

## THIRD DIVISION

[ G.R. No. 176959, September 08, 2010 ]

**METROPOLITAN BANK & TRUST COMPANY, INC. (AS SUCCESSOR-IN-INTEREST OF THE BANKING OPERATIONS OF GLOBAL BUSINESS BANK, INC. FORMERLY KNOWN AS PHILIPPINE BANKING CORPORATION), PETITIONER, VS. THE BOARD OF TRUSTEES OF RIVERSIDE MILLS CORPORATION PROVIDENT AND RETIREMENT FUND, REPRESENTED BY ERNESTO TANCHI, JR., CESAR SALIGUMBA, AMELITA SIMON, EVELINA OCAMPO AND CARLITOS Y. LIM, RMC UNPAID EMPLOYEES ASSOCIATION, INC., AND THE INDIVIDUAL BENEFICIARIES OF THE PROVIDENT AND RETIREMENT FUND OF RMC, RESPONDENTS.**

### D E C I S I O N

**VILLARAMA, JR., J.:**

This petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, prays for the reversal of the Decision<sup>[1]</sup> dated November 7, 2006 and Resolution<sup>[2]</sup> dated March 5, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 76642. The CA had affirmed the Decision<sup>[3]</sup> dated June 27, 2002 of the Regional Trial Court (RTC), Branch 137, Makati City in Civil Case No. 97-997 which declared invalid the reversion or application of the Riverside Mills Corporation Provident and Retirement Fund (RMCPRF) to the outstanding obligation of Riverside Mills Corporation (RMC) with Philippine Banking Corporation (Philbank).

The facts are as follows:

On November 1, 1973, RMC established a Provident and Retirement Plan<sup>[4]</sup> (Plan) for its regular employees. Under the Plan, RMC and its employees shall each contribute 2% of the employee's current basic monthly salary, with RMC's contribution to increase by 1% every five (5) years up to a maximum of 5%. The contributions shall form part of the provident fund (the Fund) which shall be held, invested and distributed by the Commercial Bank and Trust Company. Paragraph 13 of the Plan likewise provided that the Plan "may be amended or terminated by the Company at any time on account of business conditions, but no such action shall operate to permit any part of the assets of the Fund to be used for, or diverted to purposes other than for the exclusive benefit of the members of the Plan and their ... beneficiaries. In no event shall any part of the assets of the Fund revert to [RMC] before all liabilities of the Plan have been satisfied."<sup>[5]</sup>

On October 15, 1979, the Board of Trustees of RMCPRF (the Board) entered into an Investment Management Agreement<sup>[6]</sup> (Agreement) with Philbank (now, petitioner Metropolitan Bank and Trust Company). Pursuant to the Agreement, petitioner shall

act as an agent of the Board and shall hold, manage, invest and reinvest the Fund in Trust Account No. 1797 in its behalf. The Agreement shall be in force for one (1) year and shall be deemed automatically renewed unless sooner terminated either by petitioner bank or by the Board.

In 1984, RMC ceased business operations. Nonetheless, petitioner continued to render investment services to respondent Board. In a letter<sup>[7]</sup> dated September 27, 1995, petitioner informed respondent Board that Philbank's Board of Directors had decided to apply the remaining trust assets held by it in the name of RMCPRF against part of the outstanding obligations of RMC.

Subsequently, respondent RMC Unpaid Employees Association, Inc. (Association), representing the terminated employees of RMC, learned of Trust Account No. 1797. Through counsel, they demanded payment of their share in a letter<sup>[8]</sup> dated February 4, 1997. When such demand went unheeded, the Association, along with the individual members of RMCPRF, filed a complaint for accounting against the Board and its officers, namely, Ernesto Tanchi, Jr., Carlitos Y. Lim, Amelita G. Simon, Evelina S. Ocampo and Cesar Saligumba, as well as petitioner bank. The case was docketed as Civil Case No. 97-997 in the RTC of Makati City, Branch 137.

On June 2, 1998, during the trial, the Board passed a Resolution<sup>[9]</sup> in court declaring that the Fund belongs exclusively to the employees of RMC. It authorized petitioner to release the proceeds of Trust Account No. 1797 through the Board, as the court may direct. Consequently, plaintiffs amended their complaint to include the Board as co-plaintiffs.

