

THIRD DIVISION

[G.R. No. 175278, September 23, 2015]

GSIS FAMILY BANK - THRIFT BANK [FORMERLY COMSAVINGS BANK, INC.], PETITIONER, VS. BPI FAMILY BANK, RESPONDENT.

DECISION

JARDELEZA, J.:

This is a Petition for Review on *Certiorari* filed by GSIS Family Bank — Thrift Bank^[1] assailing the Court of Appeals Decision^[2] dated March 29, 2006 (Decision) and Resolution^[3] dated October 23, 2006 which denied petitioner's petition for review of the Securities and Exchange Commission Decision dated February 22, 2005 (SEC *En Banc* Decision). The SEC *En Banc* Decision^[4] prohibited petitioner from using the word "Family" as part of its corporate name and ordered petitioner to delete the word from its name.^[5]

Facts

Petitioner was originally organized as Royal Savings Bank and started operations in 1971. Beginning 1983 and 1984, petitioner encountered liquidity problems. On July 9, 1984, it was placed under receivership and later temporarily closed by the Central Bank of the Philippines. Two (2) months after its closure, petitioner reopened and was renamed Comsavings Bank, Inc. under the management of the Commercial Bank of Manila.^[6]

In 1987, the Government Service Insurance System (GSIS) acquired petitioner from the Commercial Bank of Manila. Petitioner's management and control was thus transferred to GSIS.^[7] To improve its marketability to the public, especially to the members of the GSIS, petitioner sought Securities and Exchange Commission (SEC) approval to change its corporate name to "GSIS Family Bank, a Thrift Bank."^[8] Petitioner likewise applied with the Department of Trade and Industry (DTI) and Bangko Sentral ng Pilipinas (BSP) for authority to use "GSIS Family Bank, a Thrift Bank" as its business name. The DTI and the BSP approved the applications.^[9] Thus, petitioner operates under the corporate name "GSIS Family Bank - a Thrift Bank," pursuant to the DTI Certificate of Registration No. 741375 and the Monetary Board Circular approval.^[10]

Respondent BPI Family Bank was a product of the merger between the Family Bank and Trust Company (FBTC) and the Bank of the Philippine Islands (BPI).^[11] On June 27, 1969, the Gotianum family registered with the SEC the corporate name "Family First Savings Bank," which was amended to "Family Savings Bank," and then later to "Family Bank and Trust Company."^[12] Since its incorporation, the bank has been commonly known as "Family Bank." In 1985, Family Bank merged with BPI, and the

latter acquired all the rights, privileges, properties, and interests of Family Bank, including the right to use names, such as "Family First Savings Bank," "Family Bank," and "Family Bank and Trust Company." BPI Family Savings Bank was registered with the SEC as a wholly-owned subsidiary of BPI. BPI Family Savings Bank then registered with the Bureau of Domestic Trade the trade or business name "BPI Family Bank," and acquired a reputation and goodwill under the name.^[13]

Proceedings before the SEC

Eventually, it reached respondent's attention that petitioner is using or attempting to use the name "Family Bank." Thus, on March 8, 2002, respondent petitioned the SEC Company Registration and Monitoring Department (SEC CRMD) to disallow or prevent the registration of the name "GSIS Family Bank" or any other corporate name with the words "Family Bank" in it. Respondent claimed exclusive ownership to the name "Family Bank," having acquired the name since its purchase and merger with Family Bank and Tmst Company way back 1985.^[14] Respondent also alleged that through the years, it has been known as "BPI Family Bank" or simply "Family Bank" both locally and internationally. As such, it has acquired a reputation and goodwill under the name, not only with clients here and abroad, but also with correspondent and competitor banks, and the public in general.^[15]

Respondent prayed the SEC CRMD to disallow or prevent the registration of the name "GSIS Family Bank" or any other corporate name with the words "Family Bank" should the same be presented for registration. Respondent likewise prayed the SEC CRMD to issue an order directing petitioner or any other corporation to change its corporate name if the names have already been registered with the SEC.^[16]

The SEC CRMD was thus confronted with the issue of whether the names BPI Family Bank and GSIS Family Bank are confusingly similar as to require the amendment of the name of the latter corporation.

