

## THIRTEENTH DIVISION

[ C.A.-G.R. SP No. 108237, March 31, 2014 ]

**BANCO DE ORO UNIBANK, INC. (FORMERLY EQUITABLE PCI BANK, INC.) AND EBC STRATEGIC HOLDINGS, INC., PETITIONERS, VS. REGIONAL TRIAL COURT OF PARAÑAQUE, BRANCH 274 AND ASIA AMALGAMATED HOLDINGS CORPORATION, RESPONDENTS.**

### D E C I S I O N

**YBAÑEZ, J.:**

This petition for certiorari<sup>[1]</sup> seeks to annul the 30 July 2008 Order<sup>[2]</sup> of the Regional Trial Court (RTC) of Parañaque City, Branch 274, in Civil Case No. 07-0349 for Declaration of Nullity of Contract and Damages denying petitioners' motion to dismiss and the subsequent 19 December 2008 Order<sup>[3]</sup> denying their motion for reconsideration.

#### The Antecedents

From the record, it appears that private respondent Asia Amalgamated Holdings Corporation (AAHC for brevity) is a holding company the majority shares of which are owned by Jimmy Gow (hereinafter referred to as Gow) and his family.<sup>[4]</sup> The Gow family is also the owners of almost all the shares of stocks of the Uniwide Group of Companies, consisting of Uniwide Holdings, Inc. (UHI), Uniwide Sales, Inc. (USI), Uniwide Sales Warehouse Club, Inc. (USWCI), and Uniwide Sales Realty and Resources Corporation (USRRC), otherwise referred as the Uniwide Group.<sup>[5]</sup>

The Gow family directly owns approximately 53.6%, and indirectly through USI approximately 24.4%, of the issued capital stocks of AAHC which in turn owned almost 100% of the outstanding capital stocks of Ecology Savings Bank (Ecology Bank), a thrift bank, comprising 4,500,000 common shares with a par value of P100.00 per share. After experiencing phenomenal growth and success in the retail business from the 1980's up to the early 1990's, the Uniwide Group embarked on a rapid nationwide expansion, not just in its core business of retailing, but in its other businesses as well. As a result of its attempt to expand its business, there was a pressing need for an increase in the capitalization of one of AAHC's wholly-owned companies, Ecology Bank. Equitable Banking Corporation (EBC likewise for brevity), then the Uniwide Group's depository bank since 1965 readily extended loans and credit accommodations to the latter.<sup>[6]</sup>

The Asian financial crisis in 1997 caused tremendous financial difficulties for the Uniwide Group that was aggravated by the sudden and unexpected decision of most creditor banks to withhold further releases of loans to, and focus on efforts to collect payments from, the Uniwide Group. At this point, EBC, through its President George

Co, offered to be the financial adviser of the Group with the promise that EBC would extend additional loans needed by Uniwide to which it agreed.<sup>[7]</sup>

Thereafter, EBC advised Uniwide that it could raise about P500 Million in badly needed funds if AAHC allowed EBC to take over the operations of Ecology Bank. Under severe financial distress and constant threats that the latter bank would face imminent bank runs unless it is taken over by EBC, respondent AAHC relented if only to save the Uniwide Group.<sup>[8]</sup>

In October 1998, AAHC entered into a Memorandum of Agreement with EBC Investments, Inc. (EBCII),<sup>[9]</sup> a subsidiary of EBC, in which AAHC agreed to sell to EBCII its 4,500,000 shares of stock in Ecology Bank. On 24 November 1998, AAHC entered into a Deed of Assignment<sup>[10]</sup> with petitioner EBC Strategic Holdings, Inc. (ESHI) wherein the former agreed to sell, and the latter agreed to buy, the subject shares.<sup>[11]</sup> Under the Deed of Assignment, the purchase price of the shares of stock was initially fixed at P75,000,000.00 supposedly based on the book value of Ecology Bank as of 30 September 1998 as determined by ESHI, subject to further price adjustments as may be determined in a due diligence audit to be conducted by ESHI. The Deed of Assignment likewise contains the agreements that (1) the final purchase price computation, as determined by ESHI after completion of the due diligence audit, shall be deemed final and conclusive on both parties, and (2) ownership over the assigned shares shall immediately be transferred to ESHI upon approval by the BSP of the conveyance, the pendency of the due diligence audit notwithstanding.<sup>[12]</sup>

On 21 December 1998, AAHC authorized Gow to negotiate the sale of the shares to the petitioners.<sup>[13]</sup> EBC and ESHI were able to secure BSP approval of the conveyance and transfer of Ecology Bank's share in favor of ESHI on 7 April 1999.<sup>[14]</sup> AAHC, through Gow, gave its conformity and agreed on the final price of the subject shares in the amount of negative P2.522 million on 8 June 1999 through a letter.<sup>[15]</sup> On 18 June 1999, Gow reiterated AAHC's conformity to the 8 June 1999 letter.<sup>[16]</sup> During the regular meeting of the board of directors of Ecology Bank on 21 June 1999, Gow confirmed that they had already reached an agreement with the petitioners regarding the sale of the Ecology Bank shares. Also affirmed in the meeting was that the losses for the month of May 1999 amounted to P18.36 million.<sup>[17]</sup> EBC then suddenly cut off its credit accommodations to the Uniwide Group in June 1999. As a consequence, several checks of the Uniwide Group were dishonored.<sup>[18]</sup>

In a letter dated 22 September 1999, EBC formally informed AAHC through Gow that the final price computation of the purchase price for the shares of the Ecology Bank is negative P2.522 million. This amount was reached after losses incurred by the bank were deducted from the purchase price. EBC likewise advised AAHC in the same letter that it shall formally assume the management and control of Ecology Savings Bank.<sup>[19]</sup>

On 1 October 1999, petitioner wrote the Bangko Sentral ng Pilipinas (BSP) with the information that the purchase of the shares of stock of Ecology Bank at the price of negative P2.522 million has been completed.<sup>[20]</sup> On 30 May 2000, Gow wrote petitioner that AAHC will be holding a stockholders' meeting in July 2000 to seek the

approval of the stockholders of the assignment of the subject shares in Ecology Bank.<sup>[21]</sup> A Secretary's Certificate dated 10 July 2000 certifying that the stockholders of AAHC approved the assignment of the subject shares apparently with full knowledge of its negative price was subsequently transmitted to petitioners.<sup>[22]</sup>

After the completion of the transfer of the shares of stock, petitioner infused P365 million worth of deposit on subscription in Ecology Bank on 29 December 1999 to meet the minimum capitalization requirement of thrift banks, spent resources integrating the thrift bank into its system and later transferred its ownership of the subject shares of the Ecology Bank to East West Bank in 2002.<sup>[23]</sup>

On 6 November 2007, AAHC filed a complaint for Declaration of Nullity of Contract and Damages.<sup>[24]</sup> In the complaint, private respondent prayed that the Deed of Assignment dated 24 November 1998 be declared null and void and in the alternative petitioner be ordered to jointly and severally pay to AAHC the reasonable price of the subject shares to be determined by the court. Likewise prayed for is that petitioners be ordered to pay private respondent jointly and severally P100,000.00 as exemplary damages, P100,000.00 as attorney's fees and P50,000.00 as expenses for litigation.<sup>[25]</sup> Petitioners filed their motion to dismiss<sup>[26]</sup> on 20 May 2008 alleging that the respondent court has no jurisdiction over the complaint, proper docket fees were not paid, that private respondent AAHC was estopped from questioning the assignment and the complaint failed to state cause of action.

In denying the motion to dismiss, the RTC ruled that the doctrine of primary jurisdiction is not applicable in the case since it is the constitutionally assigned function of the courts to interpret the law. Considering that the declaration of nullity of contract was made the cause of action, it falls within the exclusive domain of regular courts as it involves solely the issue of interpretation of the law on contracts. On the non-payment of correct filing fees, the court held that the cause of action being incapable of pecuniary estimation as the complaint seeks to nullify a deed of assignment, the filing fees so far paid are in order. Thirdly, estoppel is not among the grounds for dismissal of an action under Rule 16 of the 1997 Rules of Civil Procedure but a matter of defense which require the presentation of evidence for both parties. The respondent court also found the allegations in the complaint sufficient to state a cause of action.<sup>[27]</sup>

Aggrieved by the orders of the public respondent, petitioners filed this petition and submitted the following issues for consideration:

### **Issues**

#### **I**

WHETHER THE BANGKO SENTRAL NG PILIPINAS (BSP) HAS PRIMARY JURISDICTION OVER THE CASE.

## II

WHETHER THE FILING FEES SO FAR PAID BY RESPONDENT AAHC ARE IN ORDER.

## III

WHETHER AAHC, HAVING AGREED TO THE PURCHASE PRICE, IS ESTOPPED FROM QUESTIONING THE VALIDITY OF PETITIONERS' PURCHASE OF RESPONDENT AAHC'S 4.5 MILLION SHARES IN ECOLOGY SAVINGS BANK.

