

SECOND DIVISION

[G.R. No. 172393, October 20, 2010]

**BANK OF COMMERCE, PETITIONER, VS. HON. ESTELA PERLAS-
BERNABE, IN HER CAPACITY AS PRESIDING JUDGE OF THE
REGIONAL TRIAL OF MAKATI CITY, BRANCH 142; BANCAPITAL
DEVELOPMENT CORPORATION; AND EXCHANGE CAPITAL
CORPORATION, RESPONDENTS.**

D E C I S I O N

PERALTA, J.:

A multimillion-peso treasury bill scam shook the Philippine financial markets in the mid-1990's. At the center of the fiasco lies respondent Bancapital Development Corporation (Bancapital) whose series of alleged fraudulent and unauthorized dealings in securities had left several other financial institutions almost in shambles—among them was herein petitioner Bank of Commerce. Bancapital was suspected of having funneled its funds to Exchange Capital Corporation (Excap) allegedly to insulate its assets from creditors stung by its scheme. The magnitude of the fraud had caught the attention of the National Bureau of Investigation (NBI) which immediately launched an investigation into the matter. Petitioner, it appears, was the only one that instituted an action to retrieve its rather scandalous losses.

This is a petition for review under Rule 45 of the Rules of Court assailing the June 22, 2004 Decision^[1] and the April 21, 2006 Resolution^[2] of the Court of Appeals in CA-G.R. SP. No. 67488. The challenged Decision denied due course to and dismissed petitioner's petition for *certiorari* from the September 7, 2001 Order of the Regional Trial Court (RTC) of Makati City, Branch 142 in Civil Case No. 01-855. The said Order, in turn, had denied petitioner's motion to consolidate Civil Case No. 01-855 with Case No. 01-974 pending with Branch 138 of the same court. These two cases had found their way to the RTC from the Securities and Exchange Commission (SEC) by operation of Republic Act (R.A.) No. 8977. The assailed Resolution denied reconsideration.

The facts follow.

On February 7, 1996, petitioner filed with the SEC a petition for involuntary dissolution, liquidation and receivership,^[3] docketed as SEC Case No. 02-96-5259 (the Receivership Case), alleging that Bancapital had defrauded it in unauthorized trading in government securities and had deliberately transferred its assets to Excap to keep them beyond reach of its creditors.^[4] Bancapital was declared in default for lack of an answer despite service of summons by publication,^[5] whereas Excap was allowed to intervene in the case. The SEC, thereafter, constituted a Receivership Committee of three members.^[6]

In the course of the proceedings, petitioner submitted to the Receivership Committee the NBI Report,^[7] as well as the copies of the checks mentioned therein.^[8] In a nutshell, the report seemed to validate the supposed transactional anomalies staged by Bancapital and Excap consisting of a series of questionable movement of funds from the former to the latter which had not been properly documented and accounted for in the books of Excap.^[9] This finding led the NBI to conclude, albeit tentatively, that respondents had indeed arranged for Bancapital's assets to be insulated from the prospect of creditor claims.^[10] Expectedly, Excap defended its transactions mentioned in the report and explained that the same were all but regular and legitimate dealings with Bancapital.^[11]

After an evaluation of the parties' evidence, the Receivership Committee submitted its report^[12] to the SEC. This committee report found Bancapital to be insolvent and admitted that the Receivership Committee had thus been unable to take custody or control of any assets.^[13] Commenting on the report, Excap, on the one hand, advanced that the hearing officer must only affirm the Committee's finding that it had never been in possession of Bancapital's assets.^[14] On the other hand, petitioner emphasized that contrary to Excap's understanding, the Committee Report did not make a categorical finding that Excap was, in fact, not in possession of Bancapital's assets.^[15]

On October 22, 1999, Hearing Officer Marciano Bacalla, Jr. issued an Order^[16] accepting the Committee Report and holding in explicit terms that Excap was not in possession of Bancapital's assets as indeed the money trail into Excap's accounts, as alluded to by the NBI, had been sufficiently explained to be regular, well-documented legitimate transactions.^[17] Petitioner sought reconsideration,^[18] but it was denied in an Order^[19] dated December 16, 1999 which reiterated that in view of the Committee's finding that Bancapital was insolvent and had no more assets that could be accounted for, it would also mean that Bancapital had no funds in possession even of Excap which might otherwise be taken custody of by the Receivership Committee.^[20]

Alleging grave abuse of discretion on the part of the hearing officer in issuing these twin orders, petitioner, on January 18, 2000, filed a Petition for *Certiorari*^[21] with the SEC *En Banc*, docketed as SEC EB Case No. 692 (the *Certiorari* Petition). Pending this petition and with no hint yet that the same had been submitted for decision, Hearing Officer Bacalla issued yet another Order^[22] on April 19, 2000 dismissing the Receivership Case based on the Committee Report while taking judicial notice that Bancapital had long since ceased from operations and had been unable to comply with its mandatory reportorial obligations to the Receivership Committee.^[23]

In the meantime, on August 8, 2000, R.A. No. 8799, otherwise known as the *Securities Regulation Code*,^[24] came in place and transferred jurisdiction over the Receivership Case and the *Certiorari* Petition from the SEC to the courts of general jurisdiction.

On the basis of this statutory development, the SEC *En Banc* in SEC EB Case No.

692 issued an Order [25] dated November 23, 2000 expressly declaring that it should not be acting on the *Certiorari* Petition and supposedly denying due course to it on the ground that the Commission's oversight functions relative to the acts of its hearing officers had become *functus officio* with the jurisdictional transfer thereof to the regional trial courts and hence. Forthwith, SEC EB Case No. 692 (*Certiorari* Petition) was transferred to the RTC of Makati, Branch 142 [26] and was docketed as Civil Case No. 01-974; whereas SEC Case No. 02-96-5259 -- the Receivership Case--was transferred to Branch 138 of the same Court and was docketed as Civil Case No. 01-855.

Petitioner sought the consolidation of Civil Case No. 01-974 (*Certiorari* Petition) with the Receivership Case and, for that purpose, filed a Motion to Consolidate [27] before Branch 142 of the RTC of Makati. The RTC, however, denied the motion in an Order [28] dated September 7, 2001, holding that consolidation would serve no purpose in view of the November 23, 2000 Order of the SEC *En Banc* denying due course to the *Certiorari* Petition, and ordering that the records of the case must nevertheless be transferred to Branch 138 for inclusion in the main records in the interest of orderly procedure. [29]

Petitioner elevated the matter to the Court of Appeals via a Rule 65 petition ascribing grave abuse of discretion amounting to lack or excess of jurisdiction to the presiding judge of Branch 142 in declining to consolidate the *Certiorari* Petition with the Receivership Case pending before Branch 138. [30]

In its Decision [31] dated June 22, 2004, the Court of Appeals denied due course to and dismissed the petition. Finding no grave abuse of discretion on the part of the trial court, it held that in view of the hearing officer's dismissal of the Receivership Case, there was indeed nothing more to consolidate with the *Certiorari* Petition, especially since no appeal was taken from said dismissal to the Court of Appeals which had jurisdiction to entertain the same. The Court of Appeals, likewise, stated that even the November 23, 2000 Order of the SEC *En Banc* in the *Certiorari* Petition had itself attained finality for the exact same reason as the April 19, 2000 Order. A Rule 65 petition, it said, could not substitute for petitioner's lost right to appeal. [32]

Petitioner's motion for reconsideration was denied. [33] Hence, the instant petition which bears the unrelenting issue of whether the Court of Appeals was correct in upholding the denial by the RTC of Makati, Branch 142 of petitioner's motion for the consolidation of the *Certiorari* Petition with the Receivership Case pending before Branch 138.

Petitioner posits that the Court of Appeals erroneously upheld the trial court's denial of its motion to consolidate and it invokes three reasons why: (a) first, Rule 31 of the Rules of Court sanctions consolidation thereof; (b) second, the SEC *En Banc*'s denial of due course to the petition for *certiorari* in SEC EB Case No. 692 [Civil Case No. 01-974] was based on lack of jurisdiction which, however, would not preclude the consolidation of the two cases that eventually found their way to the trial court of different branches; and (c) third, the denial of the motion for consolidation has given rise to the inequitable situation where the hearing officer's grave abuse of discretion in dismissing the Receivership Case would as it did remain unchecked thereby leaving the aggrieved party with no more remedy to pursue. [34]

Excap differs.^[35] In its Comment^[36] on the petition, it posits that as the Court of Appeals discussed in the assailed decision, there was nothing more to consolidate with the *Certiorari* Petition, because the dismissal of this case, as well as of the Receivership Case, had long attained finality without an appeal being taken from them. It also points out that, as affirmed by the September 7, 2001 Order of the trial court, the SEC *En Banc*'s denial of due course to the petition for *certiorari* in SEC EB Case No. 692 operates as a complete disposition of the petition from which the proper remedy would have been an ordinary appeal to the Court of Appeals. It, thus, believes that the Court of Appeals has correctly upheld the denial of the consolidation of the cases.

