



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **March 1, 2023** which reads as follows:

“G.R. No. 253411 (Philippine Deposit Insurance Corporation (PDIC) v. Ma. Fe Balceda Sinoro and The Majority Stockholders of AMA Rural Bank of Mandaluyong, Inc.); and G.R. No. 253270 (Bangko Sentral ng Pilipinas v. Ma. Fe Balceda Sinoro and The Majority Stockholders of AMA Rural Bank of Mandaluyong, Inc.). — These consolidated¹ Petition for Review on *Certiorari* (With Urgent Motion for Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction) and Petition for Review on *Certiorari* with Extremely urgent application for the issuance of an *ex-parte* Temporary Restraining Order and/or Writ of Preliminary Injunction² under Rule 45 of the Rules of Court seek to reverse and set aside the Decision³ dated 07 September 2020 of the Court of Appeals (CA) in CA-G.R. SP No. 163288.

Antecedents

Petitioner *Bangko Sentral ng Pilipinas* (BSP) is the independent central monetary authority of the Philippines.⁴ Under Republic Act No. (RA) 7653,⁵ as amended, or the BSP Charter, BSP is mandated to supervise the operations of banks and exercise regulatory powers over non-bank financial institutions with quasi-banking functions.⁶ It also performs its powers and functions through the Monetary Board (MB).⁷ Petitioner Philippine Deposit Insurance Corporation (PDIC) is the insurer of deposits and may also be designated as

¹ This Court’s Resolution dated 17 November 2021; *Rollo* (G.R. No. 253270), p. 3104.

² *Id.* at 164-378.

³ *Id.* at 12-48; Penned by Associate Justice Japar B. Dimaampao (now Member of this Court) and concurred in by Associate Justices Edwin D. Sorongon and Geraldine C. Fiel-Macaraig.

⁴ Section 2, Republic Act No. (RA) 7653, as amended.

⁵ Entitled: “THE NEW CENTRAL BANK ACT.” Approved: 14 June 1993.

⁶ RA 7653, Section 3, as amended.

⁷ RA 7653, Section 6, as amended.

receiver and liquidator of closed banks under RA 3591,⁸ as amended, or the PDIC Charter.⁹ Respondents Ma. Fe Balceda Sinoro and the majority stockholders (respondents) of AMA Rural Bank of Mandaluyong, Inc. (“AMA Bank” or the Bank) are the owners of 96% of the Bank’s outstanding capital stock.¹⁰

AMA Bank, which was formally known as Ventures Rural Bank of Mandaluyong, Inc., started its operations in 1953.¹¹ On 03 November 2006, AMA Bank was initiated into the Prompt Corrective Action (PCA) Framework. In 2008, AMA Bank executed a Memorandum of Understanding (MOU) and a five-year rehabilitation plan.¹² However, according to BSP, despite entering the PCA Framework and the execution of the MOU, AMA Bank has not reformed its deficiencies.¹³ Thus, on 17 March 2016, a Cease-and-Desist Order (CDO) was issued on the following alleged unsafe or unsound practices of AMA Bank:

- a. Purchase of [CTS] receivables from [Picar]; entering into a housing loan program, involving Picar, [AMA Properties Management, Inc.] and [AMA Computer College, Inc.] (related companies), among others, with contracts/agreements with related parties; granting of irregular/questionable loans to borrowers, and/or other related practices/transactions that give unwarranted benefits to the directors, officers, stockholders and their related interests (DOSRI) and are grossly disadvantageous to the Bank; and
- b. Outright recognition of income for capitalized interest and penalties, amortizing unearned interest discount/deferred credits and recognizing income on compromise/restructured loan and sales contract receivables (SCR) regardless of actual collections and/or other related practices/transactions of making entries that will result in the misstatement of accounts.¹⁴

On 25 August 2016, the CDO attained finality. From 2017 to 2019, following BSP’s instruction to infuse additional capital, AMA Bank has submitted several applications to increase its authorized capital stock. Initially, the applications were for an increase to Two Billion Pesos, but later changed to Five Billion Pesos. However, all these applications were not favorably acted upon by BSP, citing various discrepancies or inconsistencies.¹⁵

⁸ Entitled: “AN ACT ESTABLISHING THE PHILIPPINE DEPOSIT INSURANCE CORPORATION, DEFINING ITS POWERS AND DUTIES AND FOR OTHER PURPOSES” Approved: 22 June 1963.

⁹ RA 3591, Section 1, as amended.

¹⁰ *Rollo* (G.R. No. 253270), p. 170.

¹¹ *Id.* at 430.

¹² *Id.* at 187-188.

¹³ *Id.*

¹⁴ *Id.* at 196.

¹⁵ *Id.* at 19, 42-43.

On 19 August 2019, PDIC, which conducted a joint examination with BSP, wrote to AMA Bank that it “has substantially addressed PDIC examination findings.”¹⁶ On 30 September 2019, PDIC likewise certified that AMA Bank had no outstanding assessment due to the PDIC. Thus, with this turn of events, AMA Bank re-filed its application for approval of the amendment of its Articles of Incorporation and By-Laws on 02 October 2019. Losing no time, AMA Bank, through Ambassador Amable Aguiluz V, its Chairman and President, informed BSP in writing that it had deposited an additional One Hundred Million Pesos in his capacity as a subscriber to the Bank’s increased authorized capital stock. However, on 21 October 2019, BSP again denied AMA Bank’s application.¹⁷

In the Memorandum to the MB dated 24 October 2019 (“Memorandum to the MB”), BSP’s Financial Supervision Department VIII (FSD VIII) submitted its report and recommendations on AMA Bank. The FSD VIII concluded that the Bank cannot continue business without involving probable losses to its depositors or creditors, and the Bank has willfully violated the CDO involving acts or transactions which amount to fraud or dissipation of assets of the Bank. Ultimately, FSD VIII recommended that AMA Bank be prohibited from doing business in the Philippines.¹⁸

Thus, on 07 November 2019, MB Resolution No. 1705.D was issued, prohibiting AMA Bank from doing business in the Philippines, designating PDIC as its receiver, and directing PDIC to proceed with the takeover and liquidation of AMA Bank, viz.:

1. To prohibit [AMA RB] from doing business in the Philippines x x x in accordance with Section 30 (c) and (d) of RA 7653, as amended; x x x and
2. To designate the (PDIC) as Receiver of [AMA RB] and direct PDIC to proceed with the takeover and liquidation of the Bank in accordance with Section 12 (a) of R.A. No. 3591 (PDIC Charter), as amended[.]¹⁹

On the following day, PDIC immediately proceeded with the takeover of AMA Bank by serving it a Notice of Closure and a copy of MB Resolution No. 1705.D.²⁰ In the Letter²¹ dated 08 November 2019, PDIC wrote AMA Bank:

Upon placement of the Bank under liquidation, the powers, voting rights, functions and duties, as well as the allowances, remunerations, and perquisites [sic], of the directors, officers and stockholders of the Bank are terminated. Accordingly, the directors, officers, and stockholders shall be

¹⁶ Id. at 3330.

¹⁷ *Rollo* (G.R. No. 253411), pp. 21-23.

¹⁸ *Rollo* (G.R. No. 253270), pp. 452-455.

¹⁹ Id. at 454.

²⁰ Id. at 210.

²¹ Id. at 17-18.

barred from interfering in any way with the assets, records and affairs of the Bank.

Directors, officers, employees or agents of the closed bank have the duty to immediately account for, surrender and turn over to the Receiver the assets, records, and affairs of the closed banks in their possession, custody, administration or management, and provide information relative thereto, upon service of the notice of closure to the bank in accordance with Section 14 of the PDIC Charter.

In view thereof, demand is made upon you to immediately turn over all the records and assets of the bank, including but not limited to, the Bank's deposit accounts, titles to real properties, collaterals, promissory notes, evidence of indebtedness or investments, which are in your custody and/or under your responsibility and accountability to the PDIC authorized representative at the bank premises.

X X X X

Finally, notwithstanding the provisions of the Labor Code, the employer-employee relationship between the Bank and its employees shall be deemed terminated upon service of notice of closure of the Bank. In this regard, this letter serves as the notice of termination of your employment with the Bank. Your separation pay (net of any receivable or any other money accountability), shall be paid from the available assets of the bank in accordance with the Rules on Concurrence and Preference of Credits and other laws.²²

This prompted respondents to file with the CA their Petition for *Certiorari* and Prohibition, with applications for the issuance of a Temporary Restraining Order (TRO) and a Writ of Preliminary Injunction (WPI), praying that the appellate court nullify MB Resolution No. 1705.D. They challenged said MB Resolution for being issued without jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction. On 26 November 2019, the CA issued a TRO to enjoin BSP and PDIC from implementing MB Resolution No. 1705.D and from committing such other acts that would render respondents' petition moot and academic.²³ On 24 January 2020, the CA issued a WPI to forestall the irreparable damage that may be suffered by respondents, depositors, and AMA Bank's employees.²⁴

Ruling of the CA

On 07 September 2020, the CA issued the assailed Decision declaring that the MB whimsically and arbitrarily issued MB Resolution No. 1705.D. The *fallo* reads:

²² Id.

²³ Id. at 3332-3333.

²⁴ Id. at 25.

THE FOREGOING DISQUISITIONS CONSIDERED, the *Petition for Certiorari and Prohibition with Application for Temporary Restraining Order and/or Preliminary Injunction* is hereby **GRANTED**.

Perforce, We rule as follows:

1. *MB Resolution 1705.D* dated 7 November 2019 of the Bangko Sentral ng Pilipinas-Monetary Board and the *Letter* dated 8 November 2019 of the Philippine Deposit Insurance Corporation, are **ANNULLED and SET ASIDE**.
2. The *Bangko Sentral ng Pilipinas* is mandatorily **ORDERED** within five days from receipt of this Decision to do all the necessary acts to restore AMA Bank to its full operational status, i.e., to its last actual, peaceful, and uncontested status.
3. The Philippine Deposit Insurance Corporation is mandatorily **DIRECTED** within five (5) days from receipt of this Decision to return all the assets and records which it seized from AMA Bank as well as nullify the orders it issued by virtue of the implementation of *MB Resolution 1705.D*.
4. The Writ of Preliminary Injunction dated 24 January 2020 is declared **FINAL**.
5. This *Decision* is immediately **EXECUTORY**.

The Motions for Reconsideration of Our Resolution dated 24 January 2020 filed by respondents Bangko Sentral ng Pilipinas and Philippine Deposit Insurance Corporation are **DENIED**.

SO ORDERED.²⁵

Essentially, the CA ruled that there was grave abuse of discretion in the issuance of MB Resolution No. 1705.D because the grounds relied upon by the MB under Section 30 of RA 7653, as amended, were not supported by the records of the case.²⁶

Contrary to BSP's contentions, the CA found that AMA Bank can continue its business without involving probable losses to its depositors and creditors. The appellate court considered that AMA Bank's Audited Financial Statements (AFS) and quarterly Financial Reporting Packages (FRP) from 2015 to 2019 all reported net income. There were no depositors who complained of any difficulty in the withdrawal of their deposits and no creditors bewailed the payment of their credit. Neither was there any finding of insufficiency of assets to meet its liabilities. In fact, as of 30 September 2019, AMA Bank's total assets amounted to ₱2,763,408,358.18. Moreover, in the Letter dated 19 August 2019, the PDIC declared that AMA Bank has substantially addressed the PDIC examination findings. Thus, consistent with

²⁵ Id. at 46-47.

²⁶ Id. at 12-47.

Banco Filipino Savings and Mortgage Bank v. MB,²⁷ BSP should have exercised strict supervision over AMA Bank, instead of ordering its closure.²⁸

According to the CA, there was no willful violation of the CDO. The appellate court observed that the acts or transactions supposedly committed in violation of the CDO were not in fact the same transactions enumerated in the CDO. Thus, AMA Bank could not be deemed to have willfully violated the CDO.²⁹

Ultimately, the CA nullified MB Resolution No. 1705.D and PDIC's Letter dated 8 November 2019. The CA reasoned that since MB Resolution No. 1705.D is void, it follows that all acts done pursuant thereto are invalid. To the appellate court's mind, AMA Bank was not in dire straits which would have justified BSP's swift action. As such, the CA ordered BSP to restore the Bank to its full operational status and PDIC to return all the assets and records which it had seized from it, as well as remedy all the acts which PDIC made pursuant to the implementation of MB Resolution No. 1705.D. Finally, given the factual milieu of the case, the CA deemed it just and equitable to declare its decision immediately executory, in accordance with Section 11, Rule 51 of the Rules of Civil Procedure.³⁰

Aggrieved, BSP and PDIC appealed to this Court through the present Petitions.³¹

BSP asserts that it did not gravely abuse its discretion in issuing MB Resolution No. 1705.D because it relied on substantial evidence consisting of empirical data and verifiable information in deciding to close AMA Bank. BSP contends that factual findings of administrative bodies charged with their specific field of expertise, such as BSP is in the realm of banking regulation, are afforded great weight by the courts, and are deemed conclusive. It also argues that the CA erred in issuing a WPI in favor of AMA Bank and in ordering the assailed decision to be immediately executory.³²

Meanwhile, PDIC questions the CA's grant of *certiorari* and prohibition against it, arguing that it did not exercise judicial or quasi-judicial functions when it implemented MB Resolution No. 1705.D. PDIC likewise contends that the CA erred in nullifying the acts it performed according to the MB's final and executory directive, which enjoyed the presumption of regularity. It also argues that AMA Bank could no longer be reopened since it has already been placed under liquidation.³³

²⁷ 281 Phil. 847 (1991).

²⁸ *Rollo* (G.R. No. 253270), pp. 33-36.

²⁹ *Id.* at 36-38.

³⁰ *Id.* at 46.

³¹ *Id.* at 3104.

³² *Id.* at 224-231.

³³ *Id.* at 4804.

For their part, respondents aver that BSP's petition raises questions of fact, in violation of Section 1, Rule 45 of the Rules of Court. They also argue that the findings of fact of administrative bodies like BSP are subject to judicial review and may be set aside if there is grave abuse of discretion. Finally, they allege that the CA correctly issued a mandatory injunction and decreed that its decision is immediately executory.³⁴

Pertinently, in the Manifestation dated 05 August 2021, the Office of the Solicitor General, acting as the Tribune of the People, informed this Court of the numerous communications it received from various persons identifying themselves as depositors of AMA Bank. Said depositors plead assistance for the immediate implementation or execution of the assailed Decision of the CA.³⁵

Issue

Simply put, the issue before Us is whether the CA erred in declaring the MB Resolution No. 1705.D. and the PDIC Letter dated 8 November as void.

Ruling of the Court

After a judicious review of the records, We find no reason to reverse the ruling of the CA.

Preliminarily, the general rule is that only pure questions of law may be raised before this Court via a petition for review on *certiorari* under Rule 45. For a question to be one of law, its resolution must not involve an examination of the probative value of the evidence presented by the litigants, but must rely solely on what the law provides on the given set of facts. If the facts are disputed or if the issues require an examination of the evidence, the question posed is one of fact.³⁶ Nonetheless, there are recognized exceptions to the abovementioned rule.³⁷ PDIC invoked the applicability of the following exceptions: (1) when the inference is manifestly mistaken, absurd or impossible; and (2) when the judgment is based on a misapprehension of facts.³⁸

³⁴ Id. at 3322-3398.

³⁵ Id. at 4744-4753.

³⁶ *Far Eastern Surety v. People*, 721 Phil. 760, 766-767 (2013).

³⁷ *Spouses Miano, Jr. v. MERALCO*, 800 Phil. 118, 123 (2016).

³⁸ *Rollo* (G.R. No. 253270), pp. 4807-4811.



Evidently, petitioners raise questions of facts considering that entertaining their arguments will necessarily entail an evaluation of the probative value evidence. We disagree that the CA's inference is manifestly mistaken, absurd or impossible, or that its judgment is based on a misapprehension of facts. In any event, We may liberally apply the rules so that a case may be resolved on its merits. After all, rules of procedure should promote, not defeat, substantial justice.³⁹

The power and authority of the MB to close banks is an exercise of police power, which is subject to judicial inquiry

Section 30 of RA 7653, as amended, grants the MB the power to order closure of banks, without need for prior hearing. This is referred to as the "close now and hear later" scheme, which is grounded on practical and legal considerations to prevent unwarranted dissipation of the bank's assets and to protect depositors, creditors, stockholders, and the general public.⁴⁰

It is well-settled that this authority is an exercise of the police power of the State. Police power, however, is subject to judicial inquiry. It may not be exercised arbitrarily or unreasonably and could be set aside if it is either capricious, discriminatory, whimsical, arbitrary, unjust, or is tantamount to a denial of due process and equal protection clauses of the Constitution.⁴¹ In particular, Section 30 states that the actions of the MB may be restrained or set aside via a 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. To wit:

Sec. 30. Proceedings in Receivership and Liquidation. – x x x

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. The designation of a conservator under Section 29 of this Act or the appointment of a receiver under this section shall be vested exclusively with the Monetary Board. Furthermore, the designation of a conservator is not a precondition to the designation of a receiver.

