RECENT JURISPRUDENCE ON COMMERCIAL LAW*

INTRODUCTION

This Article is an overview of select Supreme Court decisions in the area of commercial law in 2021. The subject matters covered under commercial law are credit transactions, intellectual property, insurance, corporations, and related laws.

Part I discusses how the Court recognized the rights of third-party possessors over a foreclosed property after the redemption period. Part II discusses the Court's abandonment of two doctrines in trademark law: (a) holistic test in evaluating trademark resemblance; and (b) product or service classification as a factor in determining the relatedness of goods or services to determine a likelihood of confusion. Part III discusses issues in the field of insurance law in relation to: (a) the substantial compliance principle in relation to the insured's right to designate their chosen beneficiary under a life insurance policy; and (b) the insurer's right to the payment of premium. Part IV discusses whether the liabilities of directors or officers arising from violation of fiduciary duties warrant criminal sanctions under the old corporation, providing an insight into the counterpart provisions restated in the Revised Corporation Code. Part V discusses how the Court reaffirmed the superiority of a liquidation proceeding based on the New Central Bank Act over a prior suit filed by a creditor to prevent multiplicity of actions and to avoid injustice to the insolvent bank's depositors and other creditors.

I. CREDIT TRANSACTIONS

A. *Spouses Rosario v. Government Service Insurance System*[1]

In 1997, New San Jose Builders, Inc. ("NSJBI") and the Government Service Insurance System (GSIS) entered into a loan agreement. To secure the loan, NSJBI mortgaged three parcels of land with existing improvements,

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This Article is part of a series published by the JOURNAL, providing updates in jurisprudence across the eight identified fields of the law. The other articles focus on political law, labor law, taxation, civil law, mercantile law, remedial law, and judicial ethics.

[1] [Hereinafter "*Sps. Rosario*"], G.R. No. 200991, Mar. 18, 2021.

namely: 365 lots with existing low-cost houses in Cavite, 102 condominium units in Quezon City, and rights over 240 condominium units in GSIS Metro Homes. The mortgage was annotated on the Transfer Certificate of Title (TCTs) and Condominium Certificates of Titles (CCTs) of the mortgaged properties.

The terms of the loan agreement included a provision prohibiting NSJBI from alienating, selling, disposing, mortgaging, or, in any manner, encumbering the mortgage properties or any portion thereof without the consent of the GSIS. However, the parties agreed that NSJBI may continue to sell the mortgaged properties subject to the condition that the net proceeds from the sales should be exclusively used in the recoupment of the loan. In case of noncompliance with the conditions and stipulations agreed upon, the GSIS may immediately foreclose the mortgage under the applicable provisions of the law. Among the properties mortgaged pursuant to the loan agreement was a condominium unit in Quezon City, which NSJBI allegedly sold to the petitioners, spouses Wilfredo and Dominica Rosario.

NSJBI defaulted in the payment of the loan, prompting the GSIS to apply for the extrajudicial foreclosure of the mortgaged properties in 2003. An auction sale was subsequently conducted where the GSIS was declared the highest bidder. When NSJBI failed to exercise its right of redemption, the properties' titles were consolidated, and the Register of Deeds revoked the subject TCTs and CTCs in favor of the respondent. However, NSJBI continued to possess the foreclosed properties even after the GSIS had demanded NSJBI to vacate said properties.

In 2006, the GSIS filed a petition for the issuance of a writ of possession against NSJBI and all occupants of the foreclosed properties before the Regional Trial Court (RTC). NSBJI and its buyers, including the petitioners, filed their pleadings-in-intervention.

The RTC granted the respondent's application for a writ of possession as against NSJBI but only as to the unsold condominium units and lots that were not in possession of third-party buyers.