Petitioner insists in its Reply^[37] that the SEC *En Banc*'s dismissal of the *Certiorari* Petition was perched on the fact that Section 52 of R.A. No. 8799 had transferred jurisdiction over the cases to the appropriate RTCs. Petitioner theorizes that it is because of this statutory development that the SEC did not act on the petition thereby failing to make a definitive ruling on whether indeed Excap was keeping some of Bancapital's assets and funds or not. Thus, since this question has yet to be resolved by the SEC *En Banc* and in view of the transfer of the case to the RTC of Makati, Branch 142, petitioner asserts that the latter would, in any event, still have to finally resolve said question; but since the main case -- the Receivership Case -- has been transferred to Branch 138, it is crucial that the cases be consolidated before Branch 138.

There is merit in the petition.

Before we proceed to determine whether the Court of Appeals was correct in affirming the trial court's denial of petitioner's Motion to Consolidate, it is imperative to establish whether indeed the SEC hearing officer's April 19, 2000 Order dismissing the Receivership Case has attained finality especially since this consideration seems to have informed both courts below that consolidation under the given circumstances would not be practically nor legally feasible. In the same way, we must also determine whether the November 23, 2000 Order of the SEC *En Banc* had the effect of dismissing with finality petitioner's *Certiorari* Petition, because this was likewise considered by the Court of Appeals in affirming the denial of petitioner's prayer for consolidation.

First, recall that with respect to the dismissal of the Receivership Case, the Court of Appeals and the trial court noted that the hearing officer's April 19, 2000 Order was never appealed from by petitioner, which lapse resulted in said Order attaining finality. Second, with respect to the November 23, 2000 Order, the Court of Appeals emphasized that the SEC *En Banc* had already denied due course to the *Certiorari* Petition and in effect, had dismissed the case even before it was transferred to the RTC of Makati, Branch 142. With these observations, the Court of Appeals ruled that consolidation indeed was unwarranted, since there were no more cases to be consolidated in the first place.

We are not convinced.

Tucked in the records of the case is the fact that shortly after the issuance by Hearing Officer Bacalla of the April 19, 2000 Order dismissing the Receivership Case,

petitioner immediately moved to recall the said Order. In its Motion (to Recall the April 19, 2000 Order)^[38] filed on May 4, 2000, petitioner lamented that whether the Committee Report had indeed made a clear finding that Excap was not holding any of Bancapital's assets was a question yet to be decided by the SEC *En Banc* in the *Certiorari* Petition pending before it. Hence, petitioner believes that as a matter of course, the hearing officer, as a measure of courtesy to the Commission, should have deferred action on the Receivership Case unless and until the SEC *En Banc* has reached a resolution in the *Certiorari* Petition.^[39] We reproduce the pertinent portions of the said Motion, to wit:

3. The [October 22, 1999 and December 16, 1999 Orders of the Hearing Officer] and the erroneous reasoning on which they were based, were precisely made the subject of a PETITION filed by BANCOS with the Securities & Exchange Commission *En Banc* on January 6, 2000. x x x

3.1. As argued by BANCOS in its PETITION, the Honorable Hearing Officer gravely erred in ruling that EXCAP does not hold any assets for BANCAP when nothing in the Report of the Chairman of the Receivership Committee makes a finding to this effect. Nothing in said Report foreclosed the possibility that there may still be assets of BANCAP that can be recovered. Furthermore, even assuming that the Honorable Hearing Officer could rule on the issue absent a conclusive finding by the Committee, his rulings in the above- mentioned Orders were not based on substantial evidence.

4. Because these issues are now before the Commission *En banc*, the Hearing Officer has no authority to cause the dismissal of this case, especially considering that the basis of the dismissal is precisely what the Commission is asked to consider. Surely, the Hearing Officer does not mean to pre-empt any favorable decision that BANCOS might obtain from the Commission *En Banc* in SEC EB Case No. 692. But this is precisely what he did by dismissing this case. x x x

x x x x

6. In the same manner, having received a copy of BANCOS's PETITION, the Honorable Hearing Officer should give due respect to the Commission *En Banc* and not trifle with its authority by trying to render useless the possible reversal by the Commission *En Banc* of his Orders dated October 22 and December 16, 1999.

7. In the premises, the Hearing Officer should recall his Order dated April 19, 2000 and instead await the Commission's resolution of SEC EB Case No. 692.

WHEREFORE, it is respectfully prayed that the Hearing Officer recall his Order dated April 19, 2000 and await the Commission's resolution of SEC EB Case No. 692. x x x^[40]

An Opposition^[41] and a Reply,^[42] in fact, ensued thereafter, yet it appears that no