SUPREME COURT
SECOND DIVISION

CENTRAL BANK OF THE PHILIPPINES as Liquidator of the FIDELITY SAVINGS BANK,
***Petitioner*,**

-versus-

G.R. No. L-38427
March 12, 1975

HONORABLE JUDGE JESUS P. MORFE, as Presiding Judge of Branch XIII, Court of First Instance of Manila, Spouses AUGUSTO and ADELAIDA PADILLA and Spouses MARCELA and JOB ELIZES,
***Respondents*.**
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D E C I S I O N

AQUINO, *J.*:

This case involves the question of whether a final judgment for the payment of a time deposit in a savings bank, which judgment was obtained after the bank was declared insolvent, is a preferred claim against the bank. The question arises under the following facts:

On February 18, 1969 the Monetary Board found the Fidelity Savings Bank to be insolvent. The Board directed the Superintendent of Banks to take charge of its assets, forbade it to do business, and instructed the Central Bank Legal Counsel to take appropriate legal actions (Resolution No. 350).

On December 9, 1969 the Board resolved to seek the court's assistance and supervision in the liquidation of the bank. The resolution was implemented only on January 25, 1972 when the Central Bank of the Philippines filed the corresponding petition for assistance and supervision in the Court of First Instance of Manila (Civil Case No. 86005 assigned to Branch XIII).

Prior to the institution of the liquidation proceeding but after the declaration of insolvency, or, specifically, sometime in March, 1971, the spouses Job Elizes and Marcela P. Elizes filed a complaint in the Court of First Instance of Manila against the Fidelity Savings Bank for the recovery of the sum of P50,584 as the balance of their time deposits (Civil Case No. 82520 assigned to Branch I).

In the judgment rendered in that case on December 13, 1972 the Fidelity Savings Bank was ordered to pay the Elizes spouses the sum of P50,584 plus accumulated interest.

In another case, assigned to Branch XXX of the Court of First Instance of Manila, the spouses Augusto A. Padilla and Adelaida Padilla secured on April 14, 1972 a judgment against the Fidelity Savings Bank for the sums of P80,000 as the balance of their time deposits, plus interests, P70,000 as moral and exemplary damages and P9,600 as attorney's fees (Civil Case No. 84200 where the action was filed on September 6, 1971).

In its orders of August 20, 1973 and February 25, 1974, the lower court (Branch XIII having cognizance of the liquidation proceeding), upon motions of the Elizes and Padilla spouses and over the

opposition of the Central Bank, directed the latter, as liquidator, to pay their time deposits as preferred credits, evidenced by final judgments, within the meaning of article 2244(14)(b) of the Civil Code, if there are enough funds in the liquidator's custody in excess of the credits more preferred under section 30 of the Central Bank Law in relation to articles 2244 and 2251 of the Civil Code.

From the said order, the Central Bank appealed to this Court by *certiorari*. It contends that the final judgments secured by the Elizes and Padilla spouses do not enjoy any preference because (a) they were rendered after the Fidelity Savings Bank was declared insolvent and (b) under the charter of the Central Bank and the General Banking Law, no final judgment can be validly obtained against an insolvent bank.

Republic Act No. 265 provides:

> "SEC. 29. Proceedings upon insolvency. — Whenever, upon examination by the Superintendent or his examiners or agents into the condition of any banking institution, it shall be disclosed that the condition of the same is one of insolvency, or that its continuance in business would involve probable loss to its depositors or creditors, it shall be the duty of the Superintendent forthwith, in writing, to inform the Monetary Board of the facts, and the Board, upon finding the statements of the Superintendent to be true, shall forthwith forbid the institution to do business in the Philippines and shall take charge of its assets and proceeds according to law.
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> "The Monetary Board shall thereupon determine within thirty days whether the institution may be reorganized or otherwise placed in such a condition so that it may be permitted to resume business with safety to its creditors and shall prescribe the conditions under which such resumption of business shall take place. In such case the expenses and fees in the administration of the institution shall be determined by the Board and shall be paid to the Central Bank out of the assets of such banking institution.

> "At any time within ten days after the Monetary Board has taken charge of the assets of any banking institution, such institution may apply to the Court of First Instance for an order requiring the Monetary Board to show cause why it should not be enjoined from continuing such charge of its assets, and the court may direct the Board to refrain from further proceedings and to surrender charge of its assets.
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> "If the Monetary Board shall determine that the banking institution cannot resume business with safety to its creditors, it shall, by the Solicitor General, file a petition in the Court of First Instance reciting the proceedings which have been taken and praying the assistance and supervision of the court in the liquidation of the affairs of the same. The Superintendent shall thereafter, upon order of the Monetary Board and under the supervision of the court and with all convenient speed, convert the assets of the banking institution to money.
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> "SEC. 30. Distribution of assets. — In case of liquidation of a banking institution, after payment of the costs of the proceedings, including reasonable expenses and fees of the Central Bank to be allowed by the court, the Central Bank shall pay the debts of such institution, under the order of the court, in accordance with their legal priority."

The General Banking Act, Republic Act No. 337, provides:

> "SEC. 85. Any director or officer of any banking institution who receives or permits or causes to be received in said bank any deposit, or who pays out or permits or causes to be paid out any funds of said bank, or who transfers or permits or causes to be transferred any securities or property of said bank, after said bank becomes insolvent, shall be punished by fine of not less than one thousand nor more than ten thousand pesos and by imprisonment for not less than two nor more than ten years."

The Civil Code provides:

> "ART. 2237. Insolvency shall be governed by special laws insofar as they are not inconsistent with this Code. (n)

"ART. 2244. With reference to other property, real and personal, of the debtor, the following claims or credits shall be preferred in the order named:

x x x

(14) Credits which, without special privilege, appear in (a) a public instrument; or (b) in a final judgment, if they have been the subject of litigation. These credits shall have preference among themselves in the order of priority of the dates of the instruments and of the judgments, respectively. (1924a)

"ART. 2251. Those credits which do not enjoy any preference with respect to specific property, and those which enjoy preference, as to the amount not paid, shall be satisfied according to the following rules:

(1) In the order established in article 2244;(2) Common credits referred to in article 2246 shall be paid pro rata regardless of dates. (1929a)."

The trial court or, to be exact, the liquidation court noted that there is no provision in the charter of the Central Bank and in the General Banking Law (Republic Acts Nos. 265 and 337, respectively) which suspends or abates civil actions against an insolvent bank pending in courts other than the liquidation court. It reasoned out that, because such actions are not suspended, judgments against insolvent banks could be considered as preferred credits under article 2244(14)(b) of the Civil Code. It further noted that, in contrast with the Central Bank Act, section 18 of the Insolvency Law provides that upon the issuance by the court of an order declaring a person insolvent, "all civil proceedings against the said insolvent shall be stayed."

The liquidation court directed the Central Bank to honor the writs of execution issued by Branches I and XXX for the enforcement of the judgments obtained by the Elizes and Padilla spouses. It suggested that, after satisfaction of the judgments, the Central Bank, as liquidator, should include said judgments in the list of preferred

credits contained in the "Project of Distribution" "with the notation 'already paid.'"

On the other hand, the Central Bank argues that after the Monetary Board has declared that a bank is insolvent and has ordered it to cease operations, the Board becomes the trustee of its assets "for the equal benefit of all the creditors, including the depositors." The Central Bank cites the ruling that "the assets of an insolvent banking institution are held in trust for the equal benefit of all creditors, and after its insolvency, one cannot obtain an advantage or a preference over another by an attachment, execution or otherwise" (Rohr vs. Stanton Trust & Savings Bank, 76 Mont. 248, 245 Pac. 947).

The stand of the Central Bank is that all depositors and creditors of the insolvent bank should file their actions with the liquidation court. In support of that view it cites the provision that the Insolvency Law does not apply to banks (last sentence, sec. 52 of Act No. 1956).

It also invokes the provision penalizing a director or officer of a hank who disburses, or allows disbursement, of the funds of the bank after it becomes insolvent (Sec. 85, General Banking Act, Republic Act No. 337). It cites the ruling that "a creditor of an insolvent state bank in the hands of a liquidator who recovered a judgment against it is not entitled to a preference for (by) the mere fact that he is a judgment creditor" (Thomas H. Briggs & Sons, Inc. vs. Allen, 207 N. Carolina 10, 175 S. E. 838, Braver, Liquidation of Financial Institutions, p. 922).

It should be noted that fixed, savings, and current deposits of money in banks and similar institutions are not true deposits. They are considered simple loans and, as such, are not preferred credits (Art. 1980, Civil Code; In re Liquidation of Mercantile Bank of China: Tan Tiong Tick vs. American Apothecaries Co., 65 Phil. 414; Pacific Coast Biscuit Co. vs. Chinese Grocers Association, 65 Phil. 375; Fletcher American National Bank vs. Ang Cheng Lian, 65 Phil. 385; Pacific Commercial Co. vs. American Apothecaries Co., 65 Phil. 429; Gopoco Grocery vs. Pacific Coast Biscuit Co., 65 Phil. 443).

The aforequoted section 29 of the Central Bank's charter explicitly provides that when a bank is found to be insolvent, the Monetary

Board shall forbid it to do business and shall take charge of its assets. The Board in its Resolution No. 350 dated February 18, 1969 banned the Fidelity Savings Bank from doing business. It took charge of the bank's assets. Evidently, one purpose in prohibiting the insolvent bank from doing business is to prevent some depositors from having an undue or fraudulent preference over other creditors and depositors.

That purpose would be nullified if, as in this case, after the bank is declared insolvent, suits by some depositors could be maintained and judgments would be rendered for the payment of their deposits and then such judgments would be considered preferred credits under article 2244(14)(b) of the Civil Code.

We are of the opinion that such judgments cannot be considered preferred and that article 2244(14)(b) does not apply to judgments for the payment of the deposits in an insolvent savings bank which were obtained after the declaration of insolvency.

A contrary rule or practice would be productive of injustice, mischief and confusion. To recognize such judgments as entitled to priority would mean that depositors in insolvent banks, after learning that the bank is insolvent as shown by the fact that it can no longer pay withdrawals or that it has closed its doors or has been enjoined by the Monetary Board from doing business, would rush to the courts to secure judgments for the payment of their deposits.

In such an eventuality, the courts would be swamped with suits of that character. Some of the judgments would be default judgments. Depositors armed with such judgments would pester the liquidation court with claims for preference on the basis of article 2244(14)(b). Less alert depositors would be prejudiced. That inequitable situation could not have been contemplated by the framers of section 29.

The Rohr case (supra) supplies some illumination on the disposition of the instant case. It appears in that case that the Stanton Trust & Savings Bank of Great Falls closed its doors to business on July 9, 1923. On November 7, 1924 the bank (then already under liquidation) issued to William Rohr a certificate stating that he was entitled to claim from the bank $1,191.72 and that he was entitled to dividends

thereon. Later, Rohr sued the bank for the payment of his claim. The bank demurred to the complaint. The trial court sustained the demurrer. Rohr appealed. In affirming the order sustaining the demurrer, the Supreme Court of Montana said:

> "The general principle of equity that the assets of an insolvent are to be distributed ratably among general creditors applies with full force to the distribution of the assets of a bank. A general depositor of a bank is merely a general creditor, and, as such, is not entitled to any preference or priority over other general creditors.
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> "The assets of a bank in process of liquidation are held in trust for the equal benefit of all creditors. and one cannot be permitted to obtain an advantage or preference over another by an attachment, execution or otherwise. A disputed claim of a creditor may be adjudicated, but those whose claims are recognized and admitted may not successfully maintain action thereon. So to permit would defeat the very purpose of the liquidation of a bank whether being voluntarily accomplished or through the intervention of a receiver.
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> "The available assets of such a bank are held in trust, and so conserved that each depositor or other creditor shall receive payment or dividend according to the amount of his debt, and that none of equal class shall receive any advantage or preference over another."

And with respect to a national bank under voluntary liquidation, the court noted in the Rohr case that the assets of such a bank "become a trust fund, to be administered for the benefit of all creditors pro rata, and, while the bank retains its corporate existence, and may be sued, the effect of a judgment obtained against it by a creditor is only to fix the amount of debt. He can acquire no lien which will give him any preference or advantage over other general creditors." (245 Pac. 249)[**]

Considering that the deposits in question, in their inception, were not preferred credits, it does not seem logical and just that they should be raised to the category of preferred credits simply because the depositors, taking advantage of the long interval between the declaration of insolvency and the filing of the petition for judicial assistance and supervision, were able to secure judgments for the payment of their time deposits.

The judicial declaration that the said deposits were payable to the depositors, as indisputably they were due, could not have given the Elizes and Padilla spouses a priority over the other depositors whose deposits were likewise indisputably due and owing from the insolvent bank but who did not want to incur litigation expenses in securing a judgment for the payment of the deposits.

The circumstance that the Fidelity Savings Bank, having stopped operations since February 19, 1969, was forbidden to do business (and that ban would include the payment of time deposits) implies that suits for the payment of such deposits were prohibited. What was directly prohibited should not be encompassed indirectly. (See Maurello vs. Broadway Bank & Trust Co. of Paterson, 176 Atl. 391, 114 N.J.L. 167).

It is noteworthy that in the trial court's order of October 3, 1972, which contains the Bank Liquidation Rules and Regulations, it indicated in Step III the procedure for processing the claims against the insolvent bank. In Step IV, the court directed the Central Bank, as liquidator, to submit a Project of Distribution which should include "a list of the preferred credits to be paid in full in the order of priorities established in Articles 2241, 2242, 2243, 2246 and 2247" of the Civil Code (note that article 2244 was not mentioned). There is no cogent reason why the Elizes and Padilla spouses should not adhere to the procedure outlined in the said rules and regulations.

WHEREFORE, the lower court's Orders of August 20, 1973 and February 25, 1974 are reversed and set aside. No costs.

SO ORDERED.

Makalintal, *C.J.*, Fernando, Barredo and Fernandez, *JJ.*, concur.
Antonio, *J.*, did not take part.

[**] "It must be borne in mind that the predominant policy of the insolvent system is intended to secure an equality among creditors, and to prohibit all preferences except such as are expressly permitted. When, therefore, doubtful or ambiguous provisions of the enactments making up the system are to be construed, that interpretation which best comports with and gives effect to the ultimate and controlling purpose of the statute must be adopted and applied, rather than one which totally, or even partially, defeat or thwart that design. And this is but another way of saying that preferences which do not clearly and unequivocally appear to be authorized ought not to be created by mere construction, since the tendency of all preferences is to frustrate, to some extent, equality among creditors, and thus to disturb the very policy which lies at the root of all the insolvent laws." (Roberts vs. Edie, 85 Md. 181, 36 Atl. 820, 822).

"When control of a bank for liquidation purposes is taken by the superintendent of banks, the question of preference creates in reality a controversy between the depositor claiming a preference and the other depositors who are general creditors, inasmuch as the assets in which all are to participate are diminished to the extent of whatever preferences are allowed. The creation of preferences, generally speaking, should therefore be discouraged except in cases where the right thereto is clearly established. As said in Cavin vs. Gleason, 105 N.Y. 256, at page 262, 11 N.E. 504, 506:

'The equitable doctrine that, as between creditors, equality is equity, admits, so far as we know, of no exception founded on the greater supposed sacredness of one debt, or that it arose out of a violation of duty, or that its loss involves greater apparent hardship in one case than another, unless it appears, in addition, that there is some specific recognized equity founded on some agreement, or the relation of the debt to the assigned property, which entitles the claimant, according to equitable principles, to preferential payment'". (Ramisch vs. Fulton, 41 Ohio App. 443, 180 N.E. 735).

"Ordinary deposit becomes bank's money and creates debtor-creditor relation, precluding preference as against bank's receiver." (Andrew vs. Union Savings Bank & Trust Co. of Davenport, 220 Iowa 712, 263 N.W. 495).

"Where judgment was rendered against bank after bank was in custody of liquidator, judgment creditor was not entitled to preference because of judgment" (Thomas H. Briggs & Sons, Inc. vs. Allen, 207 N. C. 10, 175 S. E. 838).