³⁹ *Malixi v. Baltazar*, 821 Phil. 423, 441 (2017).

⁴⁰ *Vivas v. Monetary Board*, 716 Phil. 132, 151 (2013).

⁴¹ *Apex Bancrights Holdings, Inc. v. BSP*, 819 Phil. 127, 134 (2017).

We have consistently ruled that when there are grounds to believe that such exercise of police power was made in excess of jurisdiction or tainted with grave abuse of discretion, We should never shirk from our Constitutionally-enshrined duty of declaring such act as void. In *Ramos v. Central Bank*,⁴² We annulled MB Resolution Nos. 1263, 1290, and 1333, which prohibited Overseas Bank of Manila from clearing, directed the suspension of its operations, and ordered its liquidation, respectively. Similarly, in *Central Bank v. CA*,⁴³ We set aside the order of closure and liquidation of Provident Savings Bank. Also, in *Banco Filipino Savings and Mortgage Bank v. Monetary Board*,⁴⁴ We nullified the order to close and liquidate Banco Filipino,⁴⁵ and directed BSP to take less drastic measures, viz.:

We are aware of the Central Bank's concern for the safety of Banco Filipino's depositors as well as its creditors including itself which had granted substantial financial assistance up to the time of the latter's closure. But there are alternatives to permanent closure and liquidation to safeguard those interests as well as those of the general public for the failure of Banco Filipino or any bank for that matter may be viewed as an irreversible decline of the country's entire banking system and ultimately, it may reflect on the Central Bank's own viability. For one thing, the Central Bank and the Monetary Board should exercise strict supervision over Banco Filipino. They should take all the necessary steps not violative of the laws that will fully secure the repayment of the total financial assistance that the Central Bank had already granted or would grant in the future.⁴⁶

Once again, We are called to exercise this judicial duty. Considering the allegations of grave abuse of discretion in the issuance of an MB Resolution No. 1705.D, which significantly impacts AMA Bank's depositors, its employees, banking industry, and the general public, it behooves Us to take a closer scrutiny.

As will be discussed at length below, MB Resolution No. 1705.D is void because its issuance was arbitrary, capricious, and whimsical.

The grounds under Sections 30 of RA 7653, as amended by RA 11211, were not established

There is no doubt that the MB has authority to forbid a bank from doing business and place it under receivership. The essential requisites of said

⁴² *Ramos v. Central Bank*, 148-B Phil. 1047, 1079 (1971).

⁴³ *Central Bank v. CA*, 193 Phil. 338, 353 (1981).

⁴⁴ 281 Phil. 847 (1991).

⁴⁵ *Id.* at 893.

⁴⁶ *Banco Filipino Savings and Mortgage Bank v. Monetary Board*, 281 Phil. 847, 892-893 (1991).

authority are the following: (1) report of the head of the supervising department involving the bank; (2) finding of the MB of the existence of any of the grounds; (3) decision of the MB to forbid the institution from doing business; and (4) notice in writing to the Board of Directors informing the institution of the order of the MB.⁴⁷

As to the grounds, Sections 30 of RA 7653, as amended by RA 11211, provides the following:

Sec. 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) has notified the Bangko Sentral or publicly announced a unilateral closure, or has been dormant for at least sixty (60) days or in any manner has suspended the payment of its deposit/deposit substitute liabilities, or 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 Bangko Sentral, 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 of this Act 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 (PDIC) as receiver in the case of banks and direct the PDIC to proceed with the liquidation of the closed bank pursuant to this section and the relevant provisions of Republic Act No. 3591, as amended. The Monetary Board shall notify in writing, through the receiver, the board of directors of the closed bank of its decision.

Under the present circumstances, BSP has failed to sufficiently establish the existence of any of said grounds that would warrant the closure of AMA Bank and its being placed under receivership. AMA Bank has not announced its closure, nor has it been dormant for at least 60 days. No depositors complained of any difficulty in withdrawing their deposits, nor creditors claimed any default in the payment of their credit. The records are also bereft of any finding of insufficiency of realizable assets to meet AMA Bank's liabilities.

⁴⁷ BSP Banking Laws of the Philippines, Book I, The New Central Bank Act Annotated (2010), pp. 131-132.

BSP primarily identifies as its basis for closure of AMA Bank are its findings that the Bank cannot continue in business without involving probable losses to its depositors and creditors and the Bank willfully violated the CDO, with attained finality of 25 August 2016.⁴⁸ However, upon closer look, these grounds do not, in fact, exist.

Whether AMA Bank cannot continue in business without involving probable losses to its depositors and creditors

BSP insists that AMA Bank cannot continue in business without involving probable losses based on its findings of alleged “chronic losses, chronic capital deficiency, persistent commission of unsafe or unsound banking practices, commission of new unsafe or unsound banking practices, prolonged PCA failure, and critically deficient Board and Management oversight.”⁴⁹

However, these conclusions are belied by the records. As found by the CA, AMA Bank has been earning net income from 2015 to 2019, as shown by the AFS and FRP.⁵⁰ To wit:

	2015	2016	2017	2018	2019
Net income	58.198M	4.966M	68.628M	2.973M	1.855M

In 2017, AMA Bank has already initiated the process to infuse additional capital. In fact, it submitted several applications to increase its authorized capital stock, initially to Two Billion Pesos and later, to Five Billion Pesos from 2017 to 2019. As found by the CA, it was BSP that failed to act on AMA Bank’s applications within the prescribed period under BSP Circular No. CL-2009-042. As indicated in the Memorandum to the MB, if this would have been considered, AMA Bank’s net worth will improve by ₱221.5 Million and the Capital Adequacy Ratio will improve to 11.6 percent.⁵¹

Further, based on the Memorandum to the MB and its annexes, the finding of persistent commission of unsafe or unsound banking practice pertains to an issue on teachers’ loans which AMA Bank has already addressed in 2017 (Teachers’ Loans 1). The ‘new’ unsafe or unsound banking practice refers to grant of teachers’ loans which is covered by a Memorandum

⁴⁸ *Rollo* (G.R. No. 253270), p. 225.

⁴⁹ *Id.* at 243.

⁵⁰ *Id.* at 34.

⁵¹ *Id.* at 44.

of Agreement (MOA) with the Department of Education (DepEd) under the automatic payroll deduction scheme (APDS) (Teachers' Loans 2).⁵²

As to Teachers' Loans 1, the total loans amounted to ₱555.618 million, which were already fully paid and are no longer outstanding. Annex K of the Memorandum to the MB states that, "[b]ased on records, [AMA Educational System Holdings, Inc. (AMAESHI)] remitted a total of ₱604.712 million to AMA Bank during the period 6 January to 31 March 2017, which was booked by the latter as payments for the ₱555.618 million irregular/questionable loans to DepEd teachers, pursuant to the Deed of Assumption of Liability." Most of the funds remitted were already verified to have been cleared in AMA Bank's depository banks.⁵³ This report is therefore inconsistent with the finding that the commission of unsafe or unsound banking practice in relation to Teachers' Loans 1 is still *persisting*.

On Teacher's Loans 2, We find no reason to reverse the findings of the CA that these are fair and above board. Under the MOA with DepEd, there are several safeguards in place, such as: (1) AMA Bank shall accept loan applications only from teachers/personnel on the DepEd payroll; (2) AMA Bank shall ensure that every loan is fully documented with a completely filled out promissory note, authorization to deduct (ATD) and disclosure statement, in conformity with the DepEd standard forms; (3) DepEd shall deduct from the salary of the concerned DepEd borrowers the sum as stipulated in the ATD, as validated, until the loan amount is fully paid; and (4) DepEd shall strictly observe the "First In-First Out" queuing system in managing the order of salary deductions. If deduction cannot be made due to insufficient take home pay, the claim of AMA Bank shall be considered in the order of queuing until such time that deduction may be validly made.⁵⁴

At any rate, even if the abovementioned safeguards on Teachers' Loans 2 are insufficient for BSP, it would be against the principles of justice and fair play to order the closure of AMA Bank on the strength of these newly-identified unsafe or unsound banking practices. AMA Bank should have been given adequate opportunity to explain or address this relatively recent finding.

Lastly, We note that the alleged prolonged failure of the PCA and critically deficient Board of Directors and Management were both anchored on the finding of persistent commission of unsafe or unsound banking practice. As it appears, these are not separate and distinct findings. We quote the relevant discussions in BSP's petition:

271. There was also a prolonged failure of PCA, due to AMA Bank's repeated commissions of unsafe or unsound banking practices during the time when it was under the PCA Framework.

⁵² Id. at 441.

⁵³ Id. at 532-534.

⁵⁴ Id. at 38-40.



x x x x

273. x x x AMA Bank was also deficient in both the minimum capital and CAR requirements, and suffered from a deficient Board of Directors and Management who continuously manifested unfitness to operate AMA Bank, considering the prevalence of unsafe or unsound banking practices during their incumbency.⁵⁵

As discussed above, the issue on the identified persistent unsafe or unsound banking practice, *i.e.*, grant of Teachers' Loans 1, has already been addressed through proof of payment of the loan outstanding balance.

Thus, it must be emphasized that the first identified ground for AMA Bank's closure – that it cannot continue in business without involving probable losses to its depositors and creditors – has no leg to stand on.

*Whether AMA Bank willfully violated
the CDO which attained finality on 25
August 2016*

For clarity, We again quote the prohibited transactions under the CDO:

- a.a.i.1. Purchase of [CTS] receivables from [Picar]; entering into a housing loan program, involving Picar, AMA Properties Management, Inc. and AMA Computer College, Inc. (related companies), among others, with contracts/agreements with related parties; granting of irregular/questionable loans to borrowers, and/or other related practices/transactions that give unwarranted benefits to the directors, officers, stockholders and their related interests (DOSRI) and are grossly disadvantageous to the Bank; and
- a.a.i.2. Outright recognition of income for capitalized interest and penalties, amortizing unearned interest discount/deferred credits and recognizing income on compromise/restructured loan and sales contract receivables (SCR) regardless of actual collections and/or other related practices/transactions of making entries that will result in the misstatement of accounts.⁵⁶

Meanwhile, according to BSP, the following are the specific CDO provisions that were violated by AMA Bank:

- a. Granting of irregular/questionable loans to borrowers;
- b. Entering into other related practices/transactions that give unwarranted benefits to Directors, Officers, Stockholders, and

⁵⁵ Id. at 253.

⁵⁶ Id. at 196.

Related Interests (DOSRI) and are grossly disadvantageous to the Bank; and

- c. Other related practices/transactions of making entries that will result in the misstatement of accounts.⁵⁷

Thus, We can readily see that while the CDO enumerated specific transactions or contracts, the supposed violations by AMA Bank of the CDO are vague or unclear. Tellingly, in concluding that AMA Bank to have willfully violated the CDO, BSP has to rely on the generic terms and “catch-all” provisions. However, it must be stressed that for a violation of a CDO to be a valid ground for closure, the law requires willfulness.

At this juncture, the term “willfulness” is worth discussing in depth. Caselaw defines it as “one governed by will without yielding to reason or without regard to reason.”⁵⁸ Black’s Law Dictionary states that “[a] willful act may be described as one done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently. xxx premeditated; malicious; done with evil intent, or with bad motive or purpose, or with indifference to the natural consequences; unlawful; without legal justification.”⁵⁹

Here, We could hardly attribute premeditation, malice, or evil intent to AMA Bank for having allegedly violated the CDO’s prohibition based on the generic terms of “irregular/questionable loans” or catch-all phrase “other related practices/transactions.” Said generic terms and catch-all phrases are vague or unclear as to their scope.

In contrast, We note that AMA Bank exerted concrete efforts to comply with the CDO, particularly in rescinding the contracts specifically identified in the CDO, namely: (1) assignment of Contract to Sell receivables from Picar; and (2) housing loan program between Picar, AMA Properties Management, Inc. and AMA Computer College, Inc.⁶⁰

Verily, as to the second identified ground for AMA Bank’s closure – that it willfully violated the CDO which attained finality on 25 August 2016 – is not supported by evidence.

There being no valid grounds that would justify AMA Bank’s closure, the inevitable conclusion is that MB Resolution No. 1705.D. is void. Consequently, PDIC’s Letter dated 08 November 2019, which was issued to implement the same is likewise void.

⁵⁷ See *id.* at 4552-4553.

⁵⁸ *Natividad v. Mariano*, 710 Phil. 57, 75 (2013).

⁵⁹ Black’s Law Dictionary, Abridged Fifth Edition, p. 824.

⁶⁰ *Rollo* (G.R. No. 253270), p. 41.

The CA did not err in issuing an injunction, notwithstanding Sections 12 (a) and 13 (e) of RA 3591, as amended by RA 10846

During the proceedings in the CA, the appellate court issued a TRO and WPI to enjoin the implementation of MB Resolution 1705.D and to forestall the irreparable damage that may be suffered by respondents, depositors, and AMA Bank's employees. Contrary to petitioners' contention, the CA did not err in issuing the same as these issuances draw support from Section 38-A of RA 7653, as amended, viz.:

Sec. 38-A. Issuance of Injunctive Relief Against Bangko Sentral Actions. - No court, other than the Court of Appeals and the Supreme Court, shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the Bangko Sentral for any action under this Act. x x x

For their part, petitioners invoke Sections 12 (a) and 13 (e) of RA 3591, as amended by RA 10846, which respectively state:

SEC. 12. (a) Whenever a bank is ordered closed by the Monetary Board, the Corporation shall be designated as receiver and it shall proceed with the takeover and liquidation of the closed bank in accordance with this Act. For this purpose, banks closed by the Monetary Board shall no longer be rehabilitated.

SEC. 13 x x x

(e) The placement of a bank under liquidation shall have the following effects:

(1) x x x In no case shall the bank be reopened and permitted to resume banking business after being placed under liquidation.

Based on the foregoing provisions, petitioners claim that upon the service of the Notice of Closure to AMA Bank on 08 November 2019, it was closed and at the same time placed under liquidation by PDIC. As such, they insist that AMA Bank could no longer be reopened.⁶¹ Effectively, what petitioners are saying is that, once the Notice of Closure has been served, the stockholders of AMA Bank are left with no recourse.

We disagree. It must be recalled that Section 30 of RA 7653 follows the "close now, hear later" rule. Upon issuance of the MB's order directing the closure of any bank, PDIC must immediately implement the same by serving the Notice of Closure, which informs the bank that it is closed, under

⁶¹ Id. at 4523.

receivership by PDIC, and placed under liquidation. It must be highlighted that the supervised bank only becomes aware of the MB's order *after* the Notice of Closure is served. This being the case, if We follow petitioners' interpretation that at this point, the closed bank can no longer be reopened, We would render inutile the remedies of *certiorari* and injunction, which are clearly available under Sections 30 and 38-A of RA 7653, as amended, respectively.

Petitioners' appreciation would likewise render useless the unequivocal right of stockholders of a closed bank to file a petition for *certiorari* to assail or nullify the MB order within 10 days from notice. Undoubtedly, it could not have been the contemplation of the law to deprive said stockholders of their due process rights and leave them without any remedy, even in a case of an arbitrary, capricious, and whimsical exercise of government authority.

Indeed, the totality of circumstances reveals the tangible efforts on the part of AMA Bank to comply with the directives of BSP. Thus, under the particular facts of this case, coupled with the public interest involved, the closure of AMA Bank is too harsh. Certainly, this is not one of those instances wherein drastic times call for drastic measures.

More importantly, the closure of AMA Bank is unwarranted as it is not based on the grounds provided by law. It bears stressing that while BSP is granted with regulatory powers needed in the exercise of its supervision over the operations of banks, such powers must be exercised within the metes and bounds of law.

WHEREFORE, the petitions are both **DENIED**. The Decision of the Court of Appeals in CA-G.R. SP No. 163288 dated 07 September 2020 is hereby **AFFIRMED**.

The Letter dated December 5, 2022 of Director IV Jaime Llaguno Mabilin, Presidential Complaint Center, Malacañang, Manila, forwarding the email of Mr. Antonio Alexander Bernabe Castro, requesting for status and immediate resolution of these cases; the Electronic Mail dated February 12, 2023 of Mr. Klaus Jacob, depositor of respondent AMA Rural Bank of Mandaluyong, Inc., stating that he currently struggles with a number of a medical conditions such as cancer, and requesting that the Court expedite the resolution of this case; and the Electronic Mail of Ms. Gina Rabena, depositor of respondent AMA Rural Bank of Mandaluyong, requesting, in the vernacular, that the Court prioritize this case and a decision be rendered, for reasons stated therein, are all **NOTED**.

SO ORDERED.”

By authority of the Court:



LIBRADA C. BUENA
Division Clerk of Court *3129*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
305 & 395
MAR 3 0 2023

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