Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ALFEO D. VIVAS, on his behalf and on behalf of the Shareholders of EUROCREDIT COMMUNITY BANK,
Petitioner,

- versus -

THE MONETARY BOARD OF THE BANGKO SENTRAL NG PILIPINAS and the PHILIPPINE DEPOSIT INSURANCE CORPORATION,
Respondents.

G.R. No. 191424

Present:

VELASCO, JR., *J., Chairperson,*
PERALTA,
ABAD,
MENDOZA, and
LEONEN, *JJ.*

Promulgated:

AUG 07 2013

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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

[1] *Rollo*, p. 155.

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

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[2] Id. at 8-11.
[3] Id. at 115.
[4] Id. at 116.
[5] Id. at 12.
[6] Id. at 181.
[7] Id. at 13.

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.

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[8] Id. at 117-118.
[9] Id. at 236-241.
[10] Id. at 119-120.
[11] Id. at 262.
[12] Id. at 14.
[13] Id. at 263.

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.

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[14] Id. at 265.
[15] Id. at 267-268.
[16] Id. at 271.
[17] Id. at 272.
[18] Id. at 273.
[19] Id. at 275-277.
[20] Id. at 282.
[21] Id. at 125.
[22] Id. at 283.

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:
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> 1. To prohibit the Eurocredit Bank from doing business in the Philippines and to place its assets and affairs under receivership; and
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> 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.

[23] Id. at 50.

(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 distrained 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.

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[24] Id. at 17-18.
[25] Id. at 37.

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.
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> 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

[26] *City Engineer of Baguio v. Baniqued*, G.R. No. 150270, November 26, 2008, 57 SCRA 617, 625.

> 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 with certainty and praying that the judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as the law and justice require.
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> x x x x.

Indeed, prohibition is a preventive remedy seeking that a judgment be rendered which would direct the defendant to desist from continuing with the commission of an act perceived to be illegal.[27] As a rule, the proper function of a writ of prohibition is to prevent the doing of an act which is about to be done. It is not intended to provide a remedy for acts already accomplished.[28]

Though couched in imprecise terms, this petition for prohibition apparently seeks to prevent the acts of closing of ECBI and placing it under receivership. Resolution No. 276, however, had already been issued by the MB and the closure of ECBI and its placement under receivership by the PDIC were already accomplished. Apparently, the remedy of prohibition is no longer appropriate. Settled is the rule that prohibition does not lie to restrain an act that is already a *fait accompli.*[29]

The Petition Should Have Been Filed in the CA

Even if treated as a petition for certiorari, the petition should have been filed with the CA. Section 4 of Rule 65 reads:

> **Section 4.** *When and where petition filed.* — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.
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> The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in

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[27] *Guerrero v. Domingo*, G.R. No. 156142, March 23, 2011, 646 SCRA 175, 180.
[28] *Cabanero v. Torres,* 61 Phil, 522 (1935); *Agustin v. De la Fuente*, 84 Phil 525 (1949); *Navarro v. Lardizabal,* 134 Phil. 331 (1968); *Heirs of Eugenia V. Roxas, Inc. v. Intermediate Appellate Court,* 255 Phil 558 (1989).
[29] *Montes v. Court of Appeals,* 523 Phil 98, 110 (2006).

> aid of its appellate jurisdiction. If it involves the acts or omissions of a **quasi-judicial agency,** unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable **only** by the **Court of Appeals.** [Emphases supplied]

That the MB is a quasi-judicial agency was already settled and reiterated in the case of *Bank of Commerce v. Planters Development Bank And Bangko Sentral Ng Pilipinas*.[30]

Doctrine of Hierarchy of Courts

Even in the absence of such provision, the petition is also dismissible because it simply ignored the doctrine of hierarchy of courts. True, the Court, the *CA* and the *RTC* have original concurrent jurisdiction to issue writs of certiorari, prohibition and mandamus. The concurrence of jurisdiction, however, does not grant the party seeking any of the extraordinary writs the absolute freedom to file a petition in any court of his choice. The petitioner has not advanced any special or important reason which would allow a direct resort to this Court. Under the Rules of Court, a party may directly appeal to this Court only on *pure questions of law*.[31] In the case at bench, there are certainly factual issues as Vivas is questioning the findings of the investigating team.

Strict observance of the policy of judicial hierarchy demands that where the issuance of the extraordinary writs is also within the competence of the CA or the RTC, the special action for the obtainment of such writ must be presented to either court. As a rule, the Court will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate lower courts; or where exceptional and compelling circumstances, such as cases of national interest and with serious implications, justify the availment of the extraordinary remedy of writ of certiorari, prohibition, or mandamus calling for the exercise of its primary jurisdiction.[32] The judicial policy must be observed to prevent an imposition on the precious time and attention of the Court.

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[30] G.R. Nos. 154470-71, September 24, 2012 , 681 SCRA 521, 555 (citing *United Coconut Planters Bank v. E. Ganzon, Inc.*, G.R. No. 168859, June 30, 2009, 591 SCRA 321, 338-341).
[31] *Philippine Veterans Bank v. Benjamin Monillas,* 573 Phil 298, 315 (2008).
[32] *Springfield Development Corp., Inc. v. Hon. Presiding Judge of RTC, Branch 40., Cagayan de Oro City, Misamis Oriental,* 543 Phil. 298, 315 (2007).

The MB Committed No Grave Abuse of Discretion

In any event, no grave abuse of discretion can be attributed to the MB for the issuance of the assailed Resolution No. 276.

Vivas insists that the circumstances of the case warrant the application of Section 11 of R.A. No. 7353, which provides:

> Sec. 11. The power to supervise the operation of any rural bank by the Monetary Board as herein indicated shall consist in placing limits to the maximum credit allowed to any individual borrower; in prescribing the interest rate, in determining the loan period and loan procedures, in indicating the manner in which technical assistance shall be extended to rural banks, in imposing a uniform accounting system and manner of keeping the accounts and records of rural banks; in instituting periodic surveys of loan and lending procedures, audits, test-check of cash and other transactions of the rural banks; in conducting training courses for personnel of rural banks; and, in general, in supervising the business operations of the rural banks.
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> The Central Bank shall have the power to enforce the laws, orders, instructions, rules and regulations promulgated by the Monetary Board, applicable to rural banks; to require rural banks, their directors, officers and agents to conduct and manage the affairs of the rural banks in a lawful and orderly manner; and, upon proof that the rural bank or its Board of Directors, or officers are conducting and managing the affairs of the bank in a manner contrary to laws, orders, instructions, rules and regulations promulgated by the Monetary Board or in a manner substantially prejudicial to the interest of the Government, depositors or creditors, to take over the management of such bank when specifically authorized to do so by the Monetary Board after due hearing process until a new board of directors and officers are elected and qualified without prejudice to the prosecution of the persons responsible for such violations under the provisions of Sections 32, 33 and 34 of Republic Act No. 265, as amended.
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> x x x x.

The thrust of Vivas' argument is that ECBI did not commit any financial fraud and, hence, its placement under receivership was unwarranted and improper. He asserts that, instead, the BSP should have taken over the management of ECBI and extended loans to the financially distrained 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, and not receivership.

Vivas argues that implementation of the questioned resolution was tainted with arbitrariness and bad faith, stressing that ECBI was placed under receivership without due and prior hearing, invoking Section 11 of R.A. No. 7353 which states that the BSP may take over the management of a rural bank after due hearing.[33] He adds that because R.A. No. 7353 is a special law, the same should prevail over R.A. No. 7653 which is a general law.

The Court has taken this into account, but it appears from all over the records that ECBI was given every opportunity to be heard and improve on its financial standing. The records disclose that BSP officials and examiners met with the representatives of ECBI, including Vivas, and discussed their findings.[34] There were also reminders that ECBI submit its financial audit reports for the years 2007 and 2008 with a warning that failure to submit them and a written explanation of such omission shall result in the imposition of a monetary penalty.[35] More importantly, ECBI was heard on its motion for reconsideration. For failure of ECBI to comply, the MB came out with Resolution No. 1548 denying its request for reconsideration of Resolution No. 726. Having been heard on its motion for reconsideration, ECBI cannot claim that it was deprived of its right under the Rural Bank Act.

Close Now, Hear Later

At any rate, if circumstances warrant it, the MB may forbid a bank from doing business and place it under receivership *without prior notice and hearing*. Section 30 of R.A. No. 7653 provides, viz:

> Sec. 30. *Proceedings in Receivership and Liquidation.* – Whenever, upon report of the head of the supervising or examining department, the Monetary Board finds that a bank or quasi-bank:

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[33] **Section 11**. The power to supervise the operation of any rural bank by the Monetary Board as herein indicated shall consists in placing limits to the maximum credit allowed to any individual borrower; in prescribing the interest rate; in determining the loan period and loan procedures; in indicating the manner in which technical assistance shall be extended to rural banks; in imposing a uniform accounting system and manner of keeping the accounts and records of rural banks; in instituting periodic surveys of loan and lending procedures, audits, test-check of cash and other transactions of the rural banks; and, in general in supervising the business operations of the rural banks.

The Central bank shall have the power to enforce the laws, orders, instructions, rules and regulations promulgated by the Monetary Board applicable to rural banks; to require rural banks, their directors, officers and agents to conduct and manage the affairs of the rural banks in a lawful and orderly manner, and, upon proof that the rural bank of its Board of Directors, or officers are conducting and managing the affairs of the banking in a manner contrary to the laws, orders, instructions, rules and regulations promulgated by the Monetary Board or in a manner substantially prejudicial in the interest of the Government, depositors or creditors, to take over the management of such bank when specifically authorized to do so by the Monetary Board ***after due hearing process*** until a new board of directors and officers are elected and qualified without prejudice to the prosecution of the persons for such violations under the provisions of Sections 32, 33 and 34 of Republic Act No. 265, as amended.

[34] *Rollo*, p. 125.

[35] Id. at 283.

> (a) is unable to pay its liabilities as they become due in the ordinary course of business: Provided, That this shall not include inability to pay caused by extraordinary demands induced by financial panic in the banking community;
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> (b) has insufficient realizable assets, as determined by the Bangko Sentral, to meet its liabilities; or
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> (c) cannot continue in business without involving probable losses to its depositors or creditors; or
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> (d) has wilfully violated a cease and desist order under Section 37 that has become final, involving acts or transactions which amount to fraud or a dissipation of the assets of the institution; in which cases, the Monetary Board may summarily and **without need for prior hearing** forbid the institution from doing business in the Philippines and designate the Philippine Deposit Insurance Corporation as **receiver** of the banking institution. [Emphases supplied.]
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> x x x x.

Accordingly, there is no conflict which would call for the application of the doctrine that a special law should prevail over a general law. It must be emphasized that R.A .No. 7653 is a later law and under said act, the power of the MB over banks, including rural banks, was increased and expanded. The Court, in several cases, upheld the power of the MB to take over banks *without need for prior hearing.* It is not necessary inasmuch as the law entrusts to the MB the appreciation and determination of whether any or all of the statutory grounds for the closure and receivership of the erring bank are present. The MB, under R.A. No. 7653, has been invested with more power of closure and placement of a bank under receivership for insolvency or illiquidity, or because the bank's continuance in business would probably result in the loss to depositors or creditors. In the case of *Bangko Sentral Ng Pilipinas Monetary Board v. Hon. Antonio-Valenzuela,*[36] the Court reiterated the doctrine of "close now, hear later," stating that it was justified as a measure for the protection of the public interest. Thus:

> The **"close now, hear later"** doctrine has already been justified as a measure for the protection of the public interest. Swift action is called for on the part of the BSP when it finds that a bank is in dire straits. Unless adequate and determined efforts are taken by the government against distressed and mismanaged banks, public faith in the banking system is certain to deteriorate to the prejudice of the national economy itself, not to mention the losses

[36] G.R. No. 184778, October 2, 2009, 602 SCRA 698.

> suffered by the bank depositors, creditors, and stockholders, who all deserve the protection of the government.[37] [Emphasis supplied]

In *Rural Bank of Buhi, Inc. v. Court of Appeals*,[38] the Court also wrote that

> x x x **due process does not necessarily require a prior hearing;** a hearing or an opportunity to be heard may be subsequent to the closure. One can just imagine the dire consequences of a prior hearing: bank runs would be the order of the day, resulting in panic and hysteria. In the process, fortunes may be wiped out and disillusionment will run the gamut of the entire banking community.[39]

The doctrine is founded on practical and legal considerations to obviate unwarranted dissipation of the bank's assets and as a valid exercise of police power to protect the depositors, creditors, stockholders, and the general public.[40] Swift, adequate and determined actions must be taken against financially distressed and mismanaged banks by government agencies lest the public faith in the banking system deteriorate to the prejudice of the national economy.

Accordingly, the MB can immediately implement its resolution prohibiting a banking institution to do business in the Philippines and, thereafter, appoint the PDIC as receiver. The procedure for the involuntary closure of a bank is summary and expeditious in nature. Such action of the MB shall be final and executory, but may be later subjected to a judicial scrutiny via a petition for *certiorari* to be filed by the stockholders of record of the bank representing a majority of the capital stock. Obviously, this procedure is designed to protect the interest of all concerned, that is, the depositors, creditors and stockholders, the bank itself and the general public. The protection afforded public interest warrants the exercise of a summary closure.

