



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

**GERSIP ASSOCIATION, INC.,
LETICIA ALMAZAN, ANGELA
NARVAEZ, MARIA B. PINEDA,
LETICIA DE MESA AND
ALFREDO D. PINEDA,**
Petitioners,

- versus -

**GOVERNMENT SERVICE
INSURANCE SYSTEM,**
Respondent.

G.R. No. 189827

Present:

SERENO, C.J.,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, JJ.

Promulgated:

OCT 16 2013

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DECISION

VILLARAMA, JR., J.:

Assailed in this petition for review on certiorari under Rule 45 are the Decision¹ dated June 30, 2009 and Resolution² dated September 29, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 93342 which affirmed the Decision³ dated October 27, 2004 and Resolution⁴ dated December 8, 2005 of the Board of Trustees of respondent Government Service Insurance System (GSIS).

Respondent GSIS is a social insurance institution created under Commonwealth Act No. 186,⁵ tasked with providing and administering a pension fund for government employees and managing the General Insurance Fund.

¹ *Rollo*, pp. 53-65. Penned by Associate Justice Romeo F. Barza with Associate Justices Josefina Guevara-Salonga and Arcangelita M. Romilla-Lontok concurring.

² *Id.* at 76-77.

³ *Id.* at 96-101.

⁴ *Id.* at 112-113.

⁵ AN ACT TO CREATE AND ESTABLISH A "GOVERNMENT SERVICE INSURANCE SYSTEM," TO PROVIDE FOR ITS ADMINISTRATION, AND TO APPROPRIATE THE NECESSARY FUNDS THEREFOR [Amended by Presidential Decree (PD) No. 1146 and Republic Act No. 8291, otherwise known as The Government Service Insurance System Act of 1997].

On March 19, 1981, the GSIS Board of Trustees (GSIS Board) approved the proposed GSIS Provident Fund Plan (Plan) to provide supplementary benefits to GSIS employees upon their retirement, disability or separation from the service, and payment of definite amounts to their beneficiaries in the event of death. It likewise adopted the “Provident Fund Rules and Regulations” (PFRR) which became effective on April 1, 1981.⁶

Under the Plan, employees who are members of the Provident Fund (Fund) contribute through salary deduction a sum equivalent to five percent (5%) of their monthly salary while respondent’s monthly contribution is fixed at 45% of each member’s monthly salary. A Committee of Trustees (Committee) appointed by respondent administers the Fund by investing it “in a prudent manner to ensure the preservation of the Fund capital and the adequacy of its earnings.”⁷

Out of the earnings realized by the Fund, twenty percent (20%) of the proportionate earnings of respondent’s contributions is deducted and credited to a General Reserve Fund (GRF) and the remainder is credited to the accounts of the members in proportion to the amounts standing to their credit at the beginning of each quarter. Upon retirement, members are entitled to withdraw the entire amount of their contributions and proportionate share of the accumulated earnings thereon, and 100% of respondent’s contributions with its proportionate earnings.⁸

On March 30, 2001, petitioner GERSIP Association, Inc.⁹ (GERSIP), composed of retired GSIS employees and officers, wrote the President and General Manager of respondent requesting the liquidation and partition of the GRF. In his letter-reply¹⁰ dated August 14, 2001, then President and General Manager Winston F. Garcia explained that there exists a trust relation rather than co-ownership with respect to the Fund. He stressed that the PFRR authorizes a reduction of 20% earnings for the GRF, not a total liquidation of the fund itself. Moreover, the GRF, being an integral part of the Fund, must be maintained as a general policy to serve its purpose of providing supplementary benefits to retired, separated and disabled GSIS employees and, in the event of death, payment of definite amounts to their beneficiaries.

Petitioners initially filed a civil suit before the Regional Trial Court (RTC) of Quezon City (Civil Case No. Q-01-45533) but on motion of respondent said case was dismissed on the ground that it is the GSIS Board which has jurisdiction over the controversy.¹¹

⁶ *Rollo*, pp. 206 to 209-P.

⁷ PROVIDENT FUND RULES AND REGULATIONS, Article IV, Sections 1, 2 and 7, *id.* at 209-D to 209-E.

⁸ *Id.*, Article IV, Section 8, *id.* at 209-E to 209-F; Article V, Section 1(b), *id.* at 209-I.

⁹ Now GSIS Retirees’ Association, Inc., *rollo*, pp. 277 & 331.