The Court of Appeals (CA) reversed the RTC resolution and held that the lower court erred in restraining the implementation of the writ of possession against the petitioners since they were not third parties who were in adverse possession of the foreclosed property. The CA explained that the proper remedy for petitioners was to seek annulment of the mortgage or

foreclosure before the House and Land Use Regulatory Board (HLURB) for noncompliance with Section 18 of Presidential Decree (P.D.) No. 957.[2]

The Supreme Court held that the CA erred in reversing the RTC resolution that allowed the petitioners to intervene in respondent's *ex parte* application for a writ of possession and exempting from its implementation the condominium unit possessed by the petitioners. In previous cases, the Court held that condominium or subdivision lot buyers can be considered as transferees or successors-in-interest since they derive their title from the developer. Given the nature of their title, "[t]heir interest in the mortgaged property have not been treated as independent or adverse to the judgment mortgagor since their claim on the property merely stems from the latter."[3] In *China Banking Corp. v. Spouses Lozada*,[4] the Court ruled that condominium buyers who derive their right from the developers are not third parties who possess the foreclosed propery adversely from the mortgagor. Thus, the Court ruled that it was mandatory and ministerial for the trial court to grant the *ex parte* petition and order the issuance of a writ of possession in the latter's favor over the foreclosed property.

In the case at bar, however, the Court deemed it appropriate to modify said ruling by excluding individual buyers of condominium units or subdivision lots from the issuance or implementation of a writ of possession if they are actually occupying the unit or lot.

In general, when the redemption period lapses and no redemption is made, the highest bidder in the foreclosure sale becomes the absolute owner of the foreclosed property. The Court held in several cases that the third party's possession should be respected since it establishes a disputable presumption of ownership. Under Article 433 of the Civil Code of the Philippines, a person who contests such disputable presumption must resort to judicial processes for the recovery of the property. Nevertheless, to resolve the appropriateness of issuing a writ of possession, the trial court must hold a summary hearing to determine the nature of the possession of third-party claimants. For it is possible that the actual possessor is privy to any of the parties to the action, or his or her bona fide possession may be disputed, or where such possession has been obtained in collusion with the defeated litigant in order to frustrate the judgment. The trial court must then decide whether to grant or refuse the enforcement of a writ of possession based on its findings.

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[2] Pres. Dec. No. 957 (1976), §18. The Subdivision and Condominium Buyers' Protective Decree.

[3] *Sps. Rosario*, at 12-13. This pinpoint citation refers to the copy of this decision uploaded to the Supreme Court Website.

[4] G.R. No. 164919, 557 SCRA 177, July 4, 2008.

P.D. 957 recognizes the disparity in resources between banks and financial institutions as against individual property buyers in the context of financing subdivision and condominium development projects. In prior cases, the Court had described P.D. 957 as a means of social justice to protect small lot and condominium unit buyers from the large financial institutions with which developers are often dealing.[5] Moreover, the Court has "upheld the rights of individual buyers to possess their properties if it is established that the mortgagee-bank had knowledge of their conveyance to third-party buyers."[6]

In *Philippine National Bank v. Court of Appeals*,[7] the Court denied the enforcement of the writ of possession against a subdivision lot buyer whose property had been mortgaged by the developers. It held that since the mortgagee-bank knew that the mortgaged property was occupied by persons other than the mortgagor, it could not eject them through a summary proceeding such as an application for a writ of possession. Similar to the case at bar, the GSIS should not be authorized to deprive the petitioners of their possession of the condominium unit. The protection granted to a subdivision lot buyer under P.D. 957 should not be undermined by someone who is not a mortgagee in good faith. In this case, the GSIS was aware that the mortgaged properties are part of a condominium project, which are covered by P.D. 957. It was informed that the loaned amounts were to be used for the development of NSJBI's various projects. Thus, the RTC correctly allowed petitioners and the other condominium unit buyers to intervene, and be excluded from the issuance of the writ of possession.

In light of the provisions of, and the policy behind, P.D. 957, the Court considered it appropriate to modify the ruling in *China Banking* disqualifying all transferees or successors of the judgment debtor from being considered as third-party adverse possessors. Although individual buyers of condominium units or subdivision lots have privity with developer-mortgagors, they should be excluded from the issuance or implementation of a writ of possession if they are actually occupying the unit or lot. As illustrated in this case, small property buyers would bear the repercussions if they were considered as ordinary transferees or successors-in-interest of property developers. As modified by the Court, "the rule should now be that the issuance of a writ of possession ceases to be ministerial if a condominium unit or subdivision lot buyer intervenes to protect their rights against a mortgagee

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5 Phil. Nat'l Bank v. OP, 322 Phil. 6, (1996).

6 *Sps. Rosario*, at 10–11.

7 G.R. No. 135219, 374 SCRA 22, Jan. 17, 2002.

bank or financial institution."[8] The court must order a hearing to examine the nature and the source of the buyer's alleged right to the foreclosed property. If the court is convinced that the oppositors to the issuance of the writ are bona fide condominium or subdivision buyers who are in actual possession of the property, the writ should be executed with the exclusion of the aforementioned buyers from its implementation.

II. INTELLECTUAL PROPERTY

A. *Kolin Electronics Co., Inc. v. Kolin Philippines International, Inc.*[9]

On September 11, 2006, Kolin Philippines International, Inc. ("KPII"), an affiliate of Taiwan Kolin Co., Ltd. ("TKC"), applied for the registration of the "kol*i*n" mark for televisions and DVD players. Kolin Electronics Co., Inc. ("KECI"), an unrelated company, filed an opposition on the ground that it was the registered owner of the "*KOLIN*" mark granted in an earlier case, and that the registration of KPII's "kol*i*n" mark will cause confusion among consumers. The following table summarizes the marks in dispute in the instant case:

Parties	KECI	KPII
Marks	"*KOLIN*"	"kol*i*n"
Status	Registered	Trademark Application subject of opposition by KECI
Classes Covered	9	9
Goods Covered	Automatic Voltage Regulator, Converter, Recharger, Stereo Booster, AC-DC Regulated Power Supply, Step-Down Transformer, PA Amplified AC-DC	Televisions, DVD Players

The disputed mark had been the subject of two previous cases involving KECI and TKC. In a resolution dated September 26, 2007 ("KECI

[8] *Sps. Rosario*, at 15.
[9] [Hereinafter "*Kolin*"], G.R. No. 228165, Feb. 9, 2021.

Ownership Case"),[10] the Supreme Court named KECI as the adjudicated owner of the "*KOLIN*" mark under the Trademark Law. The trademark registration covered products under Class 9 in the Nice Classification such as automatic voltage regulator, converter, recharger, stereo booster, AC-DC regulated power supply, step-down transformer, and PA amplifier AC-DC.

In the instant case, therefore, KECI invoked the KECI Ownership Case in opposing KPII's application for the "kol*i*n" trademark for televisions and DVD players under Class 9. In its defense, KPII argued that it was not a party in the KECI Ownership Case and that the ruling therein was not *res judicata* to the instant case. KPII further argued that the KECI Ownership Case specifically clarified that KECI's mark was limited to goods specified in the certificate of registration and those related thereto. KPII insisted that televisions and DVD players were not related to the goods covered by KECI's registered mark.

While the instant case was pending, in a decision dated March 25, 2015 in another case ("Taiwan Kolin Case"),[11] the Court allowed TKC to register the "KOLIN" mark for television and DVD player—products likewise categorized under Class 9. As described by the appellate court, the only difference between KECI's and TKC's marks was that the former was italicized and colored black while the latter was in pantone red color. Nevertheless, the high court held that the same marks may be used on unrelated goods. Given that TKC's and KECI's products fell in the same class but under different sub-categories, they were considered unrelated goods; hence, the registration of TKC's mark with a limitation for televisions and DVD players may be permitted.

Prior to the promulgation of the Taiwan Kolin Case, on September 9, 2009, the Intellectual Property Office Bureau of Legal Affairs ("IPO-BLA") rejected the trademark application of KPII as it may cause confusion among buyers regarding the origin of the products offered by both companies. Moreover, the IPO-BLA also found that KPII was an instrumentality of TKC. The director general dismissed KPII's appeal on September 12, 2013, basing its decision on the ruling in the Taiwan Kolin Case that TKC's televisions and DVD players were related to KECI's goods.

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[10] Taiwan Kolin Co., Ltd. v. Kolin Electronics Co., Inc., CA-G.R. SP No. 80641 (Ct. of Appeals July 31, 2006). TKC initially appealed the appellate court's decision by filing with the Supreme Court a motion for extension to file a petition for review. However, TKC would withdraw its motion, prompting the Supreme Court to consider the case closed and terminated.

[11] Taiwan Kolin Corporation, Ltd. v. Kolin Electronics Co., Inc., G.R. No. 209843, 754 SCRA 556, Mar. 25, 2015.

On April 29, 2016, after the promulgation of the Taiwan Kolin Case, the CA ruled in the instant case that KPII was entitled to the registration of the "kol*i*n" mark. It applied the principle of *res judicata* based on the ruling in the Taiwan Kolin Case. KECI argued that the ruling in the Taiwan Kolin Case was not applicable in the instant case, and that the registration of KPII's "kol*i*n" mark was contrary to the provisions of the Intellectual Property Code.

In deciding the instant case on February 9, 2021, the Supreme Court *En Banc* reversed the decision of the CA and ruled that KPII's trademark application must be denied because it would cause a likelihood of confusion and violate KECI's rights resulting from the use of identical marks in closely related goods. In determining the likelihood of confusion, the Court emphasized its discussion on two criteria, namely, the resemblance of the marks, and the relatedness of goods or services.

In the process, the Court abandoned the holistic test in favor of the dominancy test in determining the resemblance of marks, and the use of product or service classification as a factor in determining the relatedness of goods or services.

In evaluating the resemblance of the marks, the Court acknowledged that trademark jurisprudence has been inconsistent in determining which between the dominancy and holistic tests must be employed. The dominancy test "focuses on the similarity of the prevalent features of the competing trademarks."[12] In contrast, the holistic test "requires that the entirety of the marks in question be considered in resolving confusing similarity."[13] The Court finally resolved to adopt the dominancy test and pronounced that "[it] hereby makes it crystal clear that the use of the Holistic Test in determining the resemblance of marks has been abandoned."[14] It stressed that only the dominancy test has been incorporated in the Intellectual Property Code of the Philippines, specifically in Section 155.1, which defines infringement as the "colorable imitation of a registered mark [...] or a dominant feature thereof."[15] Moreover, legislative deliberations also showed the intent to explicitly adopt the dominancy test and to abandon the holistic test.

[12] Mighty Corp. v. E. & J. Gallo Winery [hereinafter *"Mighty"*], G.R. No. 154342, 434 SCRA 473, 506, July 14, 2004.

[13] *Id.* at 507.

[14] *Kolin,* at 23. This pinpoint citation refers to the copy of this decision uploaded to the Supreme Court website.

[15] *Id.* at 21–2, *citing* McDonald's Corp. v. L.C. Big Mak Burger, Inc., G.R. No. 143993, 437 SCRA 10, 32–33, Aug. 18, 2004.

Applying the dominancy test, the Court ruled that the word "kolin" was the prevalent feature of both marks in question, which were exactly the same either phonetically or aurally. The Court further remarked: "Surely, the manner of pronouncing the word 'KOLIN' does not change just because KPII's mark is in lowercase and contains an italicized orange letter 'i.' In terms of connotation and overall impression, there seems to be no difference between the two marks."[16]

In assessing the relatedness or non-relatedness of goods or services to determine the likelihood of confusion, the Court held that relying on the Nice Classification is inconsistent with the provisions of the law and "may even create problems in jurisprudential precedents on legal relatedness due to the principle of stare decisis."[17] According to the Court, the classification is purely administrative since it merely aids trademark offices in the organization of numerous applications. More so, the Nice Classification undergoes changes every year, which makes it an unreliable basis for drawing conclusions on the relatedness or non-relatedness of goods or services for future cases. The Court further noted that besides having no legal basis for its inclusion, it contradicts provisions of the Trademark Law, the Intellectual Property Code, and the 2020 Revised Rules of Procedure for Intellectual Property Rights Cases, particularly Section 6 thereof, which provides:

> SECTION 6. Likelihood of Confusion; Determination of Related Goods or Services. — Goods or services may not be considered as being similar or dissimilar to each other on the ground that, in any registration or publication by the Office, they appear in the same or different classes of the Nice Classification.

In the instant case, the Court found that the goods covered by the trademark applications of KECI and KPII were related after considering the other jurisprudential factors. Among others, the Court cited the factors enumerated in *Mighty Corporation v. E. & J. Gallo Winery*,[18] except for product classification, as follows:

1. the business (and its location) to which the goods belong;
2. *the class of product to which the goods belong;*
3. the product's quality, quantity, or size, including the nature of the package, wrapper or container;

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[16] *Id.* at 23.
[17] *Id.* at 27.
[18] *Mighty*, 434 SCRA 473.

4. the nature and cost of the articles;

5. the descriptive properties, physical attributes or essential characteristics with reference to their form, composition, texture or quality;

6. the purpose of the goods;

7. whether the article is bought for immediate consumption, that is, day-to-day household items;

8. the fields of manufacture;

9. the conditions under which the article is usually purchased; and

10. the channels of trade through which the goods flow, how they are distributed, marketed, displayed and sold. [19]

The Taiwan Kolin Case, upon which the CA based its ruling in the instant case, relied on the holistic test and the product or service classification factor. In light of the abandonment of both the holistic test in evaluating the resemblance of marks, and the use of product or service classification as a factor in assessing the relatedness or non-relatedness of goods or services, the Supreme Court pronounced that the Taiwan Kolin Case cannot serve as a proper precedent in the instant case. Accordingly, the Court affirmed the rejection of KPII's trademark application.

III. INSURANCE

A. *De Leon v. The Manufacturers Life Insurance Company (Phils.), Inc.*[20]

Edgar Sarte acquired three life insurance policies ("subject policies") from Manufacturers Life Insurance Company ("Manulife"), with revocable designations of beneficiaries. Edgar executed and submitted two Beneficiary Designation Forms ("BDF") during his life. The first BDF, executed on March 1, 2002, named the following as beneficiaries in the respective policies: Zenaida Sarte and Jessica Sarte, legitimate wife and child, respectively, under Policy 1; Zenaida Sarte and Renzo Sarte, one of the four nonmarital children and herein petitioner, under Policy 2; and Renzo Sarte and Edgar Alvin Sarte under Policy 3. The second BDF, executed on July 31, 2002, designated the minor

[19] *Id.* at 510–11. (Emphasis supplied.)

[20] [Hereinafter "*De Leon*"], G.R. No. 243733, Jan. 12, 2021.

petitioners, Edgar's nonmarital children, as new beneficiaries for the subject policies to the exclusion of the legitimate family.

When Edgar died on December 23, 2003, the petitioners sought to enforce their claim to the subject policies. Shortly after, Zenaida Sarte also sought claim to the two policies where she was designated as a beneficiary in the first BDF.

Manulife filed a complaint for interpleader to determine the rightful recipients of the proceeds on the subject policies. It was found that the first BDF was duly registered in Manulife's internal records, while the second set was not so registered. Manulife's servicing agent said she returned the second BDF to Edgar, after noting that the designated beneficiaries were minors and there was no designated trustee or guardian. Edgar's personal and business secretary denied the allegation and claimed to have faxed the tabulation of trustees to Manulife. However, it was revealed that the tabulation was faxed shortly after Edgar had already died.

The RTC, as later affirmed by the CA, ruled in favor of the beneficiaries of the first BDF which included the legitimate wife. The trial court held that to give effect to the BDF, it must have been duly processed, approved, and registered in the insurance company's records, and confirmed to the insured by mail. As the second BDF failed to comply with Manulife's policy on the designation of minor beneficiaries, it was not registered in Manulife's records, and hence, was not binding upon the insurance company.

On appeal, the Supreme Court had to determine the standard of compliance required to give effect to a modification of beneficiaries in a life insurance policy. As the subject policies did not set out the criteria for what a "form satisfactory to the Company" would be, the clause admitted a number of interpretations. Notably, the Court characterized this issue as one of first impression in the Philippines, but one familiar in American courts.

The Supreme Court reversed the lower courts' rulings and held that the petitioners were the rightful beneficiaries of the subject policies. The Court found that there had been substantial compliance with the accomplishment of the second BDF, despite the lack of designation of trustee or guardian on behalf of the minor beneficiaries.

In ruling that the designation of a trustee or guardian on behalf of the minor beneficiaries was inconsequential, the Court held that the insured was not contractually required to designate one as there was no express provision in the subject policies providing for such requirement. In addition, Section 180

of the Insurance Code[21] provides that the minor's judicial guardian or parents may exercise any right under the policy on behalf of the minor without need for court authority or bond, where the interest in the particular act, such as the receipt for insurance proceeds, does not exceed PHP 20,000.

In resolving the issue of whether or not the second BDF was in a "form satisfactory to the Company," the Court looked to American scholars in applying the "substantial compliance" principle. Applying the principle, the second BDF was deemed to have substantially complied with all that was required for the change in designation of beneficiaries. Accordingly, the petitioners were deemed vested with rights over the proceeds of the subject policies. The substantial compliance principle states:

> A clearly proved intention to change is not sufficient, if any of the formal requirements are lacking, except: when the insured has done all in his power to comply with such requirements, but has failed to surrender the policy because it is beyond his control, equity will protect the rights of the intended beneficiary; or *if the insured has pursued the courses pointed out by the policy [...], and has done all required of him to effect a change, but dies before the new certificate has been issued [...] equity will decree that to be done which ought to be done, and regard the change as fully completed.*[22]

The Court emphasized that the application of the substantial compliance principle is more appropriate given that the insured is not contractually bound by the insurance company's internal standards. In addition, subscribing to this principle gives effect to the insured's right to designate his or her chosen beneficiary under Section 11 of the Insurance Code. In this case, because Manulife had already received the second BDF through its agent, it was deemed properly notified in writing and, thus, bound by the modification.

B. *Chartis Philippines Insurance, Inc. v. Cyber City Teleservices, Ltd.*[23]

Cyber City Teleservices, Ltd. ("CCTL") applied with Chartis Philippines Insurance, Inc. for professional indemnity insurance against damage claims for breach of duty caused by any wrongful professional act committed by the former during its course in providing services, and for

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[21] Pres. Dec. No. 612 (1974), *amended by* Rep. Act No. 10607 (2013).

[22] *De Leon*, at 23, *citing* Howard Whitehead, *Insurance: The Substantial Performance Rule in Regard to Change of Beneficiaries*, 24 KY. L.J. 507 (1936), *available at* https://uknowledge.uky.edu/klj/vol24/iss4, *citing* Vance on Insurance, Section 148, 569. This pinpoint citation refers to the copy of this resolution uploaded to the Supreme Court website. (Emphasis supplied.)

[23] [Hereinafter "*Chartis*"], G.R. No. 234299, Mar. 3, 2021.

fidelity insurance against losses that the former may sustain due to the fraudulent acts of the former's employees. CCTL, through its insurance broker, accepted the terms of the quotations. Chartis issued the insurance policies covering a period of one year starting January 20, 2005, but agreed to allow CCTL to pay the premium 90 days from thereon.

As the 90-day period neared its expiration, CCTL requested for an extension of the credit term multiple times, to which Chartis agreed. Having received no payment, Chartis eventually issued notices of cancellation and demanded payment of the premiums due for the period during which CCTL was on risk, that is, from January 5, 2005 to June 15, 2005, when the policies were canceled. CCTL refused to heed Chartis's demands for payment of premiums, arguing that the insurance policies never took effect because no payment of insurance premiums had been made. Hence, Chartis filed a complaint for payment of sum of money with damages.

The RTC sided with Chartis, finding that agreement to an extension of credit for payment of premium is one of the exceptions to the rule that there must be premium payment before the insurance policy can be valid and binding as per Section 77 of the Insurance Code, citing *UCPB General Insurance Co., Inc. v. Masagana Telemart, Inc.*[24]

The CA disagreed and held that *UCPB General Insurance* did not apply as the cited case provides that the insured may recover on the policy if the premium is paid after the loss but before the expiration of the credit term, as opposed to the instant case where no loss occurred and the credit term had already expired. The CA cited *Makati Tuscany Condominium v. Court of Appeals*[25] where it was held that for a policy to be valid, the insured must have paid initial installment on the premium. As there was no such payment in the instant case, the policy was not binding.

On petition for review on certiorari, the Supreme Court had to resolve whether or not the insurance policy in question was valid and binding against the parties in relation to the insurer's entitlement to the payment of premium for the period it was exposed to risk. The Court recognized that not much judicial guidance on the matter had been laid down, giving rise to varying appreciation of case law. In this light, it harmonized the development of statutes and jurisprudence on the subject matter.

In the instant case, the Supreme Court held that the insurance policy was valid and binding against the parties as there was a recognition of a credit

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[24] [Hereinafter "*UCPB*"], G.R. No. 137172, 356 SCRA 307, Apr. 4, 2001.

[25] G.R. No. 95546, 215 SCRA 462, Nov. 6, 1992.

term between them. Therefore, the insurer was entitled to its earned premium, having borne the risk for five months, even though there was no loss on the part of the insured.

The crux of the issue lay on the interpretation of the second sentence in Section 77 of the Insurance Code, which provides, in part, that notwithstanding any agreement to the contrary, no policy or contract of insurance issued by an insurance company is valid and binding unless the premium thereof has been paid. In *UCPB General Insurance*, the Court identified five exceptions to said provision, namely:

(1) In case of life or industrial life insurance policy where the grace period provision applies;

(2) Where the insurer acknowledged in the policy itself the receipt of premium, even if such was not actually paid, as expressed in Section 79 as amended;

(3) Where the parties agreed that the premium shall be paid in installments and a partial payment has been made at the time of loss, as held in *Makati Tuscany Condominium*;

(4) Where the insurer granted a credit term for the payment of premium and loss occurs before expiration of such period, as held in *Makati Tuscany Condominium*; and

(5) Where the insurer is in estoppel, as when it consistently granted a 90-day credit term for the payment of the premiums.[26]

The Court noted that nothing in Section 77 expressly requires that there be an actual transfer of money for the insurance contract to be binding, only that the premium be paid. As such, the premium is considered paid if there is an agreement as to the credit term, rendering the insurance contract valid and binding. This perspective is also in line with the prevalent practice in the insurance industry of extending credit term and as to the fourth exception mentioned above.

The second sentence of Section 77 was not meant to allow the insured to evade the payment of premiums on the pretense that there was no valid and binding contract between the parties. Rather, the second sentence must be read together with the first, which provides that the insurer is entitled to the

[26] *UCPB,* 356 SCRA 307, 317–18.

payment of premium as soon as the thing insured is exposed to the peril insured against. The Court clarified that it is not the occurrence or non-occurrence of the loss which entitles the insurer to the premium, but the mere exposure of the thing to the risk insured against.

Accordingly, the Court provided the following guidelines:

1. If the insured paid the premium, the insurer's liability attaches correspondingly and there is a valid and binding insurance contract.

2. If the insured did not pay the premium and the parties did not agree that the insurer's liability has attached, there is no valid and binding insurance contract, and hence, the insurer cannot demand payment of premium.