In the case at bench, the ISD II submitted its memorandum, dated February 17, 2010, containing the findings noted during the general examination conducted on ECBI with the cut-off date of September 30, 2009. The memorandum underscored the inability of ECBI to pay its liabilities as they would fall due in the usual course of its business, its liabilities being in excess of the assets held. Also, it was noted that ECBI's continued banking operation would most probably result in the incurrence of additional losses to the prejudice of its depositors and creditors. On top of

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[37] Id. at 721.
[38] 245 Phil. 263 (1988).
[39] Id. at 278.
[40] *Bangko Sentral ng Pilipinas Monetary Board v. Antonio-Valenzuela*, G.R. No. 184778, October 2, 2009, 602 SCRA 698.

these, it was found that ECBI had willfully violated the cease-and-desist order of the MB issued in its June 24, 2009 Resolution, and had disregarded the BSP rules and directives. For said reasons, the MB was forced to issue the assailed Resolution No. 276 placing ECBI under receivership. In addition, the MB stressed that it accorded ECBI ample time and opportunity to address its monetary problem and to restore and improve its financial health and viability but it failed to do so.

In light of the circumstances obtaining in this case, the application of the corrective measures enunciated in Section 30 of R.A. No. 7653 was proper and justified. Management take-over under Section 11 of R.A. No. 7353 was no longer feasible considering the financial quagmire that engulfed ECBI showing serious conditions of insolvency and illiquidity. Besides, placing ECBI under receivership would effectively put a stop to the further draining of its assets.

No Undue Delegation
of Legislative Power

Lastly, the petitioner challenges the constitutionality of Section 30 of R.A. No. 7653, as the legislature granted the MB a broad and unrestrained power to close and place a financially troubled bank under receivership. He claims that the said provision was an undue delegation of legislative power. The contention deserves scant consideration.

Preliminarily, Vivas' attempt to assail the constitutionality of Section 30 of R.A. No. 7653 constitutes collateral attack on the said provision of law. Nothing is more settled than the rule that the constitutionality of a statute cannot be collaterally attacked as constitutionality issues must be pleaded directly and not collaterally.[41] A collateral attack on a presumably valid law is not permissible. Unless a law or rule is annulled in a direct proceeding, the legal presumption of its validity stands.[42]

Be that as it may, there is no violation of the non-delegation of legislative power. The rationale for the constitutional proscription is that "legislative discretion as to the substantive contents of the law cannot be delegated. What can be delegated is the discretion to determine *how* the law may be enforced, not *what* the law shall be. The ascertainment of the latter

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[41] *Gutierrez v. Department of Budget and Management*, G.R. No. 153266, March 18, 2010, 616 SCRA 1, 25.
[42] *Dasmariñas Water District v. Leonardo-De Castro*, G.R. No. 175550, September 17, 2008, 565 SCRA 624, 637.

subject is a prerogative of the legislature. This prerogative cannot be abdicated or surrendered by the legislature to the delegate."[43]

"There are two accepted tests to determine whether or not there is a valid delegation of legislative power, *viz*, the completeness test and the sufficient standard test. Under the first test, the law must be complete in all its terms and conditions when it leaves the legislature such that when it reaches the delegate the only thing he will have to do is enforce it. Under the sufficient standard test, there must be adequate guidelines or stations in the law to map out the boundaries of the delegate's authority and prevent the delegation from running riot. Both tests are intended to prevent a total transference of legislative authority to the delegate, who is not allowed to step into the shoes of the legislature and exercise a power essentially legislative."[44]

In this case, under the two tests, there was no undue delegation of legislative authority in the issuance of R.A. No. 7653. To address the growing concerns in the banking industry, the legislature has sufficiently empowered the MB to effectively monitor and supervise banks and financial institutions and, if circumstances warrant, to forbid them to do business, to take over their management or to place them under receivership. The legislature has clearly spelled out the reasonable parameters of the power entrusted to the MB and assigned to it only the manner of enforcing said power. In other words, the MB was given a wide discretion and latitude only as to how the law should be implemented in order to attain its objective of protecting the interest of the public, the banking industry and the economy.

WHEREFORE, the petition for prohibition is **DENIED**.

SO ORDERED.

JOSE CATRAL MENDOZA
Associate Justice

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[43] *Eastern Shipping Lines, Inc. v. Philippine Overseas Employment Administration*, 248 Phil 762, 771 (1998).
[44] Id.

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

ROBERTO A. ABAD
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice