

## EN BANC

[ G.R. No. 192986, January 15, 2013 ]

**ADVOCATES FOR TRUTH IN LENDING, INC. AND EDUARDO B. OLAGUER, PETITIONERS, VS. BANGKO SENTRAL MONETARY BOARD, REPRESENTED BY ITS CHAIRMAN, GOVERNOR ARMANDO M. TETANGCO, JR., AND ITS INCUMBENT MEMBERS: JUANITA D. AMATONG, ALFREDO C. ANTONIO, PETER FAVILA, NELLY F. VILLAFUERTE, IGNACIO R. BUNYE AND CESAR V. PURISIMA, RESPONDENTS.**

### DECISION

**REYES, J.:**

Petitioners, claiming that they are raising issues of transcendental importance to the public, filed directly with this Court this Petition for *Certiorari* under Rule 65 of the 1997 Rules of Court, seeking to declare that the Bangko Sentral ng Pilipinas Monetary Board (BSP-MB), replacing the Central Bank Monetary Board (CB-MB) by virtue of Republic Act (R.A.) No. 7653, has no authority to continue enforcing Central Bank Circular No. 905,<sup>[1]</sup> issued by the CB-MB in 1982, which “suspended” Act No. 2655, or the Usury Law of 1916.

#### Factual Antecedents

Petitioner “Advocates for Truth in Lending, Inc.” (AFTIL) is a non-profit, non-stock corporation organized to engage in *pro bono* concerns and activities relating to money lending issues. It was incorporated on July 9, 2010,<sup>[2]</sup> and a month later, it filed this petition, joined by its founder and president, Eduardo B. Olaguer, suing as a taxpayer and a citizen.

R.A. No. 265, which created the Central Bank (CB) of the Philippines on June 15, 1948, empowered the CB-MB to, among others, set the maximum interest rates which banks may charge for all types of loans and other credit operations, within limits prescribed by the Usury Law. Section 109 of R.A. No. 265 reads:

Sec. 109. *Interest Rates, Commissions and Charges.* — The Monetary Board may fix the maximum rates of interest which banks may pay on deposits and on other obligations.

The Monetary Board may, within the limits prescribed in the Usury Law fix the maximum rates of interest which banks may charge for different types of loans and for any other credit operations, or may fix the maximum differences which may exist between the interest or rediscount rates of the Central Bank and the rates which the banks may charge their customers if the respective credit documents are not to lose their

eligibility for rediscount or advances in the Central Bank.

Any modifications in the maximum interest rates permitted for the borrowing or lending operations of the banks shall apply only to future operations and not to those made prior to the date on which the modification becomes effective.

In order to avoid possible evasion of maximum interest rates set by the Monetary Board, the Board may also fix the maximum rates that banks may pay to or collect from their customers in the form of commissions, discounts, charges, fees or payments of any sort. (Underlining ours)

On March 17, 1980, the Usury Law was amended by Presidential Decree (P.D.) No. 1684, giving the CB-MB authority to prescribe different maximum rates of interest which may be imposed for a loan or renewal thereof or the forbearance of **any** money, goods or credits, provided that the changes are effected gradually and announced in advance. Thus, Section 1-a of Act No. 2655 now reads:

Sec. 1-a. The Monetary Board is hereby authorized to prescribe the maximum rate or rates of interest for the loan or renewal thereof or the forbearance of any money, goods or credits, and to change such rate or rates whenever warranted by prevailing economic and social conditions: Provided, That changes in such rate or rates may be effected gradually on scheduled dates announced in advance.

In the exercise of the authority herein granted the Monetary Board may prescribe higher maximum rates for loans of low priority, such as consumer loans or renewals thereof as well as such loans made by pawnshops, finance companies and other similar credit institutions although the rates prescribed for these institutions need not necessarily be uniform. The Monetary Board is also authorized to prescribe different maximum rate or rates for different types of borrowings, including deposits and deposit substitutes, or loans of financial intermediaries. (Underlining and emphasis ours)

In its Resolution No. 2224 dated December 3, 1982,<sup>[3]</sup> the CB-MB issued CB Circular No. 905, Series of 1982, effective on January 1, 1983. Section 1 of the Circular, under its General Provisions, removed the ceilings on interest rates on loans or forbearance of **any** money, goods or credits, to wit:

