

THIRD DIVISION

[G.R. No. 191424, August 07, 2013]

**ALFEO D. VIVAS, ON HIS BEHALF AND ON BEHALF OF THE
SHAREHOLDERS OF EUROCREDIT COMMUNITY BANK,
PETITIONER, VS. THE MONETARY BOARD OF THE BANGKO
SENTRAL NG PILIPINAS AND THE PHILIPPINE DEPOSIT
INSURANCE CORPORATION, RESPONDENTS.**

DECISION

MENDOZA, J.:

This is a petition for prohibition with prayer for the issuance of a status quo ante order or writ of preliminary injunction ordering the respondents to desist from closing EuroCredit Community Bank, Incorporated (*ECBI*) and from pursuing the receivership thereof. The petition likewise prays that the management and operation of ECBI be restored to its Board of Directors (*BOD*) and its officers.

The Facts

The Rural Bank of Faire, Incorporated (*RBFi*) was a duly registered rural banking institution with principal office in Centro Sur, Sto. Niño, Cagayan. Record shows that the corporate life of RBFi expired on May 31, 2005.^[1] Notwithstanding, petitioner Alfeo D. Vivas (*Vivas*) and his principals acquired the controlling interest in RBFi sometime in January 2006. At the initiative of Vivas and the new management team, an internal audit was conducted on RBFi and results thereof highlighted the dismal operation of the rural bank. In view of those findings, certain measures calculated to revitalize the bank were allegedly introduced.^[2] On December 8, 2006, the Bangko Sentral ng Pilipinas (*BSP*) issued the Certificate of Authority extending the corporate life of RBFi for another fifty (50) years. The BSP also approved the change of its corporate name to EuroCredit Community Bank, Incorporated, as well as the increase in the number of the members of its BOD, from five (5) to eleven (11).^[3]

Pursuant to Section 28 of Republic Act (R.A.) No. 7653, otherwise known as The New Central Bank Act, the Integrated Supervision Department II (*ISD II*) of the BSP conducted a general examination on ECBI with the cut-off date of December 31, 2007. Shortly after the completion of the general examination, an exit conference was held on March 27, 2008 at the BSP during which the BSP officials and examiners apprised Vivas, the Chairman and President of ECBI, as well as the other bank officers and members of its BOD, of the advance findings noted during the said examination. The ECBI submitted its comments on BSP's consolidated findings and risk asset classification through a letter, dated April 8, 2008.^[4]

Sometime in April 2008, the examiners from the Department of Loans and Credit of the BSP arrived at the ECBI and cancelled the rediscounting line of the bank. Vivas

appealed the cancellation to BSP.^[5] Thereafter, the Monetary Board (MB) issued Resolution No. 1255, dated September 25, 2008, placing ECBI under Prompt Corrective Action (PCA) framework because of the following serious findings and supervisory concerns noted during the general examination: 1] negative capital of ₱ 14.674 million and capital adequacy ratio of negative 18.42%; 2] CAMEL (Capital Asset Management Earnings Liquidity) composite rating of "2" with a Management component rating of "1"; and 3] serious supervisory concerns particularly on activities deemed unsafe or unsound.^[6] Vivas claimed that the BSP took the above courses of action due to the joint influence exerted by a certain hostile shareholder and a former BSP examiner.^[7]

Through its letter, dated September 30, 2008, the BSP furnished ECBI with a copy of the Report of Examination (ROE) as of December 31, 2007. In addition, the BSP directed the bank's BOD and senior management to: 1] infuse fresh capital of ₱ 22.643 million; 2] book the amount of ₱28.563 million representing unbooked valuation reserves on classified loans and other risks assets on or before October 31, 2008; and 3] take appropriate action necessary to address the violations/exceptions noted in the examination.^[8]

Vivas moved for a reconsideration of Resolution No. 1255 on the grounds of non-observance of due process and arbitrariness. The ISD II, on several instances, had invited the BOD of ECBI to discuss matters pertaining to the placement of the bank under PCA framework and other supervisory concerns before making the appropriate recommendations to the MB. The proposed meeting, however, did not materialize due to postponements sought by Vivas.^[9]

In its letter, dated February 20, 2009, the BSP directed ECBI to explain why it transferred the majority shares of RBFi without securing the prior approval of the MB in apparent violation of Subsection X126.2 of the Manual of Regulation for Banks (MORB).^[10] Still in another letter,^[11] dated March 31, 2009, the ISD II required ECBI to explain why it did not obtain the prior approval of the BSP anent the establishment and operation of the bank's sub-offices.

