

SECOND DIVISION

[G.R. No. 129368, August 25, 2003]

LAND BANK OF THE PHILIPPINES, PETITIONER, VS. THE HON. COURT OF APPEALS, MAMERTA B. RODRIGUEZ, SPS. ARMANDO AND ZENAIDA STA ANA, EL OBSERVATORIO DE MANILA INCORPORADA, SPS. WILFREDO AND AURORA POSADAS, REGINALD F. FRANCISCO, BIENVENIDO L. MACEDA, SPS. HECTOR AND MATILDE MENDOZA AND EUGENIO V. ROMILLO, RESPONDENTS.

D E C I S I O N

CALLEJO, SR., J.:

Before this Court is a petition for *certiorari* under Rule 65 of the Revised Rules of Court which seeks to annul and set aside the Decision^[1] and Resolution of the Court of Appeals in CA-G.R. CV Nos. 12533-35 dated November 12, 1996 and April 14, 1997, respectively, reversing the Order^[2] of the Regional Trial Court of Makati City, Branch 136, in Special Proceedings Cases Nos. M-108, M-125 and M-126.

THE ANTECEDENTS

Manotoc Securities, Inc. (MSI) was a duly licensed broker and dealer in securities, doing business and operating under the provisions of the Securities Act. The Insular Bank of Asia and America (IBAA) and the Land Bank of the Philippines (LBP) are private commercial banking corporations duly authorized to operate as trust companies.

IBAA and MSI offered and sold securities to the public. Among the purchasers were private respondents Mamerta B. Rodriguez, the Spouses Armando and Zenaida Sta. Ana, El Observatorio de Manila, Incorporada, Spouses Wilfredo and Aurora Posadas, Reginald F. Francisco, Bienvenido L. Maceda, Spouses Hector and Matilde Mendoza, and Eugenio V. Romillo.^[3] As evidence of their purchases, the private respondents executed individual investment agreements with MSI.

Under the said agreements, MSI undertook to invest funds primarily in a portfolio of certain specified securities for fixed periods of time, and to return upon maturity the funds of the investors and their corresponding share in the income of the same. As security for compliance of its undertaking with private respondents, MSI, as the investment agent of the private respondents, delivered qualified securities to the IBAA. Thus, on August 19, 1976, MSI and IBAA executed a custodianship agreement in which the latter was constituted as custodian bank of the investment portfolio/collateral pool of securities of the private respondents with corresponding duties and responsibilities thereunder defined, some of which are as follows:

- g) To sell out the portfolio in whole or in part upon failure by

the Company to deliver additional securities as provided for in Section 2.03 hereof, up to an amount that would at least equal to the maximum security value of the Custodian Receipt outstanding and to hold such proceeds from the sale as part of the portfolio under cash accounts until duly claimed (i) by the Company upon presentation of additional qualified securities or cancellation of custodian receipts or (ii) the Investor upon failure of the Company to make such presentation, upon proper presentation of the Investment Agreement together with the Custodian Receipt.

- h) To do and perform such other acts and things as the Company may, by any future instrument in writing delivered to the Custodian, require of the Custodian, provided that such other acts and things are germane to the intent and purpose of this Agreement.^[4]

of default by the investment agent, the custodian bank as its attorney-in-fact was authorized to sell so much of the qualified securities held in the portfolio and to apply the proceeds thereof, thus:

Section 5.03. Sale of Securities Portfolio

The Company, by adhesion to this Agreement in the manner herein provided, shall be deemed as having expressly in (*sic*) irrevocably constituted and appointed the Custodian, as its true and lawful attorney-in-fact, with full power and authority, upon the occurrence of an event of default, to perform the following:

- a) To sell so much of the qualified securities held in the portfolio as may be necessary to satisfy the amounts due and payable whether by term or by declaration or otherwise such sale to be effected at such time or times as the Trustee may determine, and any such sale or sales may be made at a public or private sale in any broker's board or securities exchange, or may be made over-the-counter;
- b) To collect and receive the proceeds of the sale and to issue receipts therefor and/or execute and/or deliver such papers or documents and perform such acts as may be necessary to transfer to the purchaser or purchasers of the qualified securities so sold, all the rights, title and interest on such securities.

Section 5.04. Application of Proceeds of Sale; Accounting

The proceeds from the sale of the qualified securities held in the Portfolio shall be applied as follows:

- a) First To the payment of the costs and expenses of the sale, and the compensation and other claims of the Custodian pursuant to Section 3.09 hereof;
- b) To the payment in full of the amounts then due and Second unpaid for principal and income of the Investor's

investment upon the maturity of the Investment Agreement;

- c) Third To the placement of cash accounts as part of the portfolio so as to maintain the aggregate maximum security value required to cover custodian receipts outstanding pursuant to Section 2.03 and 3.01 (g) hereof;
- d) Any surplus remaining shall be returned to the Company, Fourth its successors or assigns or to whomsoever may be lawfully entitled to receive the same.

The Custodian shall submit and render to the Company written statements and reports of sales transactions under this Section, if any, fifteenth (15th) day of each calendar month.^[5]

MSI executed in favor of IBAA, conformably to the said custodianship agreement, deeds of assignment, quoted in part as follows:

NOW THEREFORE, for and in consideration of the foregoing premises and by way of security for the faithful compliance by the Company with the terms and conditions of the Investment Agreement and pursuant to the Agreement, the Company *hereby transfers, assigns, sets over and delivers to the Custodian for the benefit and security of Investors, all rights, title and interest whether legal or beneficial in and to the securities more particularly described in the schedule attached hereto as Exhibit "1" hereof, and to such other securities as may from time to time be brought under the operation of this assignment from time to time by way of supplementary schedules hereto incorporated and made an integral part hereof by their terms of reference.*

The Company hereby reiterates and affirms, as integral parts of this Agreement, all of the warranties set forth in Section 4.01 of the Agreement, to which Agreement reference is hereby made for the other terms and conditions applicable hereto.^[6]

On December 12, 1979, MSI as trustor and LBP as trustee executed a contract denominated as "Substitution of Trustee with Assumption of Liabilities" in which LBP substituted and succeeded IBAA as custodian bank of the collateral pool of securities under the custodianship agreement, and thus assumed the previous duties and responsibilities of IBAA as custodian and safekeeper of qualified securities for the benefit of the investors:

2. Also effective as of December 12, 1979, Land Bank has agreed to be substituted as Custodian in place of IBAA under the aforementioned Custodianship Agreement, and has assumed any and all liabilities of IBAA thereunder.
3. IBAA, upon the instruction of the TRUSTOR shall, under the mechanics to be agreed upon subsequent hereto, transfer the custody and management of the collateral pool to LAND BANK.

4. TRUSTOR undertake[s] to hold IBAA free from any and all liability which may arise under the CUSTODIANSHIP AGREEMENT, referred to above, and agree to defend IBAA from any and all suits which may arise by virtue thereof.
5. LAND BANK undertakes to collect all outstanding IBAA Custodian Receipts issued pursuant to the CUSTODIANSHIP AGREEMENT mentioned above, and to substitute its own Custodianship Receipts thereof within thirty (30) days from the execution of this AGREEMENT.
6. LAND BANK further agrees to notify all investors of the fact of substitution of IBAA as trustee of the collateral pool, pursuant to Section 3.05 of the CUSTODIANSHIP AGREEMENT dated August 19, 1976.
7. The provision of Section 3.04-A of the said AGREEMENT relative to the effectivity of removal or resignation of the trustee after the thirtieth banking day from date of notice is hereby waived.
8. The TRUSTOR shall, upon the execution of this AGREEMENT, liquidate all its outstanding obligations with IBAA, including but not limited to outstanding trust fees and out of pocket expenses.
9. Upon the execution of this AGREEMENT, IBAA will render its final accounting to the TRUSTOR. Any exception thereto must be communicated in writing to IBAA within thirty (30) days from receipt thereof, otherwise the same shall be deemed conclusively correct.^[7]

In the same month, Ricardo L. Manotoc, Jr. and Teodoro M. Kalaw filed a petition with the Securities and Exchange Commission (SEC) docketed as SEC Case No. 1826 for the rehabilitation of MSI and the appointment of a Management Committee for the said corporation "to avoid an imminent danger of paralyzation of its business operations brought about by serious financial problems." Teodoro M. Kalaw likewise filed a similar petition with the SEC docketed as SEC Case No. 1835 for the rehabilitation of the Trans-Insular Management, Inc. *et al.* and for the appointment of a Management Committee.

On December 20, 1979 and January 11, 1980, the SEC issued orders placing MSI under rehabilitation and appointing a Management Committee as interim receiver of the real and personal properties and assets of MSI, its subsidiaries and subdivisions. The SEC issued another order on April 2, 1980 delineating the duties of the Management Committee as interim receiver:

1. To bring and defend such action in its own name;
2. To take and keep possession of the properties in controversy;
3. To receive rents and other income;

4. To collect debts due to the corporations as receiver and all such funds, property and estate, due to person or corporation of which it is receiver;
5. To compound for and compromise the same;
6. To make transfer;
7. To pay outstanding debts; to divide the money and other property that shall remain among the persons legally entitled to receive the same;
8. To negotiate with any financial institution whether public or private, domestic or foreign, for such funding and financial arrangement as may be necessary to support the rehabilitation project and program. For this purpose, the Committee or its duly authorized representative may sign such documents and papers as may be necessary;
9. To make such reports to the Commission as may be decreed necessary from time to time regarding the aforementioned projects; and generally to do such acts respecting the property as the Commission may authorize, including the authority to rehabilitate the said corporation, if possible.^[8]

Wilfrido B. Jacinto was appointed as Officer-In-Charge of the Committee.

On February 13, 1980, MSI wrote the LBP, advising the latter that the corporation had been placed under rehabilitation, and that the SEC had appointed a Management Committee to handle its affairs. MSI directed the LBP--

... to suspend any movement, disposition or substitution of any and all properties you now hold either, as collateral, security or custodian for the above-mentioned companies as per the directive of the Securities and Exchange Commission.^[9]

On April 18, 1982, the private respondents, through counsel, wrote the LBP, requesting the latter to return their investments with the MSI. The LBP referred the letter of the private respondents to the Management Committee which on May 28, 1982 rejected the demands of the private respondents. On June 1, 1982, the LBP wrote the private respondents that it could not possibly comply with their demands:

As what we have told you in our letter of May 20, 1982 we referred your demands to the SEC-Appointed Management Committee which took over Manotoc Securities, Inc. in view of the SEC order suspending any movement or disposition of any and all properties of the company under our custody as per letter of Enrique J. Unson, Asst. Vice-President of Manotoc Securities, Inc., and noted by W. B. Jacinto, Officer-In-Charge for the SEC-Appointed Management Committee, dated February 13, 1980.

We are, therefore, attaching herewith a copy of the reply-letter from the SEC-Appointed Management Committee dated May 28, 1982 which is