

FIRST DIVISION

[G.R. NO. 158261, December 18, 2006]

**IN RE: PETITION FOR ASSISTANCE IN THE LIQUIDATION OF THE
RURAL BANK OF BOKOD (BENGUET), INC., PHILIPPINE DEPOSIT
INSURANCE CORPORATION, PETITIONER, VS. BUREAU OF
INTERNAL REVENUE, RESPONDENT**

D E C I S I O N

CHICO-NAZARIO, J.:

This is a Petition for Review on *Certiorari*^[1] under Rule 45 of the revised Rules of Court, praying that this Court set aside the Orders, dated 17 January 2003^[2] and 13 May 2003,^[3] of the Regional Trial Court (RTC) of La Trinidad, Benguet, sitting as the Liquidation Court of the closed Rural Bank of Bokod (Benguet), Inc. (RBBI), in Spec. Proc. No. 91-SP-0060.

There is no dispute as to the antecedent facts of the case, recounted as follows:

In 1986, a special examination of RBBI was conducted by the Supervision and Examination Sector (SES) Department III of what is now the *Bangko Sentral ng Pilipinas* (BSP),^[4] wherein various loan irregularities were uncovered. In a letter, dated 20 May 1986, the SES Department III required the RBBI management to infuse fresh capital into the bank, within 30 days from date of the advice, and to correct all the exceptions noted. However, up to the termination of the subsequent general examination conducted by the SES Department III, no concrete action was taken by the RBBI management. In view of the irregularities noted and the insolvent condition of RBBI, the members of the RBBI Board of Directors were called for a conference at the BSP on 4 August 1986. Only one RBBI Director, a certain Mr. Wakit, attended the conference, and the examination findings and related recommendations were discussed with him. In a letter, dated 4 August 1986, receipt of which was acknowledged by Mr. Wakit, the SES Department III warned the RBBI Board of Directors that, unless substantial remedial measures are taken to rehabilitate the bank, it will recommend that the bank be placed under receivership. In a subsequent letter, dated 17 November 1986, a copy of which was sent to every member of the RBBI Board of Directors via registered mail, the SES Department III reiterated its warning that it would recommend the closure of the bank, unless the needed fresh capital was immediately infused. Despite these notices, the SES Department III received no word from RBBI or from any of its Directors as of 28 November 1986.^[5]

In a meeting held on 9 January 1987, the Monetary Board of the BSP decided to take the following action –

Rural Bank of Bokod (Benguet), Inc. – Report on its examination as of
June 16, 1986, its placement under receivership

ACTION TAKEN

Finding to be true the statements of the Special Assistant to the Governor and Head, Supervision and Examination Sector (SES) Department III, in her memorandum dated 28 November 1986 submitting a report on the general examination of the Rural Bank of Bokod (Benguet), Inc. as of 16 June 1986, that the financial condition of the rural bank is one of insolvency and its continuance in business would involve further losses to its depositors and creditors, x x x

x x x x

[T]he Board decided as follows:

- a. To forbid the bank to do business in the Philippines and place its assets and affairs under receivership in accordance with Section 29 of R.A. No. 265, as amended.
- b. To designate the Special Assistant to the Governor and Head, SES Department III, as Receiver of the bank;
- c. To refer the cases of irregularities/frauds to the Office of Special Investigation for further investigation and possible filing of appropriate charges against the following present/former officers and employees of the bank:

x x x x

- d. To include the names of the above-mentioned present and former officers and employees of the bank in the list of persons barred from employment in any financial institution under the supervision of the Central Bank without prior clearance from the Central Bank.

[6]

A memorandum and report, dated 28 August 1990, were submitted by the Director of the SES Department III concluding that the RBBI remained in insolvent financial condition and it can no longer safely resume business with the depositors, creditors, and the general public. On 7 September 1990, the Monetary Board, after determining and confirming the said memorandum and report, ordered the liquidation of the bank and designated the Director of the SES Department III as liquidator.[7]

On 10 April 1991, the designated BSP liquidator of RBBI caused the filing with the RTC of a Petition for Assistance in the Liquidation of RBBI, docketed as Spec. Proc. No. 91-SP-0060.[8] Subsequently, on 2 June 1992, the Monetary Board transferred to herein petitioner Philippine Deposit Insurance Corporation (PDIC) the receivership/liquidation of RBBI.[9]

PDIC then filed, on 11 September 2002, a Motion for Approval of Project of Distribution[10] of the assets of RBBI, in accordance with Section 31, in relation to Section 30, of Republic Act No. 7653, otherwise known as the New Central Bank Act. During the hearing held on 17 January 2003, the respondent Bureau of Internal

Revenue (BIR), through Atty. Justo Reginaldo, manifested that PDIC should secure a tax clearance certificate from the appropriate BIR Regional Office, pursuant to Section 52(C) of Republic Act No. 8424, or the Tax Code of 1997, before it could proceed with the dissolution of RBBI. On even date, the RTC issued one of the assailed Orders,^[11] directing PDIC to comply with Section 52(C) of the Tax Code of 1997 within 30 days from receipt of a copy of the said order. Pending compliance therewith, the RTC held in abeyance the Motion for Approval of Project of Distribution. On 13 May 2003, the second assailed Order^[12] was issued, in which the RTC, in resolving the Motion for Reconsideration filed by PDIC, ruled as follows –

ORDER

Submitted for resolution is petitioner's motion for reconsideration of the order of this court dated January 17, 2003 holding in abeyance the motion for approval of the project of distribution pending their compliance with a tax clearance from the Bureau of Internal Revenue.

Petitioner in their motion state that Section 52-C of Republic Act 8424 does not cover closed banking institutions like the Rural Bank of Bokod as the law that covers liquidation of closed banks is Section 30 of Republic Act No. 7653 otherwise known as the new Central Bank Law.

Commenting on the motion for reconsideration the Bureau of Internal Revenue states that the only logic why the Bureau is requesting for a tax clearance is to determine how much taxes, if there be any, is due the government.

The court believes and so holds that petitioner should still secure the necessary tax clearance in order for it to be cleared of all its tax liabilities as regardless of what law covers the liquidation of closed banks, still these banks are subject to payment of taxes mandated by law. Also in its motion for approval of the project of distribution, paragraph 2, item 2.2 states that there are unremitted withholding taxes in the amount of P8,767.32.

This shows that indeed there are still taxes to be paid. In order therefore that all taxes due the government should be paid, petitioner should secure a tax clearance from the Bureau of Internal Revenue.

Wherefore, based on the foregoing premises, the motion for reconsideration filed by petitioner is hereby DENIED for lack of merit.^[13]

Hence, PDIC filed the present Petition for Review on *Certiorari*, under Rule 45 of the revised Rules of Court, raising pure questions of law. It made a lone assignment of error, alleging that –

THE COURT A QUO ERRED IN APPLYING THE PROVISION OF SECTION 52-C OF REPUBLIC ACT NO. 8424 DIRECTING THE SUBMISSION OF TAX CLEARANCE FOR CORPORATIONS CONTEMPLATING DISSOLUTION ON A BANK ORDERED CLOSED AND PLACED UNDER RECEIVERSHIP AND, THEREAFTER, UNDER LIQUIDATION, BY THE MONETARY BOARD PURSUANT TO SECTION 30 OF REPUBLIC ACT NO. 7653.^[14]

PDIC argues that the closure of banks under Section 30 of the New Central Bank Act is summary in nature and procurement of tax clearance as required under Section 52(C) of the Tax Code of 1997 is not a condition precedent thereto; that under Section 30, in relation to Section 31, of the New Central Bank Act, asset distribution of a closed bank requires only the approval of the liquidation court; and that the BIR is not without recourse since, subject to the applicable provisions of the Tax Code of 1997, it may therefore assess the closed RBBI for tax liabilities, if any.

In its Comment, the BIR countered with the following arguments: that the present Petition for Review on *Certiorari* under Rule 45 of the revised Rules of Court is not the proper remedy to question the Order, dated 17 January 2003, of the RTC because said order is interlocutory and cannot be the subject of an appeal; that Section 52(C) of the Tax Code of 1997 applies to all corporations, including banks ordered closed by the Monetary Board pursuant to Section 30 of the New Central Bank Act; that the RTC may order the PDIC to obtain a tax clearance before proceeding to rule on the Motion for Approval of Project of Distribution of the assets of RBBI; and that the present controversy should not have been elevated to this Court since the parties are both government agencies who should have administratively settled the dispute.

This Court finds that there are only two primary issues for the resolution of the Petition at bar, one being procedural, and the other substantive. The procedural issue involves the question of whether the Petition for Review on *Certiorari* under Rule 45 of the revised Rules of Court is the proper remedy from the assailed Orders of the RTC. The substantive issue deals with the determination of whether a bank ordered closed and placed under receivership by the Monetary Board of the BSP still needs to secure a tax clearance certificate from the BIR before the liquidation court approves the project of distribution of the assets of the bank.

I

This Court shall first proceed with the procedural issue on the appropriateness of the remedy taken by PDIC from the assailed RTC Orders.

The differences between an appeal by *certiorari* under Rule 45^[15] of the revised Rules of Court and an original action for *certiorari* under Rule 65^[16] of the same Rules have been laid down by this Court in the case of *Atty. Paa v. Court of Appeals*, ^[17] to wit –

- a. In appeal by *certiorari*, the petition is based on questions of law which the appellant desires the appellate court to resolve. In *certiorari* as an original action, the petition raises the issue as to whether the lower court acted without or in excess of jurisdiction or with grave abuse of discretion.
- b. *Certiorari*, as a mode of appeal, involves the review of the judgment, award or final order on the merits. The original action for *certiorari* may be directed against an interlocutory order of the court prior to appeal from the judgment or where there is no appeal or any other plain, speedy or adequate remedy.

- c. Appeal by *certiorari* must be made within the reglementary period for appeal. An original action for *certiorari* may be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed.
- d. Appeal by *certiorari* stays the judgment, award or order appealed from. An original action for *certiorari*, unless a writ of preliminary injunction or a temporary restraining order shall have been issued, does not stay the challenged proceeding.
- e. In appeal by *certiorari*, the petitioner and respondent are the original parties to the action, and the lower court or quasi-judicial agency is not to be impleaded. In *certiorari* as an original action, the parties are the aggrieved party against the lower court or quasi-judicial agency and the prevailing parties, who thereby respectively become the petitioner and respondents.
- f. In *certiorari* for purposes of appeal, the prior filing of a motion for reconsideration is not required (Sec. 1, Rule 45); while in *certiorari* as an original action, a motion for reconsideration is a condition precedent (*Villa-Rey Transit vs. Bello*, L-18957, April 23, 1963), subject to certain exceptions.
- g. In appeal by *certiorari*, the appellate court is in the exercise of its appellate jurisdiction and power of review, while in *certiorari* as an original action, the higher court exercises original jurisdiction under its power of control and supervision over the proceedings of lower courts.

Guided by the foregoing distinctions, this Court, in perusing the assailed RTC Orders, dated 17 January 2003 and 13 May 2003, reaches the conclusion that these are merely interlocutory in nature and are not the proper subjects of an appeal by *certiorari* under Rule 45 of the revised Rules of Court.

This Court has repeatedly and uniformly held that a judgment or order may be appealed only when it is final, meaning that it completely disposes of the case and definitively adjudicates the respective rights of the parties, leaving thereafter no substantial proceeding to be had in connection with the case except the proper execution of the judgment or order. Conversely, an interlocutory order or judgment is not appealable for it does not decide the action with finality and leaves substantial proceedings still to be had.^[18]

The RTC Orders presently questioned before this Court has not disposed of the case nor has it adjudicated definitively the rights of the parties in Spec. Proc. No. 91-SP-0060. They only held in abeyance the approval of the Project of Distribution of the assets of RBBI until PDIC, as liquidator, acquires a tax clearance from the BIR. Indubitably, there are still substantial proceedings to be had after PDIC presents the required tax clearance to the trial court, since the Project of Distribution of assets still has to be finalized and approved.

PDIC avers that the RTC Orders of 17 January 2003 and 13 May 2003 are final because, as this Court pronounced in the case of *Pacific Banking Corporation*