¹⁰ CA *rollo*, pp. 131-135.

¹¹ *Id.* at 128-130.

On October 30, 2002, petitioners filed a Petition¹² with the GSIS Board alleging that they have not been paid their portion of the GRF upon their retirement, to which they are entitled as “co-owners” of the Fund. They thus prayed for a judgment: (1) ordering respondent to render and/or submit a report of accounting of the Fund and the GRF and to furnish copies thereof to petitioners, pursuant to Section 5, Article VIII of the PFRR; (2) directing respondent to partition, settle, release and pay to the members of petitioner GERSIP their proportionate share of the GRF, or their corresponding share of the accumulated earnings thereon, and in addition, 100% of respondent’s contributions to the Fund, plus the proportionate earnings thereon, all with interests at the legal rate computed from the retirement dates of each individual member until fully paid, conformably with Section 1(b), Article V of the PFRR; and (3) holding respondent liable for reasonable attorney’s fees equivalent to 15% of the total amount claimed, appearance fee of ₱3,000 per appearance and cost of suit.

In its Answer,¹³ respondent asserted that petitioners as retiring members of the Fund were entitled only to the benefits provided in Section 1(b), Article V of the PFRR and that their claim is not covered by Section 8(a) to (d), Article IV which enumerates the purposes for which the GRF is allocated. Respondent further contended that there is no legal basis for petitioners’ theory that they are co-owners and not just beneficiaries of the Fund.

On October 27, 2004, the GSIS Board denied the petition for lack of merit. It held that the execution of the Trust Agreement¹⁴ between respondent and the Committee is a clear indication that the parties intended to establish an express trust, not a co-ownership, with respondent as Trustor, the Committee as Trustee of the Fund and the members as Beneficiaries. As to the GRF, the Board said that it answers only for the contingent claims mentioned in Section 8, Article IV and there is no requirement in the PFRR for the accounting and partition of GRF.¹⁵

When their motion for reconsideration was denied by the GSIS Board, petitioners filed a petition for review in the CA under Rule 43 of the 1997 Rules of Civil Procedure, as amended.

By Decision dated June 30, 2009, the CA affirmed the ruling of the GSIS Board. Petitioners’ motion for reconsideration was likewise denied.

Hence, this petition arguing that:

- 1) The GSIS Provident fund is not a “trust” but a co-ownership.
- 2) The Reserve Fund of the GSIS Provident Fund is not required by law; there is no necessity for it.

¹² *Rollo*, pp. 78-84.

¹³ *Id.* at 85-94.

¹⁴ *Id.* at 158-165.

¹⁵ *Id.* at 96-101.

- 3) Partial partition of the Reserve Fund is not inconsistent with maintaining the GSIS Provident Fund.
- 4) The petitioners, as members of the Provident Fund, are legally entitled to accounting and audit of the Fund.¹⁶

Petitioners assert that since the GSIS Provident Fund is an employee fringe benefit package incorporated in the collective bargaining agreements (CBA), the members own not only their personal contributions to the Fund but also 100% of GSIS management contributions remitted in their names and for their benefit, plus all the earnings of both personal contributions and the earnings of the management contribution, 20% of which is allotted by respondent to the GRF. Upon the remittance by respondent of its contributions to the Fund, the same ceased to be part of management funds but becomes part of the equity of the members for whom they were remitted as a contractual obligation.

As to the GRF, petitioners contend that unlike modern insurance companies, there is no law or rule requiring the GSIS Provident Fund to maintain a Reserve Fund. Hence, upon their retirement, members are entitled also to that part of earnings from respondent's contributions which are remitted to the GRF, or at least the remaining balance thereof pertaining to the share of each member.

Petitioners further argue that the Trust Agreement cited by the respondent is a misnomer. They point out that such contract was entered only between the respondent and the first trustees, and it merely defined the latter's functions in running the affairs of the Fund. As a contractual obligation of the respondent under the CBA, its contributions to the Fund become part of the equity of the member in whose name it was remitted. Respondent thus has no legal title to the funds and it has no basis to impose any condition on how to avail of the Fund benefits, or to refuse its accounting and audit.

Resolution of the present controversy hinges on the determination of the nature of the funds contributed and its accumulated earnings under the Plan.

A provident fund is a type of retirement plan where both the employer and employee make fixed contributions. Out of the accumulated fund and its earnings, employees receive benefits upon their retirement, separation from service or disability.

The GSIS Provident Fund was established through Resolution No. 201 of the GSIS Board. The GSIS Board likewise adopted a set of rules and regulations (PFRR) to govern the membership, fund contributions and investment, payment of benefits and the trustees.

¹⁶ Id. at 257-265.

On July 23, 1981, a Trust Agreement¹⁷ was executed between respondent and the Committee. The latter was tasked to administer, manage and invest the Fund, out of which it shall pay the benefits due to members or their beneficiaries in accordance with the policies, rules and regulations approved by respondent. The Agreement likewise explicitly declares:

SECTION 2. - The COMMITTEE OF TRUSTEES shall **hold title and manage the FUND in trust for the exclusive benefit of the members and their beneficiaries** as provided for in the PLAN. No part of the FUND shall be used for, or diverted to any purpose or purposes other than for the exclusive benefits of such members and their beneficiaries[.]¹⁸ (Emphasis supplied.)

Respondent's contention that it had thereby created an express trust was upheld by the GSIS Board and the CA. The appellate court further ruled that the rules on co-ownership do not apply and there is nothing in the PFRR that allows the distribution of the GRF in proportion to the members' share therein.

We sustain the rulings of the GSIS Board and CA.

Trust is the legal relationship between one person having an equitable ownership in property and another person owning the legal title to such property, the equitable ownership of the former entitling him to the performance of certain duties and the exercise of certain powers by the latter.¹⁹ A *trust fund* refers to money or property set aside as a trust for the benefit of another and held by a trustee.²⁰ Under the Civil Code, trusts are classified as either express or implied. An express trust is created by the intention of the trustor or of the parties, while an implied trust comes into being by operation of law.²¹

There is no doubt that respondent intended to establish a trust fund from the employees' contributions (5% of monthly salary) and its own contributions (45% of each member's monthly salary and all unremitted Employees Welfare contributions). We cannot accept petitioners' submission that respondent could not impose terms and conditions on the availment of benefits from the Fund on the ground that members already own respondent's contributions from the moment such was remitted to their account. Petitioners' assertion that the Plan was a purely contractual obligation on the part of respondent is likewise mistaken.

Republic Act No. 8291, otherwise known as "The Government Service Insurance System Act of 1997," mandated respondent to maintain a

¹⁷ Supra note 14.

¹⁸ Id. at 159.

¹⁹ IV A. M. Tolentino, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 669 (1991).

²⁰ H. C. BLACK, BLACK'S LAW DICTIONARY 1357 (5th ed., 1979).

²¹ *Torbela v. Rosario*, G.R. Nos. 140528 & 140553, December 7, 2011, 661 SCRA 633, 661, citing *Heirs of Tranquilino Labiste v. Heirs of Jose Labiste*, G.R. No. 162033, May 8, 2009, 587 SCRA 417, 425.

provident fund subject to rules and regulations it may adopt. Thus:

SECTION 41. *Powers and Functions of the GSIS.* — The GSIS shall exercise the following powers and functions:

x x x x

(s) **to maintain a provident fund**, which consists of contributions made by both the GSIS and its officials and employees and their earnings, for the payment of benefits to such officials and employees or their heirs **under such terms and conditions as it may prescribe**; (Emphasis supplied.)

In *Development Bank of the Philippines v. Commission on Audit*,²² this Court recognized DBP's establishment of a trust fund to cover the retirement benefits of certain employees. We noted that as the trustor, DBP vested in the trustees legal title over the Fund as well as control over the investment of the money and assets of the Fund. The Trust Agreement therein also stated that the principal and income must be used to satisfy all of the liabilities to the beneficiary officials and employees under the Gratuity Plan.²³

Here, petitioners as beneficiaries of the Fund contend that they became co-owners of the entire Fund including respondent's contributions and its accumulated earnings. On this premise, they demand a proportionate share in the GRF which was deducted from the earnings on respondents' contributions.

Under the PFRR, however, the GRF is allocated for specific purposes and not intended for distribution to members. Section 8,²⁴ Article IV thus provides:

Section 8. *Earnings.* At the beginning of each quarter, the earnings realized by the Fund in the previous quarter just ended shall be credited to the accounts of the members in proportion to the amounts standing to their credit as of the beginning of the same quarter after deducting therefrom twenty per cent (20%) of the proportionate earnings of the System's contributions, which deduction shall be credited to a General Reserve Fund. Whenever circumstances warrant, however, the Committee may reduce the percentage to be credited to the General Reserve Fund for any given quarter; provided that in no case shall such percentage be lower than five per cent (5%) of the proportionate earnings of the System's contributions for the quarter. When and as long as the total amount in the General Reserve Fund is equivalent to at least ten per cent (10%) of the total assets of the Fund, the Committee may authorize all the earnings for any given quarter to be credited to the members.

The General Reserve Fund shall be used for the following purposes:

(a) To cover the deficiency, if any, between the amount standing to the credit of a member who dies or is separated from the service due to

²² 467 Phil. 62 (2004).

²³ Id. at 78-79.

²⁴ *Rollo*, pp. 209-E to 209-F.

permanent and total disability, and the amount due him under Article V Section 4²⁵;

(b) To make up for any investment losses and write-offs of bad debts, in accordance with policies to be promulgated by the Board;

(c) To pay the benefits of separated employees in accordance with Article IV, Section 3²⁶; and

(d) For other purposes as may be approved by the Board, provided that such purposes is consistent with Article IV, Section 4²⁷.

It is clear that while respondent's monthly contributions are credited to the account of each member, and the same were received by petitioners upon their retirement, they were entitled to only a proportionate share of the earnings thereon. The benefits of retiring members of the Fund are covered by Section 1(b), Article V which states:

(b) *Retirement.* In the event the separation from the System is due to retirement under existing laws, such as P.D. 1146, R.A. 660 or R.A. 1616, irrespective of the length of membership to the Fund, the retiree shall be entitled to withdraw the entire amount of his contributions to the Fund, as well as the corresponding proportionate share of the accumulated earnings thereon, and in addition, 100% of the System's contributions, plus the proportionate earnings thereon.

We find nothing illegal or anomalous in the creation of the GRF to address certain contingencies and ensure the Fund's continuing viability. Petitioners' right to receive retirement benefits under the Plan was subject to well-defined rules and regulations that were made known to and accepted by them when they applied for membership in the Fund.

Petitioners have the right to demand for an accounting of the Fund including the GRF. Under Section 5,²⁸ Article VIII of the PFRR, the Committee is required to prepare an annual report showing the income and expenses and the financial condition of the Fund as of the end of each calendar year. Said report shall be submitted to the GSIS Board and shall be

²⁵ Section 4. *Death, Incapacity.* In the event of death or upon separation from the service due to permanent and total disability, a member or his beneficiaries, regardless of such member's length of service or membership in the Fund, shall be paid the entire amount standing to his credit, provided, however, that the minimum amount paid to such member shall be equal to at least one (1) year of his salary at the time of death or separation, and provided, further, that should the total amount standing to his credit be less than one year's salary, the difference shall be paid out of the outstanding balance of the General Reserve Fund. Id. at 209-J.

²⁶ Section 3. *Additional System's Contributions.* Upon effectivity of this Plan, the System shall also pay into the Provident Fund all its unremitted EWF contributions. Those contributions creditable under EWF rules to present employees of the System shall be credited to each one's individual account in the Provident Fund. All contributions creditable under EWF rules to accounts of employees who have, as of the effectivity of this Plan, separated from the System shall be credited to the General Reserve Fund pending its disbursement to the employees concerned, in accordance with Article V, Section 6. Id. at 209-D to 209-E.

²⁷ Section 4. *Irrevocability and Exclusivity.* All contributions made by the System to the Fund shall be held, solely and exclusively, for the exclusive benefit of the members or their beneficiaries, and no part of said contributions or its income shall be used for, or diverted to, purposes other than for the exclusive benefit of such members and their beneficiaries. Id. at 209-E.

²⁸ Id. at 209-N.

available to members. There is, however, no allegation or evidence that the Committee failed to comply with the submission of such annual report, or that such report was not made available to members.

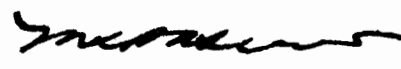
WHEREFORE, the petition is **DENIED**. The Decision dated June 30, 2009 and Resolution dated September 29, 2009 of the Court of Appeals in CA-G.R. SP No. 93342 are hereby **AFFIRMED**.

No pronouncement as to costs.

SO ORDERED.


MARTIN S. VILLARAMA, JR.
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson



TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS R. BERSAMIN
Associate Justice


BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the 1987 Constitution, 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