Also, the scheduled March 31, 2009 general examination of the books, records and general condition of ECBI with the cut-off date of December 31, 2008, did not push through. According to Vivas, ECBI asked for the deferment of the examination pending resolution of its appeal before the MB. Vivas believed that he was being treated unfairly because the letter of authority to examine allegedly contained a clause which pertained to the Anti-Money Laundering Law and the Bank Secrecy Act.^[12]

The MB, on the other hand, posited that ECBI unjustly refused to allow the BSP examiners from examining and inspecting its books and records, in violation of Sections 25 and 34 of R.A. No. 7653. In its letter,^[13] dated May 8, 2009, the BSP informed ECBI that it was already due for another annual examination and that the pendency of its appeal before the MB would not prevent the BSP from conducting another one as mandated by Section 28 of R.A. No. 7653.

In view of ECBI's refusal to comply with the required examination, the MB issued Resolution No. 726,^[14] dated May 14, 2009, imposing monetary penalty/fine on

ECBI, and referred the matter to the Office of the Special Investigation (OSI) for the filing of appropriate legal action. The BSP also wrote a letter,^[15] dated May 26, 2009, advising ECBI to comply with MB Resolution No. 771, which essentially required the bank to follow its directives. On May 28, 2009, the ISD II reiterated its demand upon the ECBI BOD to allow the BSP examiners to conduct a general examination on June 3, 2009.^[16]

In its June 2, 2009 Letter-Reply,^[17] ECBI asked for another deferment of the examination due to the pendency of certain unresolved issues subject of its appeal before the MB, and because Vivas was then out of the country. The ISD II denied ECBI's request and ordered the general examination to proceed as previously scheduled.^[18]

Thereafter, the MB issued Resolution No. 823,^[19] dated June 4, 2009, approving the issuance of a cease and desist order against ECBI, which enjoined it from pursuing certain acts and transactions that were considered unsafe or unsound banking practices, and from doing such other acts or transactions constituting fraud or might result in the dissipation of its assets.

On June 10, 2009, the OSI filed with the Department of Justice (DOJ) a complaint for Estafa Through Falsification of Commercial Documents against certain officials and employees of ECBI. Meanwhile, the MB issued Resolution No. 1164,^[20] dated August 13, 2009, denying the appeal of ECBI from Resolution No. 1255 which placed it under PCA framework. On November 18, 2009, the general examination of the books and records of ECBI with the cut-off date of September 30, 2009, was commenced and ended in December 2009. Later, the BSP officials and examiners met with the representatives of ECBI, including Vivas, and discussed their findings.^[21] On December 7, 2009, the ISD II reminded ECBI of the non-submission of its financial audit reports for the years 2007 and 2008 with a warning that failure to submit those reports and the written explanation for such omission shall result in the imposition of a monetary penalty.^[22] In a letter, dated February 1, 2010, the ISD II informed ECBI of MB Resolution No. 1548 which denied its request for reconsideration of Resolution No. 726.

On March 4, 2010, the MB issued Resolution No. 276^[23] placing ECBI under receivership in accordance with the recommendation of the ISD II which reads:

On the basis of the examination findings as of 30 September 2009 as reported by the Integrated Supervision Department (ISD) II, in its memorandum dated 17 February 2010, which findings showed that the Eurocredit Community Bank, Inc. – a Rural Bank (Eurocredit Bank) (a) is unable to pay its liabilities as they become due in the ordinary course of business; (b) has insufficient realizable assets to meet liabilities; (c) cannot continue in business without involving probable losses to its depositors and creditors; and (d) has willfully violated a cease and desist order of the Monetary Board for acts or transactions which are considered unsafe and unsound banking practices and other acts or transactions constituting fraud or dissipation of the assets of the institution, and considering the failure of the Board of Directors/management of Eurocredit Bank to restore the bank's financial health and viability despite

considerable time given to address the bank's financial problems, and that the bank had been accorded due process, the Board, in accordance with Section 30 of Republic Act No. 7653 (The New Central Bank Act), approved the recommendation of ISD II as follows:

1. To prohibit the Eurocredit Bank from doing business in the Philippines and to place its assets and affairs under receivership; and
2. To designate the Philippine Deposit Insurance Corporation as Receiver of the bank.

Assailing MB Resolution No. 276, Vivas filed this petition for prohibition before this Court, ascribing grave abuse of discretion to the MB for prohibiting ECBI from continuing its banking business and for placing it under receivership. The petitioner presents the following

ARGUMENTS:

- (a) It is grave abuse of discretion amounting to loss of jurisdiction to apply the general law embodied in Section 30 of the New Central Bank Act as opposed to the specific law embodied in Sections 11 and 14 of the Rural Banks Act of 1992.
- (b) Even if it assumed that Section 30 of the New Central Bank Act is applicable, it is still the gravest abuse of discretion amounting to lack or excess of jurisdiction to execute the law with manifest arbitrariness, abuse of discretion, and bad faith, violation of constitutional rights and to further execute a mandate well in excess of its parameters.
- (c) The power delegated in favor of the Bangko Sentral ng Pilipinas to place rural banks under receiverships is unconstitutional for being a diminution or invasion of the powers of the Supreme Court, in violation of Section 2, Article VIII of the Philippine Constitution.^[24]

Vivas submits that the respondents committed grave abuse of discretion when they erroneously applied Section 30 of R.A. No. 7653, instead of Sections 11 and 14 of the Rural Bank Act of 1992 or R.A. No. 7353. He argues that despite the deficiencies, inadequacies and oversights in the conduct of the affairs of ECBI, it has not committed any financial fraud and, hence, its placement under receivership was unwarranted and improper. He posits that, instead, the BSP should have taken over the management of ECBI and extended loans to the financially distressed bank pursuant to Sections 11 and 14 of R.A. No. 7353 because the BSP's power is limited only to supervision and management take-over of banks.

He contends that the implementation of the questioned resolution was tainted with arbitrariness and bad faith, stressing that ECBI was placed under receivership without due and prior hearing in violation of his and the bank's right to due process. He adds that respondent PDIC actually closed ECBI even in the absence of any directive to this effect. Lastly, Vivas assails the constitutionality of Section 30 of R.A. No. 7653 claiming that said provision vested upon the BSP the unbridled power to close and place under receivership a hapless rural bank instead of aiding its financial

needs. He is of the view that such power goes way beyond its constitutional limitation and has transformed the BSP to a sovereign in its own “kingdom of banks.”^[25]

The Court’s Ruling

The petition must fail.

Vivas Availed of the Wrong Remedy

To begin with, Vivas availed of the wrong remedy. The MB issued Resolution No. 276, dated March 4, 2010, in the exercise of its power under R.A. No. 7653. Under Section 30 thereof, any act of the MB placing a bank under conservatorship, receivership or liquidation may not be restrained or set aside except on a petition for *certiorari*. Pertinent portions of R.A. 7653 read:

Section 30. –

x 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.

x x x x. [Emphases supplied]

Prohibition is already unavailing

Granting that a petition for prohibition is allowed, it is already an ineffective remedy under the circumstances obtaining. Prohibition or a “writ of prohibition” is that process by which a superior court prevents inferior courts, tribunals, officers, or persons from usurping or exercising a jurisdiction with which they have not been vested by law, and confines them to the exercise of those powers legally conferred. Its office is to restrain subordinate courts, tribunals or persons from exercising jurisdiction over matters not within its cognizance or exceeding its jurisdiction in matters of which it has cognizance.^[26] In our jurisdiction, the rule on prohibition is enshrined in Section 2, Rule 65 of the Rules on Civil Procedure, to wit:

Sec. 2. *Petition for prohibition* - When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts