

FIRST DIVISION

[G.R. NO. 150886, February 16, 2007]

**RURAL BANK OF SAN MIGUEL, INC. AND HILARIO P. SORIANO,
IN HIS CAPACITY AS MAJORITY STOCKHOLDER IN THE RURAL
BANK OF SAN MIGUEL, INC., PETITIONERS, VS. MONETARY
BOARD, BANGKO SENTRAL NG PILIPINAS AND PHILIPPINE
DEPOSIT INSURANCE CORPORATION, RESPONDENTS.**

DECISION

CORONA, J.:

This is a petition for review on certiorari^[1] of a decision^[2] and resolution^[3] of the Court of Appeals (CA) dated March 28, 2000 and November 13, 2001, respectively, in CA-G.R. SP No. 57112.

Petitioner Rural Bank of San Miguel, Inc. (RBSM) was a domestic corporation engaged in banking. It started operations in 1962 and by year 2000 had 15 branches in Bulacan.^[4] Petitioner Hilario P. Soriano claims to be the majority stockholder of its outstanding shares of stock.^[5]

On January 21, 2000, respondent Monetary Board (MB), the governing board of respondent Bangko Sentral ng Pilipinas (BSP), issued Resolution No. 105 prohibiting RBSM from doing business in the Philippines, placing it under receivership and designating respondent Philippine Deposit Insurance Corporation (PDIC) as receiver:

On the basis of the comptrollership/monitoring report as of October 31, 1999 as reported by Mr. Wilfredo B. Domo-ong, Director, Department of Rural Banks, in his memorandum dated January 20, 2000, which report showed that [RBSM] (a) is unable to pay its liabilities as they become due in the ordinary course of business; (b) cannot continue in business without involving probable losses to its depositors and creditors; that the management of the bank had been accordingly informed of the need to infuse additional capital to place the bank in a solvent financial condition and was given adequate time within which to make the required infusion and that no infusion of adequate fresh capital was made, the Board decided as follows:

1. To prohibit the bank from doing business in the Philippines and to place its assets and affairs under receivership in accordance with Section 30 of [RA 7653];
2. To designate the [PDIC] as receiver of the bank;

On January 31, 2000, petitioners filed a petition for certiorari and prohibition in the Regional Trial Court (RTC) of Malolos, Branch 22 to nullify and set aside Resolution No. 105.^[7] However, on February 7, 2000, petitioners filed a notice of withdrawal in the RTC and, on the same day, filed a special civil action for certiorari and prohibition in the CA. On February 8, 2000, the RTC dismissed the case pursuant to Section 1, Rule 17 of the Rules of Court.^[8]

The CA's findings of facts were as follows.

To assist its impaired liquidity and operations, the RBSM was granted emergency loans on different occasions in the aggregate amount of P375 [million].

As early as November 18, 1998, Land Bank of the Philippines (LBP) advised RBSM that it will terminate the clearing of RBSM's checks in view of the latter's frequent clearing losses and continuing failure to replenish its Special Clearing Demand Deposit with LBP. The BSP interceded with LBP not to terminate the clearing arrangement of RBSM to protect the interests of RBSM's depositors and creditors.

After a year, or on November 29, 1999, the LBP informed the BSP of the termination of the clearing facility of RBSM to take effect on December 29, 1999, in view of the clearing problems of RBSM.

On December 28, 1999, the MB approved the release of P26.189 [million] which is the last tranche of the P375 million emergency loan for the sole purpose of servicing and meeting the withdrawals of its depositors. Of the P26.180 million, xxx P12.6 million xxx was not used to service withdrawals [and] remains unaccounted for as admitted by [RBSM's Treasury Officer and Officer-in-Charge of Treasury]. Instead of servicing withdrawals of depositors, RBSM paid Forcecollect Professional Solution, Inc. and Surecollect Professional, Inc., entities which are owned and controlled by Hilario P. Soriano and other RBSM officers.

On January 4, 2000, RBSM declared a bank holiday. RBSM and all of its 15 branches were closed from doing business.

Alarmed and disturbed by the unilateral declaration of bank holiday, [BSP] wanted to examine the books and records of RBSM but encountered problems.

Meanwhile, on November 10, 1999, RBSM's designated comptroller, Ms. Zenaida Cabais of the BSP, submitted to the Department of Rural Banks, BSP, a Comptrollership Report on her findings on the financial condition and operations of the bank as of October 31, 1999. Another set of findings was submitted by said comptroller [and] this second report reflected the financial status of RBSM as of December 31, 1999.

The findings of the comptroller on the financial state of RBSM as of October 31, 1999 in comparison with the financial condition as of

December 31, 1999 is summed up pertinently as follows:

FINANCIAL CONDITION OF RBSM

	As of Oct. 31, 1999	As of Dec. 31, 1999
Total obligations/Liabilities	P1,076,863,000.00	1,009,898,000.00
Realizable Assets	898,588,000.00	796,930,000.00
Deficit	178,275,000.00	212,968,000.00
Cash on Hand	101,441.547.00	8,266,450.00
Required Capital Infusion	P252,120,000.00	
Capital Infusion (On Dec. 20, 1999)	P5,000,000.00	

Actual Breakdown of Total Obligations:

- 1) Deposits of 20,000 depositors – P578,201,000.00
- 2) Borrowings from BSP – P320,907,000.00
- 3) Unremitted withholding and gross receipt taxes – P57,403,000.00.^[9]

Based on these comptrollership reports, the director of the Department of Rural Banks Supervision and Examination Sector, Wilfredo B. Domo-ong, made a report to the MB dated January 20, 2000.^[10] The MB, after evaluating and deliberating on the findings and recommendation of the Department of Rural Banks Supervision and Examination Sector, issued Resolution No. 105 on January 21, 2000.^[11] Thereafter, PDIC implemented the closure order and took over the management of RBSM's assets and affairs.

In their petition^[12] before the CA, petitioners claimed that respondents MB and BSP committed grave abuse of discretion in issuing Resolution No. 105. The petition was dismissed by the CA on March 28, 2000. It held, among others, that the decision of the MB to issue Resolution No. 105 was based on the findings and recommendations of the Department of Rural Banks Supervision and Examination Sector, the comptroller reports as of October 31, 1999 and December 31, 1999 and the declaration of a bank holiday. Such could be considered as substantial evidence.^[13]

Pertinently, on June 9, 2000, on the basis of reports prepared by PDIC stating that RBSM could not resume business with sufficient assurance of protecting the interest of its depositors, creditors and the general public, the MB passed Resolution No. 966 directing PDIC to proceed with the liquidation of RBSM under Section 30 of RA 7653.^[14]

Hence this petition.

It is well-settled that the closure of a bank may be considered as an exercise of police power.^[15] The action of the MB on this matter is final and executory.^[16] Such exercise may nonetheless be subject to judicial inquiry and can be set aside if found

to be in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction.^[17]

Petitioners argue that Resolution No. 105 was bereft of any basis considering that no complete examination had been conducted before it was issued. This case essentially boils down to one core issue: whether Section 30 of RA 7653 (also known as the New Central Bank Act) and applicable jurisprudence require a current and complete **examination** of the bank before it can be closed and placed under receivership.

Section 30 of RA 7653 provides:

SECTION 30. *Proceedings in Receivership and Liquidation.* — Whenever, **upon report of the head of the supervising or examining department**, the Monetary Board finds that a bank or quasi-bank:

(a) is unable to pay its liabilities as they become due in the ordinary course of business: Provided, That this shall not include inability to pay caused by extraordinary demands induced by financial panic in the banking community;

(b) has insufficient realizable assets, as determined by the [BSP] to meet its liabilities; or

(c) cannot continue in business without involving probable losses to its depositors or creditors; or

(d) has willfully violated a cease and desist order under Section 37 that has become final, involving acts or transactions which amount to fraud or a dissipation of the assets of the institution; in which cases, **the Monetary Board may summarily and without need for prior hearing forbid the institution from doing business in the Philippines and designate the Philippine Deposit Insurance Corporation as receiver of the banking institution.**

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The actions of the Monetary Board taken under this section or under Section 29 of this Act shall be final and executory, and may not be restrained or set aside by the court except on petition for certiorari on the ground that the action taken was in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction. The petition for certiorari may only be filed by the stockholders of record representing the majority of the capital stock within ten (10) days from receipt by the board of directors of the institution of the order directing receivership, liquidation or conservatorship. (Emphasis supplied)

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Petitioners contend that there must be a current, thorough and complete

examination before a bank can be closed under Section 30 of RA 7653. They argue that this section should be harmonized with Sections 25 and 28 of the same law:

SECTION 25. *Supervision and Examination.* — The [BSP] shall have supervision over, and **conduct periodic or special examinations** of, banking institutions and quasi-banks, including their subsidiaries and affiliates engaged in allied activities.

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SECTION 28. *Examination and Fees.* — **The supervising and examining department head**, personally or by deputy, shall examine the books of every banking institution once in every twelve (12) months, and at such other time as the Monetary Board by an affirmative vote of five (5) members may deem expedient **and to make a report on the same to the Monetary Board**: Provided that there shall be an interval of at least twelve (12) months between annual examinations. (Emphasis supplied)

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According to the petitioners, it is clear from these provisions that the “report of the supervising or examining department” required under Section 30 refers to the report on the examination of the bank which, under Section 28, must be made to the MB after the supervising or examining head conducts an examination mandated by Sections 25 and 28.^[18] They cite *Banco Filipino Savings & Mortgage Bank v. Monetary Board, Central Bank of the Philippines*^[19] wherein the Court ruled:

There is no question that under Section 29 of the Central Bank Act, the following are the **mandatory requirements** to be complied with before a bank found to be insolvent is ordered closed and forbidden to do business in the Philippines: **Firstly, an examination shall be conducted by the head of the appropriate supervising or examining department or his examiners or agents into the condition of the bank**; secondly, it shall be disclosed in the examination that the condition of the bank is one of insolvency, or that its continuance in business would involve probable loss to its depositors or creditors; thirdly, the department head concerned shall inform the Monetary Board in writing, of the facts; and lastly, the Monetary Board shall find the statements of the department head to be true.^[20] (Emphasis supplied)

Petitioners assert that an examination is necessary and not a mere report, otherwise the decision to close a bank would be arbitrary.

Respondents counter that RA 7653 merely requires a report of the head of the supervising or examining department. They maintain that the term “report” under Section 30 and the word “examination” used in Section 29 of the old law are not synonymous. “Examination” connotes in-depth analysis, evaluation, inquiry or investigation while “report” connotes a simple disclosure or narration of facts for informative purposes.^[21]