## IV

WHETHER AAHC'S COMPLAINT DATED 24 OCTOBER 2007 FAILED TO STATE A CAUSE OF ACTION BASED ON THE ALLEGATIONS THEREIN.

### **The Ruling of This Court**

The petition is bereft of merit.

Anent the first issue, petitioners contend that it is the Bangko Sentral ng Pilipinas that has jurisdiction over this case and not the respondent court being the central monetary authority and a body corporate with fiscal and administrative autonomy with a mandate to provide policy direction in the areas of money, banking and credit, having regulatory and supervisory powers of banks. They cited Section 17 (e) of Republic Act No. 7653 which provides that the BSP has the power to render opinions, decisions or rulings on matters regarding application or enforcement of laws pertaining to institutions supervised by the BSP. Incidental to its administrative powers, the BSP has the authority to pass upon and approve transfer of shares in banks in accordance to Section 7 of BSP Circular No. 332. Since AAHC seeks the reconveyance of the subject shares in Ecology Bank, the controversy is one which is within the special jurisdiction of the BSP as a quasi-judicial body and thus outside the jurisdiction of regular courts. Consequently, the doctrine of primary jurisdiction is applicable in the instant case.<sup>[28]</sup>

The Complaint of petitioner AAHC questions Section V of the Deed of Assignment which provided that the final purchase computation of the shares of stock of Ecology Bank, as determined by ESHI, shall be deemed final and conclusive on both parties. AAHC alleges that this provision violates Article 1473<sup>[29]</sup> of the Civil Code as the fixing of the price was left to the decision of only one of the contracting parties. Being in violation of the law, therefore, the Deed of Assignment is inexistent and void from the beginning pursuant to Article 1409.<sup>[30]</sup> It likewise assails the stipulation in the same Section V which violates Article 1473 for the absence of payment or consideration, an essential element of a contract of sale. Accordingly, it

wants petitioners to return the shares of stock to AAHC in the same condition and value they had at the time they were appropriated by petitioners or, in the alternative, to jointly and solidarily pay the reasonable price thereof to be determined by the court.

The Complaint basically charged petitioners with disregarding and ignoring the provisions of the New Civil Code on contracts and clearly not a bank or a corporate dispute. The main question raised in the complaint was the validity of the Deed of Assignment which is essentially judicial and not merely for the determination of the rights of the parties under the said deed but the very validity of the said document is put in issue.

Private respondent alleges in paragraph 2.8.2 of its Complaint that AAHC had no freedom of choice under the circumstances then prevailing and was severely constrained to agree to the takeover of Ecology Bank by EBC through its subsidiary, EBCII.<sup>[31]</sup> This constitutes undue influence which vitiated respondent's consent, and under Article 1390<sup>[32]</sup> of the Civil Code, is one of the grounds for the annulment of a voidable contract. Voidable or annulable contracts, before they are set aside, are existent, valid, and binding, and are effective and obligatory between the parties. They can, however, be ratified.

The resolution of the validity or voidness of the contracts remains a legal or judicial question as it requires the exercise of judicial function. It requires the ascertainment of what laws are applicable to the dispute, the interpretation and application of those laws, and the rendering of a judgment based thereon.<sup>[33]</sup>

A judicial question is a question that is proper for determination by the courts, as opposed to a moot question or one properly decided by the executive or legislative branch. A judicial question is raised when the determination of the question involves the exercise of a judicial function; that is, the question involves the determination of what the law is and what the legal rights of the parties are with respect to the matter in controversy<sup>[34]</sup> as in the case at bar.

The objective of the doctrine of primary jurisdiction asserted by the petitioner is to guide a court in determining whether it should refrain from exercising its jurisdiction until after an administrative agency — which has special knowledge, experience and tools to determine technical and intricate matters of fact, has determined some question, or a particular aspect of some question, arising in the proceeding before the court.<sup>[35]</sup> It applies where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body; in such case, the judicial process is suspended pending referral of such issues to the administrative body for its view. And in such cases, the court cannot arrogate unto itself the authority to resolve a controversy, the jurisdiction over which is initially lodged with an administrative body of special competence.<sup>[36]</sup>

Arbitration before an administrative agency is proper only when there is a disagreement between the parties as to some provisions of the contract between them, which needs the interpretation and the application of that particular knowledge and expertise possessed by members of that agency. *It is not proper when one of the parties repudiates the existence or validity of such contract or*