On June 27, 2002, the RTC rendered a decision in favor of respondents. The trial court declared invalid the reversion and application of the proceeds of the Fund to the outstanding obligation of RMC to petitioner bank. The *fallo* of the decision reads:

WHEREFORE, judgment is hereby rendered:

1. Declaring INVALID the reversion or application of the Riverside Mills Corporation Provident and Retirement Fund as payment for the outstanding obligation of Riverside Mills Corporation with defendant Philippine Banking Corporation.
2. Defendant Philippine Banking Corporation (now [Global Bank]) is hereby ordered to:
  - a. Reverse the application of the Riverside Mills Corporation Provident and Retirement Fund as payment for the outstanding obligation of Riverside Mills Corporation with defendant Philippine Banking Corporation;
  - b. Render a complete accounting of the Riverside Mills Corporation Provident and Retirement Fund; the Fund will then be subject to disposition by plaintiff Board of Trustees in accordance with law and

the Provident Retirement Plan;

- c. Pay attorney's fees equivalent to 10% of the total amounts due to plaintiffs Riverside Mills Unpaid Employees Association and the individual beneficiaries of the Riverside Mills Corporation Provident and Retirement Fund; and costs of suit.

3. The Riverside Mills Corporation Provident and Retirement Fund is ordered to determine the beneficiaries of the FUND entitled to benefits, the amount of benefits per beneficiary, and pay such benefits to the individual beneficiaries.

SO ORDERED.<sup>[10]</sup>

On appeal, the CA affirmed the trial court. It held that the Fund is distinct from RMC's account in petitioner bank and may not be used except for the benefit of the members of RMCPRF. Citing Paragraph 13 of the Plan, the appellate court stressed that the assets of the Fund shall not revert to the Company until after the liabilities of the Plan had been satisfied. Further, the Agreement was specific that upon the termination of the Agreement, petitioner shall deliver the Fund to the Board or its successor, and not to RMC as trustor. The CA likewise sustained the award of attorney's fees to respondents.<sup>[11]</sup>

Hence, this petition.

Before us, petitioner makes the following assignment of errors:

I.

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE REVERSION AND APPLICATION BY PHILBANK OF THE FUND IN PAYMENT OF THE LOAN OBLIGATIONS OF RIVERSIDE MILLS CORPORATION WERE INVALID.<sup>[12]</sup>

II.

THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN DECLARING THAT "BY HAVING ENTERED INTO AN AGREEMENT WITH THE BOARD, (PHILBANK) IS NOW ESTOPPED TO QUESTION THE LATTER'S AUTHORITY AS WELL AS THE TERMS AND CONDITIONS THEREOF."<sup>[13]</sup>

III.

THE HONORABLE COURT COMMITTED REVERSIBLE ERROR IN AWARDING ATTORNEY'S FEES TO PLAINTIFFS-APPELLEES ON THE BASIS THAT "[PHILBANK] WAS REMISS IN ITS DUTY TO TREAT RMCPRF'S ACCOUNT WITH THE HIGHEST DEGREE OF CARE CONSIDERING THE FIDUCIARY NATURE OF THEIR RELATIONSHIP, PERFORCE, THE PLAINTIFFS-

APPELLEES WERE COMPELLED TO LITIGATE TO PROTECT THEIR RIGHT."

[14]

The fundamental issue for our determination is whether the proceeds of the RMCPRF may be applied to satisfy RMC's debt to Philbank.

Petitioner contends that RMC's closure in 1984 rendered the RMCPRF Board of Trustees *functus officio* and devoid of authority to act on behalf of RMCPRF. It thus belittles the RMCPRF Board Resolution dated June 2, 1998, authorizing the release of the Fund to several of its supposed beneficiaries. Without known claimants of the Fund for eleven (11) years since RMC closed shop, it was justifiable for petitioner to consider the Fund to have "technically reverted" to, and formed part of RMC's assets. Hence, it could be applied to satisfy RMC's debts to Philbank. Petitioner also disputes the award of attorney's fees in light of the efforts taken by Philbank to ascertain claims before effecting the reversion.