Sec. 1. The rate of interest, including commissions, premiums, fees and other charges, on a loan or forbearance of any money, goods, or credits, regardless of maturity and whether secured or unsecured, that may be charged or collected by any person, whether natural or juridical, shall not be subject to any ceiling prescribed under or pursuant to the Usury Law, as amended. (Underscoring and emphasis ours)

The Circular then went on to amend Books I to IV of the CB's "Manual of Regulations

for Banks and Other Financial Intermediaries” (Manual of Regulations) by removing the applicable ceilings on specific interest rates. Thus, Sections 5, 9 and 10 of CB Circular No. 905 amended Book I, Subsections 1303, 1349, 1388.1 of the Manual of Regulations, by removing the ceilings for interest and other charges, commissions, premiums, and fees applicable to commercial banks; Sections 12 and 17 removed the interest ceilings for thrift banks (Book II, Subsections 2303, 2349); Sections 19 and 21 removed the ceilings applicable to rural banks (Book III, Subsection 3152.3-c); and, Sections 26, 28, 30 and 32 removed the ceilings for non-bank financial intermediaries (Book IV, Subsections 4303Q.1 to 4303Q.9, 4303N.1, 4303P).<sup>[4]</sup>

On June 14, 1993, President Fidel V. Ramos signed into law R.A. No. 7653 establishing the Bangko Sentral ng Pilipinas (BSP) to replace the CB. The repealing clause thereof, Section 135, reads:

Sec. 135. *Repealing Clause.* — Except as may be provided for in Sections 46 and 132 of this Act, Republic Act No. 265, as amended, the provisions of any other law, special charters, rule or regulation issued pursuant to said Republic Act No. 265, as amended, or parts thereof, which may be inconsistent with the provisions of this Act are hereby repealed. Presidential Decree No. 1792 is likewise repealed.

### **Petition for Certiorari**

To justify their skipping the hierarchy of courts and going directly to this Court to secure a writ of *certiorari*, petitioners contend that the transcendental importance of their Petition can readily be seen in the issues raised therein, to wit:

- a) Whether under R.A. No. 265 and/or P.D. No. 1684, the CB-MB had the statutory or constitutional authority to prescribe the maximum rates of interest for all kinds of credit transactions and forbearance of money, goods or credit beyond the limits prescribed in the Usury Law;
- b) If so, whether the CB-MB exceeded its authority when it issued CB Circular No. 905, which removed all interest ceilings and thus suspended Act No. 2655 as regards usurious interest rates;
- c) Whether under R.A. No. 7653, the *new* BSP-MB may continue to enforce CB Circular No. 905.<sup>[5]</sup>

Petitioners attached to their petition copies of several Senate Bills and Resolutions of the 10th Congress, which held its sessions from 1995 to 1998, calling for investigations by the Senate Committee on Banks and Financial Institutions into alleged unconscionable commercial rates of interest imposed by these entities. Senate Bill (SB) Nos. 37<sup>[6]</sup> and 1860,<sup>[7]</sup> filed by Senator Vicente C. Sotto III and the late Senator Blas F. Ople, respectively, sought to amend Act No. 2655 by fixing the rates of interest on loans and forbearance of credit; Philippine Senate Resolution (SR) No. 1053,<sup>[8]</sup> 1073<sup>[9]</sup> and 1102,<sup>[10]</sup> filed by Senators Ramon B. Magsaysay, Jr., Gregorio B. Honasan and Franklin M. Drilon, respectively, urged the aforesaid Senate Committee to investigate ways to curb the high commercial interest rates

then obtaining in the country; Senator Ernesto Maceda filed SB No. 1151 to prohibit the collection of more than two months of advance interest on any loan of money; and Senator Raul Roco filed SR No. 1144<sup>[11]</sup> seeking an investigation into an alleged cartel of commercial banks, called "Club 1821", reportedly behind the regime of high interest rates. The petitioners also attached news clippings<sup>[12]</sup> showing that in February 1998 the banks' prime lending rates, or interests on loans to their best borrowers, ranged from 26% to 31%.

Petitioners contend that under Section 1-a of Act No. 2655, as amended by P.D. No. 1684, the CB-MB was authorized only to prescribe or set the maximum rates of interest for a loan or renewal thereof or for the forbearance of any money, goods or credits, and to change such rates whenever warranted by prevailing economic and social conditions, the changes to be effected gradually and on scheduled dates; that nothing in P.D. No. 1684 authorized the CB-MB to lift or suspend the limits of interest on all credit transactions, when it issued CB Circular No. 905. They further insist that under Section 109 of R.A. No. 265, the authority of the CB-MB was clearly only to fix the banks' maximum rates of interest, but always within the limits prescribed by the Usury Law.

Thus, according to petitioners, CB Circular No. 905, which was promulgated without the benefit of any prior public hearing, is void because it violated Article 5 of the New Civil Code, which provides that "Acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity."

They further claim that just weeks after the issuance of CB Circular No. 905, the benchmark 91-day Treasury bills (T-bills),<sup>[13]</sup> then known as "Jobo" bills<sup>[14]</sup> shot up to 40% *per annum*, as a result. The banks immediately followed suit and re-priced their loans to rates which were even higher than those of the "Jobo" bills. Petitioners thus assert that CB Circular No. 905 is also unconstitutional in light of Section 1 of the Bill of Rights, which commands that "no person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws."

Finally, petitioners point out that R.A. No. 7653 did not re-enact a provision similar to Section 109 of R.A. No. 265, and therefore, in view of the repealing clause in Section 135 of R.A. No. 7653, the BSP-MB has been stripped of the power either to prescribe the maximum rates of interest which banks may charge for different kinds of loans and credit transactions, or to suspend Act No. 2655 and continue enforcing CB Circular No. 905.

## **Ruling**

The petition must fail.

### **A. The Petition is procedurally infirm.**

The decision on whether or not to accept a petition for *certiorari*, as well as to grant due course thereto, is addressed to the sound discretion of the court.<sup>[15]</sup> A petition for *certiorari* being an extraordinary remedy, the party seeking to avail of the same must strictly observe the procedural rules laid down by law, and non-observance

thereof may not be brushed aside as mere technicality.<sup>[16]</sup>

As provided in Section 1 of Rule 65, a writ of *certiorari* is directed against a tribunal exercising judicial or quasi-judicial functions.<sup>[17]</sup> Judicial functions are exercised by a body or officer clothed with authority to determine what the law is and what the legal rights of the parties are with respect to the matter in controversy. Quasi-judicial function is a term that applies to the action or discretion of public administrative officers or bodies given the authority to investigate facts or ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action using discretion of a judicial nature.<sup>[18]</sup>

The CB-MB (now BSP-MB) was created to perform executive functions with respect to the establishment, operation or liquidation of banking and credit institutions, and branches and agencies thereof.<sup>[19]</sup> It does not perform judicial or quasi-judicial functions. Certainly, the issuance of CB Circular No. 905 was done in the exercise of an executive function. *Certiorari* will not lie in the instant case.<sup>[20]</sup>

### **B. Petitioners have no *locus standi* to file the Petition**

*Locus standi* is defined as “a right of appearance in a court of justice on a given question.” In private suits, Section 2, Rule 3 of the 1997 Rules of Civil Procedure provides that “every action must be prosecuted or defended in the name of the real party in interest,” who is “the party who stands to be benefited or injured by the judgment in the suit or the party entitled to the avails of the suit.” Succinctly put, a party’s standing is based on his own right to the relief sought.<sup>[21]</sup>

Even in public interest cases such as this petition, the Court has generally adopted the “direct injury” test that the person who impugns the validity of a statute must have “a personal and substantial interest in the case such that he has sustained, or will sustain direct injury as a result.”<sup>[22]</sup> Thus, while petitioners assert a public right to assail CB Circular No. 905 as an illegal executive action, it is nonetheless required of them to make out a sufficient interest in the vindication of the public order and the securing of relief. It is significant that in this petition, the petitioners do not allege that they sustained any personal injury from the issuance of CB Circular No. 905.

Petitioners also do not claim that public funds were being misused in the enforcement of CB Circular No. 905. In *Kilosbayan, Inc. v. Morato*,<sup>[23]</sup> involving the on-line lottery contract of the PCSO, there was no allegation that public funds were being misspent, which according to the Court would have made the action a public one, “and justify relaxation of the requirement that an action must be prosecuted in the name of the real party-in-interest.” The Court held, moreover, that the status of *Kilosbayan* as a people’s organization did not give it the requisite personality to question the validity of the contract. Thus:

Petitioners do not in fact show what particularized interest they have for bringing this suit. It does not detract from the high regard for petitioners