



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

**PHILIPPINE VETERANS G.R. No. 249353**  
**BANK,**  
*Petitioner,*

- versus -

**COURT OF APPEALS,**  
**COLLEGE ASSURANCE PLAN**  
**PHILIPPINES, INC., and**  
**MAMERTO A. MARCELO, JR.,**  
in his capacity as the  
**REHABILITATION**  
**RECEIVER OF COLLEGE**  
**ASSURANCE PLAN**  
**PHILIPPINES, INC.,**  
*Respondents.*

Present:

LEONEN, S.A.J., Chairperson,  
LAZARO-JAVIER,  
LOPEZ, M.  
LOPEZ, J., and  
KHO, JR., JJ.

Promulgated:

AUG 22 2022

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RESOLUTION

**KHO, JR., J.:**

Assailed in this petition for *certiorari*<sup>1</sup> under Rule 65 of the Rules of Court are the Resolutions dated October 11, 2018<sup>2</sup> and July 26, 2019<sup>3</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 157608, which denied the application for temporary restraining order/writ of preliminary injunction (TRO/WPI) prayed for by petitioner Philippine Veterans Bank (PVB) in its petition for *certiorari* under Rule 65 filed before the CA, which in turn

<sup>1</sup> *Rollo*, pp. 3-29.

<sup>2</sup> *Id.* at 31-34. Penred by Associate Justice Myra V. Garcia-Fernandez with Associate Justices Victoria Isabel A. Paredes and Ronaldo Roberto B. Martin, concurring.

<sup>3</sup> *Id.* at 36-37.

questioned the Order<sup>4</sup> dated August 9, 2018 of the Regional Trial Court of Makati City, Branch 66 (RTC) in SP. Proc. No. M-6144. The said RTC Order required PVB, among others, to refund private respondent College Assurance Plan Philippines, Inc., (CAP) the amount of ₱50,639,642.94 representing the excess trust fee PVB collected from CAP.

### The Facts

CAP is a domestic corporation formed for the purpose of selling, among others, pre-need educational plans to the general public. In 2002, CAP entered into a trust agreement<sup>5</sup> with PVB, among others. In 2005, CAP filed a petition for corporate rehabilitation which was raffled to the RTC acting as a Rehabilitation Court. In 2008, CAP's other trustee banks – Allied Bank and Bank of Commerce – transferred the assets they held in trust to PVB. Through two (2) memoranda<sup>6</sup> dated October 22, 2013 (2013 memoranda), CAP and PVB agreed for the trust fees to be charged upon the assets transferred from Allied Bank and Bank of Commerce. In a letter<sup>7</sup> dated January 19, 2017, the court-appointed Rehabilitation Receiver for CAP, Mamerto A. Marcelo, Jr. expressed his reservations on the trust fees being charged by PVB against CAP. In a series of correspondence that followed, PVB and CAP expressed their separate views on the correct trust fees while the RTC was merely furnished copies thereof.<sup>8</sup>

On April 21, 2017, the RTC issued a *motu proprio* Order<sup>9</sup> directing PVB to refund the excess trust fees it collected from the trust fund amounting to ₱50,639,642.94 and to adjust the fees it has been collecting in accordance with the 2013 memoranda.

On May 29, 2017, PVB filed a Motion for Clarification<sup>10</sup> of the April 21, 2017 Order wherein it reiterated that it correctly charged the trust fees and asked for clarification as to the inconsistencies in the correspondences between PVB and CAP.<sup>11</sup>

In an Order<sup>12</sup> dated January 10, 2018, the RTC clarified that the April 21, 2017 Order directed PVB to give an update on the adjustments on the amounts due from the trust fund in accordance with the trust fees stipulated in the trust agreement dated September 22, 2013.<sup>13</sup>

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<sup>4</sup> Id. at 331–344. Penned by Presiding Judge Joselito C. Villarosa.

<sup>5</sup> Id. at 78–86. Dated September 27, 2002.

<sup>6</sup> Id. at 120–121.

<sup>7</sup> Id. at 122–123.

<sup>8</sup> Id. at 6–10.

<sup>9</sup> Id. at 191–192.

<sup>10</sup> Id. at 193–204.

<sup>11</sup> Id. at 11.

<sup>12</sup> Id. at 258–260.

<sup>13</sup> Id. at 260. To note, there is no trust agreement dated September 22, 2013 in the records.

In a manifestation and motion<sup>14</sup> dated March 6, 2018, PVB pointed out an alleged clerical error in the dispositive portion of the January 10, 2018 Order and praying for the same to be corrected to reflect the “true” date of the applicable trust agreement, which is September 27, 2002 instead of September 22, 2013.<sup>15</sup> CAP filed its comment<sup>16</sup> on the motion and argued that the RTC meant that the trust fees stipulated in the October 22, 2013 memoranda should prevail given that the dispositive portion of the January 10, 2018 Order used the year 2013.<sup>17</sup>

Thus, in an Order<sup>18</sup> dated August 9, 2018, the RTC, *inter alia*, affirmed its April 21, 2017 Order directing PVB to refund CAP the amount of ₱50,639,642.94 and declaring the applicable trust rates for the assets held in trust pursuant to the 2013 memoranda. The RTC also clarified that the date of agreement (September 22, 2013) mentioned in the dispositive portion of the January 10, 2018 Order refers to the 2013 memoranda.

