion of the accused, of an Information that fails to allege the acts constituting the offense.<sup>[14]</sup> Jurisprudence has laid down the fundamental test in appreciating a motion to quash an Information grounded on the insufficiency of the facts alleged therein. We stated in *People v. Romualdez*<sup>[15]</sup> that:

The determinative test in appreciating a motion to quash xxx is the sufficiency of the averments in the information, that is, whether the facts alleged, if hypothetically admitted, would establish the essential elements of the offense as defined by law without considering matters *aliunde*. As Section 6, Rule 110 of the Rules of Criminal Procedure requires, **the**