The SEC CRMD declared that upon the merger of FBTC with the BPI in 1985, the latter acquired the right to the use of the name of the absorbed corporation. Thus, BPI Family Bank has a prior right to the use of the name Family Bank in the banking industry, arising from its long and extensive nationwide use, coupled with its registration with the Intellectual Property Office (IPO) of the name "Family Bank" as its trade name. Applying the rule of "priority in registration" based on the legal maxim first in time, first in right, the SEC CRMD concluded that BPI has the preferential right to the use of the name "Family Bank." More, GSIS and Comsavings Bank were then fully aware of the existence and use of the name "Family Bank" by FBTC prior to the latter's merger with BPI.^[17]

The SEC CRMD also held that there exists a confusing similarity between the corporate names BPI Family Bank and GSIS Family Bank. It explained that although not identical, the corporate names are indisputably similar, as to cause confusion in the public mind, even with the exercise of reasonable care and observation, especially so since both corporations are engaged in the banking business.^[18]

In a decision^[19] dated May 19, 2003, the SEC CRMD said,

PREMISES CONSIDERED respondent GSIS FAMILY BANK is hereby directed to refrain from using the word "Family" as part of its name and make good its commitment to change its name by deleting or dropping the subject word from its corporate name within [thirty (30) days] from the date of actual receipt hereof.^[20]

Petitioner appealed^[21] the decision to the SEC *En Banc*, which denied the appeal, and upheld the SEC CRMD in the SEC *En Banc* Decision.^[22] Petitioner elevated the SEC *En Banc* Decision to the Court of Appeals, raising the following issues:

1. Whether the use by GSIS Family Bank of the words "Family Bank" is deceptively and confusingly similar to the name BPI Family Bank;
2. Whether the use by Comsavings Bank of "GSIS Family Bank" as its business constitutes unfair competition;
3. Whether BPI Family Bank is guilty of forum shopping;
4. Whether the approval of the DTI and the BSP of petitioner's application to use the name GSIS Family Bank constitutes its authority to the lawful and valid use of such trade name or trade mark;
5. Whether the application of respondent BPI Family Bank for the exclusive use of the name "Family Bank," a generic name, though not yet approved by IPO of the Bureau of Patents, has barred the GSIS Family Bank from using such trade mark or name.^[23]

Court of Appeals Ruling

The Court of Appeals ruled that the approvals by the BSP and by the DTI of petitioner's application to use the name "GSIS Family Bank" do not constitute authority for its lawful and valid use. It said that the SEC has absolute jurisdiction, supervision and control over all corporations.^[24] The Court of Appeals held that respondent was entitled to the exclusive use of the corporate name because of its prior adoption of the name "Family Bank" since 1969.^[25] There is confusing similarity in the corporate names because "[c]onfusion as to the possible association with GSIS might arise if we were to allow Comsavings Bank to add its parent company's acronym, 'GSIS' to 'Family Bank.' This is true especially considering both companies belong to the banking industry. Proof of actual confusion need not be shown. It suffices that confusion is probably or likely to occur."^[26] The Court of Appeals also ruled out forum shopping because not all the requirements of *litis pendentia* are present.^[27]

The dispositive portion of the decision read,

WHEREFORE, the instant petition for review is hereby **DISMISSED** for lack of merit.^[28]

After its Motion for Reconsideration was denied,^[29] petitioner brought the decision to this Court *via* a Petition for Review on *Certiorari*.^[30]

Issues in the Petition

Petitioner raised the following issues in its petition:

- I. The Court of Appeals gravely erred in affirming the SEC Resolution finding the word "Family" not generic despite its unregistered status with the IPO of the Bureau of Patents and the use by GSIS-Family Bank in its corporate name of the words "[F]amily [B]ank" as deceptive and [confusingly similar] to the name BPI Family Bank;^[31]
- II. The Court of Appeals gravely erred when it ruled that the respondent is not guilty of forum shopping despite the filing of three (3) similar complaints before the DTI and BSP and with the SEC without the requisite certification of non-forum shopping attached thereto;^[32]
- III. The Court of Appeals gravely erred when it completely disregarded the opinion of the *Banko Sentral ng Pilipinas* that the use by the herein petitioner of the trade name GSIS Family Bank - Thrift Bank is not similar or does not deceive or likely cause any deception to the public.^[33]

Court's Ruling

We uphold the decision of the Court of Appeals.

Section 18 of the Corporation Code provides,

Section 18. *Corporate name.* - No corporate name may be allowed by the Securities and Exchange Commission if the proposed name is identical or deceptively or confusingly similar to that of any existing corporation or to any other name already protected by law or is patently deceptive, confusing or contrary to existing laws. When a change in the corporate name is approved, the Commission shall issue an amended certificate of incorporation under the amended name.

In *Philips Export B.V. v. Court of Appeals*,^[34] this Court ruled that to fall within the prohibition of the law on the right to the exclusive use of a corporate name, two requisites must be proven, namely:

- (1) that the complainant corporation acquired a prior right over the use of such corporate name; and
- (2) the proposed name is either
 - (a) identical or
 - (b) deceptive or confusingly similar to that of any existing

corporation or to any other name already protected by law; or
(c) patently deceptive, confusing or contrary to existing law.^[35]

These two requisites are present in this case. On the first requisite of a prior right, *Industrial Refractories Corporation of the Philippines v. Court of Appeals* (IRCP case) ^[36] is instructive. In that case, Refractories Corporation of the Philippines (RCP) filed before the SEC a petition to compel Industrial Refractories Corporation of the Philippines (IRCP) to change its corporate name on the ground that its corporate name is confusingly similar with that of RCP's such that the public may be confused into believing that they are one and the same corporation. The SEC and the Court of Appeals found for petitioner, and ordered IRCP to delete or drop from its corporate name the word "Refractories." Upon appeal of *IRCP*, this Court upheld the decision of the CA.

Applying the priority of adoption rule to determine prior right, this Court said that RCP has acquired the right to use the word "Refractories" as part of its corporate name, being its prior registrant. In arriving at this conclusion, the Court considered that RCP was incorporated on October 13, 1976 and since then continuously used the corporate name "Refractories Corp. of the Philippines." Meanwhile, IRCP only started using its corporate name "Industrial Refractories Corp. of the Philippines" when it amended its Articles of Incorporation on August 23, 1985.^[37]

In this case, respondent was incorporated in 1969 as Family Savings Bank and in 1985 as BPI Family Bank. Petitioner, on the other hand, was incorporated as GSIS Family - Thrift Bank only in 2002,^[38] or at least seventeen (17) years after respondent started using its name. Following the precedent in the *IRCP* case, we rule that respondent has the prior right over use of the corporate name.

The second requisite in the *Philips Export* case likewise obtains on two points: the proposed name is (a) identical or (b) deceptive or confusingly similar to that of any existing corporation or to any other name already protected by law.

On the first point (a), the words "Family Bank" present in both petitioner and respondent's corporate name satisfy the requirement that there be identical names in the existing corporate name and the proposed one. Respondent cannot justify its claim under Section 3 of the Revised Guidelines in the Approval of Corporate and Partnership Names,^[39] to wit:

3. The name shall not be identical, misleading or confusingly similar to one already registered by another corporation or partnership with the Commission or a sole proprietorship registered with the Department of Trade and Industry.

If the proposed name is similar to the name of a registered firm, the proposed name must contain at least one distinctive word different from the name of the company already registered.

Section 3 states that if there be identical, misleading or confusingly similar name to one already registered by another corporation or partnership with the SEC, the