

## **FIRST DIVISION**

**[ G.R. No. 123569, April 01, 1996 ]**

**FAR EAST BANK & TRUST COMPANY, PETITIONER, VS. COURT OF APPEALS, HON. REGINO T. VERIDIANO, II AND VITALIANO NANAGAS, II, RESPONDENTS.**

### **D E C I S I O N**

**HERMOSISIMA, JR., J.:**

Pacific Banking Corporation (PBC) was placed under receivership by the Central Bank under Monetary Board Resolution No. 699 dated July 5, 1985, and thereafter placed under liquidation. Banks were invited to submit proposals for the purchase of PBC's assets. On November 14, 1985, petitioner Far East Bank and Trust Company (FEBTC) submitted its formal offer to purchase all the assets of PBC. Subsequently, a Memorandum of Agreement (MOA) was entered into by and among the petitioner as buyer, PBC through its liquidator as seller, and the Central Bank (CB).

On December 18, 1986, the Regional Trial Court, Branch 31 of Manila where the liquidation proceeding was pending, approved the Purchase Agreement executed by and among the same parties pursuant to the Memorandum of Agreement (MOA) earlier entered into by them. Alleging compliance with its obligations under the MOA and the Purchase Agreement, petitioner then requested PBC's liquidator to execute the proper deeds of sale involving PBC's fixed assets located in the following branches, to wit:

1. Soler (Arranque)
2. Bacolod City
3. Cabanatuan City
4. Laoag
5. San Pablo City
6. Cebu-Manalili
7. Davao-Sta. Ana
8. San Fernando, La Union
9. Legaspi City
10. Iloilo City-Central Market
11. Units in Pacific Bank Condominium Bldg., Ayala Avenue, Makati City

PBC's liquidator consistently refused to execute said deeds of sale and proceeded to offer for bidding to third parties the subject fixed assets.

On July 5, 1993, FEBTC filed with the trial court a motion to direct PBC's liquidator to execute the deeds of sale with application for issuance of preliminary injunction and/or temporary restraining order to prevent the liquidator from further offering to sell to third parties the subject fixed assets.

The RTC initially issued a temporary restraining order directing PBC's liquidator to

desist from proceeding with the bidding. After hearing, the trial court nevertheless denied the application of the petitioner for a writ of preliminary injunction. Aggrieved, petitioner went to the respondent Court of Appeals.

On October 23, 1995, the respondent Court of Appeals rendered its decision likewise denying petitioner's application for injunction.

Hence, the instant Petition for Review under Rule 45 praying that the decision of the Court of Appeals be set aside and a temporary restraining order and/or preliminary injunction be issued against the respondent liquidator to prohibit him from disposing of the subject fixed assets to other buyers.

The main issue we need to resolve here is whether or not petitioner is entitled to the injunctive relief prayed for.

We rule in the negative.

Petitioner submits that having met all the conditions and performed all its obligations under the Memorandum of Agreement as well as the Purchase Agreement, it follows, as a matter of course, that petitioner has obtained a clear right over the subject fixed assets, which right is being jeopardized by the stubborn refusal of the respondent liquidator to execute the deeds of sale covering these fixed assets.

On the other hand, respondent liquidator maintains that, contrary to petitioner's claim, the petitioner herein has not acquired ownership over the subject fixed assets because the same were submitted as collaterals with the Central Bank, and pursuant to Section 1(a) of the Memorandum of Agreement, these properties are excluded from among the assets that can be purchased by the petitioner. Said section provides:

"SECTION 1 - Purchase Agreement

a. Within ninety (90) calendar days from the date of the execution of this Memorandum of Agreement, subject to such extension of time as shall be mutually agreed upon by the parties, the BUYER shall purchase all the assets of the SELLER as shall be defined and specifically described in the corresponding Purchase Agreement to be executed by the parties, inclusive of the SELLER's authority to operate its forty-three (43) banking offices/branches, **but exclusive of the following items:**

xxx      xxx      xxx

vii. **Assets submitted as collaterals with the Central Bank;** and

xxx      xxx      xxx

The issue whether or not injunction in favor of the petitioner should issue hinges on the important question: Whether the disputed fixed assets were collateralized with the Central Bank? Apparently however, this is a sole issue of fact. The rule is settled that pure questions of fact may not be the proper subject of an appeal by certiorari under Rule 45 of the Revised Rules of Court. This mode of appeal is generally limited