Respondents for their part, belie the claim that petitioner exerted earnest efforts to ascertain claims. Respondents cite petitioner's omission to publish a notice in newspapers of general circulation to locate claims against the Fund. To them, petitioner's act of addressing the letter dated September 27, 1995 to the Board is a recognition of its authority to act for the beneficiaries. For these reasons, respondents believe that the reversion of the Fund to RMC is not only unwarranted but unconscionable. For being compelled to litigate to protect their rights, respondents also defend the award of attorney's fees to be proper.

The petition has no merit.

A trust is a "fiduciary relationship with respect to property which involves the existence of equitable duties imposed upon the holder of the title to the property to deal with it for the benefit of another." A trust is either express or implied. Express trusts are those which the direct and positive acts of the parties create, by some writing or deed, or will, or by words evincing an intention to create a trust.<sup>[15]</sup>

Here, the RMC Provident and Retirement Plan created an express trust to provide retirement benefits to the regular employees of RMC. RMC retained legal title to the Fund but held the same in trust for the employees-beneficiaries. Thus, the allocation under the Plan is directly credited to each member's account:

6. Allocation:

a. Monthly Contributions:

1. Employee - to be **credited to his account**.
2. Employer - to be **credited to the respective member's account** as stated under the contribution provision.

b. Investment Earnings - semestral valuation of the fund shall be made and any earnings or losses shall **be credited or debited, as**

**the case may be, to each member's account** in proportion to his account balances based on the last proceeding (sic) [preceding] accounting period.

c. Forfeitures - shall be retained in the fund.<sup>[16]</sup> (Emphasis supplied.)

The trust was likewise a revocable trust as RMC reserved the power to terminate the Plan after all the liabilities of the Fund to the employees under the trust had been paid. Paragraph 13 of the Plan provided that "[i]n no event shall any part of the assets of the Fund revert to the Company before all liabilities of the Plan have been satisfied."

Relying on this clause, petitioner, as the Fund trustee, considered the Fund to have "technically reverted" to RMC, allegedly after no further claims were made thereon since November 1984. Thereafter, it applied the proceeds of the Fund to RMC's debt with the bank pursuant to Paragraph 9 of Promissory Note No. 1618-80<sup>[17]</sup> which RMC executed on May 12, 1981. The pertinent provision of the promissory note reads:

IN THE EVENT THAT THIS NOTE IS NOT PAID AT MATURITY OR WHEN THE SAME BECOMES DUE UNDER ANY OF THE PROVISIONS HEREOF, I/WE HEREBY AUTHORIZE THE BANK AT ITS OPTION AND WITHOUT NOTICE, TO APPLY TO THE PAYMENT OF THIS NOTE, ANY AND ALL MONEYS, SECURITIES AND THINGS OF VALUE WHICH MAY BE IN ITS HAND OR ON DEPOSIT OR OTHERWISE **BELONGING TO ME/US** AND, FOR THIS PURPOSE, I/WE HEREBY, JOINTLY AND SEVERALLY, IRREVOCABLY CONSTITUTE AND APPOINT THE SAID BANK TO BE MY/OUR TRUE ATTORNEY-IN-FACT WITH FULL POWER AND AUTHORITY FOR ME/US AND IN MY/OUR NAME AND BEHALF, AND WITHOUT PRIOR NOTICE, TO NEGOTIATE, SELL AND TRANSFER ANY MONEYS, SECURITIES AND THINGS OF VALUE WHICH IT MAY HOLD, BY PUBLIC OR PRIVATE SALE, AND APPLY THE PROCEEDS THEREOF TO THE PAYMENT OF THIS NOTE. (Emphasis supplied.)

Petitioner contends that it was justified in supposing that reversion had occurred because its efforts to locate claims against the Fund from the National Labor Relations Commission (NLRC), the lower courts, the CA and the Supreme Court proved futile.

We are not convinced.

Employees' trusts or benefit plans are intended to provide economic assistance to employees upon the occurrence of certain contingencies, particularly, old age retirement, death, sickness, or disability. They give security against certain hazards to which members of the Plan may be exposed. They are independent and additional sources of protection for the working group and established for their exclusive benefit and for no other purpose.<sup>[18]</sup> Here, while the Plan provides for a reversion of the Fund to RMC, this cannot be done until all the liabilities of the Plan have been paid. And when RMC ceased operations in 1984, the Fund became liable for the