Aggrieved, PVB filed before the CA a petition for *certiorari* under Rule 65 assailing the August 9, 2018 Order with prayer for a TRO/WPI.<sup>19</sup>

### **The CA Ruling**

In a Resolution<sup>20</sup> dated October 11, 2018, the CA denied the prayer for TRO/WPI and ordered CAP to file its comment on the petition. In denying the TRO, the CA ruled that PVB failed to show a right that needs to be protected, much less an invasion of such right and irreparable damage that it might experience if the trial proceeds. Moreover, any damage PVB may suffer is easily subject to mathematical computation and if proven, is fully compensable by damages.<sup>21</sup>

PVB sought reconsideration,<sup>22</sup> which was denied in a Resolution<sup>23</sup> dated July 26, 2019. Hence, this instant petition.

### **The Issue Before the Court**

The issue for the Court’s resolution is whether or not the CA gravely abused its discretion when it denied PVB’s prayer for TRO/WPI.

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<sup>14</sup> Id. at 261–265.

<sup>15</sup> Id. at 13.

<sup>16</sup> Id. at 269–280. Dated April 2, 2018.

<sup>17</sup> Id. at 271.

<sup>18</sup> Id. at 331–344.

<sup>19</sup> Id. at 14.

<sup>20</sup> Id. at 31–34.

<sup>21</sup> Id. at 32–33.

<sup>22</sup> See motion for reconsideration dated October 24, 2018; id. at 38–46.

<sup>23</sup> Id. at 36–37.

At this point, it is important to note that during the pendency of the instant petition before the Court, the CA promulgated a Decision<sup>24</sup> dated May 21, 2021 in CA-G.R. SP No. 157608, which dismissed PVB's petition before it on the merits.

### **The Court's Ruling**

The petition should be dismissed for being moot and academic.

“A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness. This is because the judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced.”<sup>25</sup>

Applying the foregoing, the Court finds that the CA's supervening promulgation of its Decision dated May 21, 2021 in CA-G.R. SP No. 157608 – which dismissed PVB's petition before it on the merits – rendered the present case moot and academic. This is because, as already discussed, the main issue in the instant petition is the propriety of the CA's denial of PVB's prayer for TRO/WPI, which is but an incident of CA-G.R. SP No. 157608. Since this issue is but an incident of the main case before the CA which had already been resolved, ruling on the present issue would be merely an academic exercise carrying no practical effect.<sup>26</sup> Accordingly, the Court is constrained to dismiss the instant petition. In this relation, it is relevant to point out that it would be premature for the Court to tackle the merits of the CA's recent Decision for the reason that it is not the matter herein appealed.

**WHEREFORE**, the petition is **DISMISSED** for being moot and academic.

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<sup>24</sup> Penned by Associate Justice Florencio M. Manauag, Jr. with Associate Justices Zenaida T. Galapate-Laguilles and Raymond Reynold R. Laguigan, concurring.


<sup>25</sup> *Sahar International Trading, Inc. v. Warner Lambert Co., LLC*, 735 Phil. 613, 621 (2014), citing *Peñafrancia Sugar Mill, Inc. v. Sugar Regulatory Administration*, 728 Phil. 535, 540 (2014).

<sup>26</sup> See *id.* at 662. See also *Banco Filipino Savings and Mortgage Bank v. Bangko Sentral ng Pilipinas and the Monetary Board*, G.R. No. 200642, April 26, 2021, citing *City of Manila v. Grecia-Cuerdo*, 726 Phil. 9, 17 (2014).

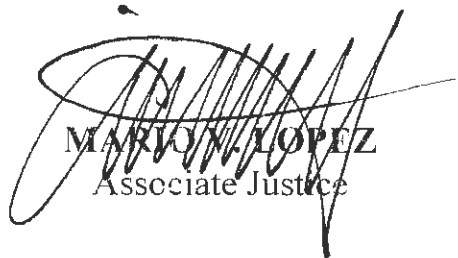
**SO ORDERED.**

  
**ANTONIO T. KHO, JR.**  
Associate Justice

**WE CONCUR:**

  
**MARVIC M.V.F. LEONEN**  
Senior Associate Justice  
Division Chairperson


**AMY C. LAZARO-JAVIER**  
Associate Justice

  
**MARIO N. LOPEZ**  
Associate Justice

  
**JHOSEP V. LOPEZ**  
Associate Justice


**ATTESTATION**

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

  
**MARVIC M.V.F. LEONEN**  
Senior Associate Justice  
Chairperson, Second 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 Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
ALEXANDER G. GESMUNDO  
Chief Justice