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FIRST DIVISION

[G.R. NO. 154973, June 21, 2005]

THE PRESIDENT OF PHILIPPINE DEPOSIT INSURANCE CORPORATION AS LIQUIDATOR OF PACIFIC BANKING CORPORATION, PETITIONER, VS. HON. WILFREDO D. REYES, PAIRING JUDGE, RTC MANILA, BRANCH 31; ANG ENG JOO; ANG KEONG LAN; AND E.J. ANG INTERNATIONAL, LTD., REPRESENTED BY FORNIER & FORNIER LAW, RESPONDENTS.

D E C I S I O N

DAVIDE, JR., C.J.:

May an investment in a corporation, whose existence has been terminated, be entitled to an interest in the concept of actual and compensatory damages from the time such investment was made until the closure of the corporation? This is the pivotal issue in this petition for certiorari filed by the President of the Philippine Deposit Insurance Corporation (PDIC), in his capacity as the Liquidator of the Pacific Banking Corporation (PaBC).

The antecedent facts are as follows:

On 5 July 1985, pursuant to Resolution No. 699 of the Monetary Board of the Central Bank of the Philippines, the PaBC was placed under receivership on the ground of insolvency. Subsequently, it was placed under liquidation, and a liquidator was designated.

On 7 April 1986, the Central Bank of the Philippines, through the Office of the Solicitor General, filed with the Regional Trial Court (RTC) of Manila, Branch 31, a petition for assistance in the liquidation of PaBC.

On 17 May 1991, Vitaliano N. Nañagas, President of the PDIC, was appointed by the Central Bank as Liquidator.

On 26 June 1992, private respondents Ang Eng Joo, Ang Keong Lan, and E.J. Ang International Ltd. (hereafter Singaporeans), then represented by their attorney-in-fact Gonzalo C. Sy, filed their claim before the liquidating court. Citing Republic Act No. 5186, otherwise known as the Investment Incentives Act, they claimed to be preferred creditors and prayed for the return of their equity investment in the amount of US$2,531,632.18 with interest until the closure of the PaBC.

After due hearing or on 11 September 1992, the liquidation court, through Presiding Judge Regino Veridiano II, issued an order that reads as follows:

> At this stage of the liquidation proceedings, the claimants who are foreign investors should already be paid. If there is any doubt as to whether claimants who are foreign investors should be treated as

> preferred claimants, the doubt should be resolved in favor of claimants since it is of judicial notice that government adopted the policy to entice foreign investors to help boost the economy. Claimants who are foreign investors should be treated with liberality such that they should be categorized among preferred creditors. Claimants were invited to invest at PaBC in 1981 and after a short period of less than four (4) years the bank was closed in 1985 due to mismanagement.[1]
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> …
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> WHEREFORE, premises considered, the Liquidator of PaBC is ordered to pay claimants through their Attorney-in-Fact Gonzalo C. Sy, their total investment of US$2,531,632.18 as preferred creditors. Dividends and/or interest that accrued in favor of claimants is hereby deferred pending study by the Liquidator who is hereby ordered to submit his report and recommendation within thirty (30) days from receipt of this Order.[2]

His motion for reconsideration having been denied, the Liquidator filed a notice of appeal. In an Order dated 28 October 1992, the liquidation court struck off the record the notice of appeal for having been filed beyond the 15-day period to appeal, and directed the execution of the Order of 11 September 1992.

The Liquidator thus filed a petition for *certiorari* before the Court of Appeals, which was, however, dismissed on the ground that the notice of appeal was correctly dismissed by the liquidation court for having been filed out of time. In our decision[3] of 20 March 1995 in G.R. Nos. 109373 and 112991, we sustained the Court of Appeals, but on a different ground. We held that while the Liquidator filed the notice of appeal within the reglementary 30-day period provided in special proceedings, he failed to file the requisite record on appeal, and thus the appeal was not perfected on time, causing the 11 September 1992 Order to become final and executory.

Consequently, the liquidation court, through the pairing judge Hon. Wilfredo D. Reyes, issued an Order dated 13 April 1998 implementing the execution order of 28 October 1992 by directing the President of the Land Bank of the Philippines (LBP) to release to the Sheriff the garnished amount of US$2,531,632.18 or its peso equivalent computed at the current exchange rate, to be paid to the Singaporeans.

The Bureau of Internal Revenue (BIR) and the Bangko Sentral ng Pilipinas promptly filed before the liquidation court separate motions to hold in abeyance the liquidation court's orders of 28 October 1992 and 13 April 1998.[4] The Liquidator also filed an urgent motion to prohibit the Singaporeans from withdrawing the money from their account with the LBP.[5] It was accompanied by an application for a temporary restraining order and/or preliminary injunction praying that Gonzalo C. Sy be prohibited from withdrawing the amount of P82,658,671.43 from his account with the LBP and be directed to return any funds that might already have been withdrawn by him.

On 12 May 1998, Judge Reyes issued an Order[6] denying the motions and ordered the payment of accrued legal interest on the Singaporeans' equity investment of US$2,531,632.18 at the rate of 12% per annum computed from 15 October 1981,

the date the outward remittance and the investment were actually made, until its full payment, at the exchange rate prevailing at the time of payment.

Finally, on 15 May 1998, Judge Reyes issued another Order[7] directing the President of the Philippine National Bank (PNB) to release the garnished amount sufficient to cover the additional sum of P172,374,220.64.

Aggrieved by these orders, the BIR, PDIC, and the Liquidator filed before the Court of Appeals a petition for *certiorari*, mandamus, and prohibition with a prayer for a temporary restraining order[8] assailing Judge Reyes' Orders of 13 April 1998, 12 May 1998, and 15 May 1998.

In its decision[9] of 31 January 2002, the Court of Appeals affirmed the Orders of 13 April 1998 and 15 May 1998, but modified the Order of 12 May 1998 as follows:

> (1) [P]ayment of accrued legal interest in the sum of P56,034,877.04 still left uncollected shall be made to private respondents, Singaporeans, directly or through their new attorney-in-fact and legal counsel, the law firm of Fornier & Fornier;
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> (2) [E]njoining respondent Gonzalo C. Sy from withdrawing the garnished amount from his savings/current account with the Land Bank of the Philippines or any other bank in which funds released from the garnished accounts of PaBC, LBP and PNB have been deposited; and
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> (3) [A]n amount equivalent to 15% of the remaining garnished amount or the balance of accrued legal interest of Pesos 56,034,877.04 shall be withheld and remitted to petitioner Bureau of Internal Revenue, without prejudice to the right of said petitioner to make other assessments for taxes in the future.
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> Consequently, the writ of preliminary injunction issued on September 14, 1998 is hereby DISSOLVED. By virtue hereof, the garnished amount from the savings/current account with the Land Bank of the Philippines or any other bank in which funds released from the garnished accounts of PaBC, LBP and PNB have been deposited may now be released only to private respondents, Singaporeans, directly or through their new attorney-in-fact and legal counsel, the law firm of Fornier & Fornier.[10]

After an unsuccessful motion for reconsideration,[11] the Liquidator came before us assigning the following errors:

> 4.1
>
> THE RESPONDENT APPELLATE COURT COMMITTED A FUNDAMENTAL ERROR OF FACT AND LAW WHEN IT DECLARED THE SINGAPOREANS' EQUITY INVESTMENT WITH CLOSED PACIFIC BANKING CORPORATION ENTITLED TO PAYMENT OF INTEREST.

4.2

THE RESPONDENT APPELLATE COURT COMMITTED A FUNDAMENTAL ERROR OF FACT AND LAW WHEN IT APPLIED THE LANDMARK CASE OF EASTERN SHIPPING LINES, INC. V. CA (G.R. NO. 97412, JULY 12, 1994) IN FIXING THE RATES OF INTEREST AND/OR DIVIDENDS THAT ALLEGEDLY ACCRUED ON THE EQUITY INVESTMENT OF THE SINGAPOREANS ON PABC.

4.3

ASSUMING FOR THE SAKE OF ARGUMENT THAT PABC IS LIABLE FOR COMPENSATORY DAMAGES TO THE SINGAPOREAN EQUITY HOLDERS, ACCRUAL OF THE 6% INTEREST RATE SHOULD COMMENCE FROM DEMAND.

4.4

ASSUMING FOR THE SAKE OF ARGUMENT THE CORRECTNESS OF THE RESPONDENT APPELLATE COURT'S IMPOSITION OF THE 6% AND 12% INTEREST RATE ON THE EQUITY INVESTMENTS OF THE SINGAPOREAN EQUITY HOLDERS, THE LATTER SHOULD ONLY BE ENTITLED TO A TOTAL AMOUNT OF P73,246,702.21 BY WAY OF THE ALLEGED ACCRUED DIVIDENDS AND/OR INTERESTS.

4.5

FOLLOWING THE JANUARY 31, 2002 DECISION OF THE RESPONDENT APPELLATE COURT WHICH DIRECTED THE PAYMENT OF ALLEGED ACCRUED DIVIDENDS AND/OR INTEREST COMMENCING ON OCTOBER 15, 1981 WHERE THE PREVAILING EXCHANGE RATE WAS P8.067 TO A DOLLAR, THE OVERPAYMENT TO THE SINGAPOREAN EQUITY HOLDERS SHALL AMOUNT TO P182,893,303.55. [12]

Anent the first issue, the Liquidator interprets the affirmation by the Court of Appeals of the 12 May 1998 Order of Judge Reyes as amounting to an unlawful grant of undeclared dividends. He argues that the only fruits that can arise from an equity investment are dividends declared from unrestricted retained earnings by the Board of Directors in accordance with the Corporation Code. Absent a declaration in this case, the interest awarded has no legal basis.

As for the second and third issues, the Liquidator argues that no actual damages can arise from the closure of the bank. The ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals*[13] is not applicable because that case clearly refers to an award of interest in the concept of actual and compensatory damages in case of breach of an obligation. The failure of PaBC to return the Singaporeans' equity investment because of its closure is not a breach of an obligation – the closure being akin to a *force majeure*. If indeed PaBC is liable to the Singaporeans for actual and compensatory damages, accrual thereof should be reckoned from the date of demand pursuant to Article 1169 of the Civil Code. Instead of running from 15 October 1981 when the Singaporeans bought their shares in PaBC, the 6% interest rate should be reckoned from 26 June 1992, the date the Singaporeans filed their

claim in the liquidation court.

The Liquidator likewise asserts that there is already an overpayment of accrued dividends or interests. The liquidation court's Order of 12 May 1998 awarded an interest of 12% *per annum* to be computed from 15 October 1981 (the date of actual remittance of the investment) until full payment. Pursuant to that Order, the PNB released P116,339,343.60. On appeal, however, the Court of Appeals modified the decision and awarded an interest of 6% *per annum* from 15 October 1981 up to PaBC's closure, as well as an interest of 12% *per annum* from 11 October 1992, when the 11 September 1992 Order became final and executory, until 17 April 1998, when the equity investment of US$2,531,632.18 was fully paid. With the prevailing exchange rate of P8.067 to a dollar on 15 October 1981, the total peso equivalent of the Singaporeans' claim is only P30,230,338.29 – P20,422,676.80 of which represents the principal equity investment of US$2,531,632.18 and P9,807,661.49, as alleged accrued interest. As of 18 May 1998, the total releases to the Singaporeans from the garnished funds of the PaBC amounted to P213,123,641.84. There is therefore an overpayment of P182,893,303.55. Thus, the order of the Court of Appeals to further release P56,034,877.04 from the garnished funds would result to unjust enrichment in favor of the Singaporeans.

For their part, the Singaporeans assert that the Court of Appeals committed no error in affirming their entitlement to accrued interests in the amount of P56,034,877.04 and in ordering its payment less 15% in taxes as agreed upon by the BIR. The Order of 11 September 1992 included the payment of the principal due the Singaporeans as preferred creditors, but it deferred the payment of interest on the principal for study by the Liquidator. Unfortunately, no study and recommendation was done since September 1992; thus, the liquidation court took it upon itself to arithmetically compute and fix the amount of interest at the legal rate of 12% *per annum* as reflected in the Order of 12 May 1998. Likewise, the award of 12% interest has become the law of the case with respect to the Liquidator and the Singaporeans.

The Singaporeans also argue that the petition should be dismissed because it assails errors of judgment, not errors of jurisdiction. They submit that the filing of a special civil action for *certiorari* rather than an appeal is wrong, improper, and fatal to the case. Moreover, the issue of overpayment is a question of fact that could not be threshed out in a special civil action for certiorari.

We shall first tackle the procedural issue of the propriety of the petition filed by the Liquidator.

A petition for *certiorari* is the proper remedy when a tribunal, board, or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal nor any plain, speedy, and adequate remedy at law.[14] *Grave abuse of discretion* is defined as the capricious, whimsical exercise of judgment as is equivalent to lack of jurisdiction. An error of judgment committed in the exercise of its legitimate jurisdiction is not the same as *grave abuse of discretion*. Thus, the special writ of *certiorari* is not the remedy for errors of judgment that can be corrected by appeal.[15]