3. If the insured did not pay the premium but the parties agreed that the insurer's liability has attached, there is an extended credit on premium. When the insured accepts the terms of credit, there is a valid and binding insurance contract and the insured must pay before the end of the credit term. The insurer may also demand the payment of premium, whether or not the loss occurred.[27]

The present case fell under the third scenario. There was an agreement that Chartis was liable to indemnify CCTL if the contingencies insured against occurred from January 20, 2005, even though no premium has been actually paid. There being a credit term extended, the contract was valid and binding. CCTL cannot now escape its obligation to pay the premium after it had enjoyed such coverage prior to Chartis's cancellation, which was triggered by the former's failure to abide by the extended payment terms.

The Court noted that the present case differed from *Makati Tuscany Condominium* because there was no loss that occurred during the credit term. However, as explained, it is not the occurrence of the loss that entitles the insurer to the premium but the mere exposure to the risk.

Also, the present ruling is the inverse perspective of the rulings in *Great Pacific Life Insurance Corp. v. Court of Appeals*,[28] and in *UCPB*. Where in *Great Pacific Life Insurance Corp.* the Court held that the insurer must return the premium where the insured was never at risk, the present case illustrated that

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[27] *Chartis,* G.R. No. 234299, 13. This pinpoint citation refers to the copy of this decision uploaded to the Supreme Court website.

[28] G.R. No. 57308, 184 SCRA 501, Apr. 23, 1990.

the insured must pay the premium because the insurer undertook the risk. In *UCPB*, the Court held that it would be unjust and inequitable if the insured, after incurring the loss, cannot recover on the policy where it was granted a credit period, in the present case it was illustrated that it would be unjust and inequitable if the insurer cannot recover the premiums during the credit period after it had undertaken the risk.

As to the amount of premium payable to Chartis, the Court held that it was only entitled to its earned premium. The earned premium is computed either as the pro-rata rate of the insurance premium or as the short period rate as agreed upon by the parties. The subject policies provided only for a short period rate in case CCTL would be the one to cancel the policies. Accordingly, the default pro-rata rate for the five-month period that lapsed was applied because it was Chartis, which canceled the contracts.

IV. CORPORATION LAW

A. *United Coconut Planters Bank v. Secretary of Justice*[29]

In 2007, petitioner United Coconut Planters Bank ("UCPB") filed a complaint against the two private respondents, Tirso Antiporda, Jr. and Gloria Carreon—respectively the former chair and chief executive officer, and president and chief operating officer—of UCPB Capital, Inc., which UCPB absorbed in 1998 as wholly owned subsidiary. When UCPB acquired UCPB Capital, the latter had some PHP 4.4 billion worth of liabilities. According to UCPB, the private respondents declared bonuses notwithstanding UCPB Capital's losses, a violation of the bank's by-laws and of Section 31 of the old Corporation Code. UCPB added that, consequently, the two were criminally liable under Section 144 of the old Corporation Code.

The two provisions of the old Corporation Code state:

> SECTION 31. *Liability of Directors, Trustees or Officers.* — Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be *liable jointly and severally for all damages resulting therefrom suffered* by the corporation, its stockholders or members and other persons.

[29] G.R. No. 209601, Jan. 12, 2021.

> When a director, trustee or officer attempts to acquire or acquires, in violation of his duty, any interest adverse to the corporation in respect of any matter which has been reposed in him in confidence, as to which equity imposes a disability upon him to deal on his own behalf, he shall be *liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation*.[30]
>
> SECTION 144. *Violations of the Code*. — Violations of any of the provisions of this Code or its amendments *not otherwise specifically penalized therein* shall be punished by a *fine* of not less than one thousand (Pl,000.00) pesos but not more than ten thousand (Pl0,000.00) pesos or by *imprisonment* for not less than thirty (30) days but not more than five (5) years, or *both*, in the discretion of the court. If the violation is committed by a corporation, the same may, after notice and hearing, be *dissolved in appropriate proceedings before the Securities and Exchange Commission*: Provided, That such dissolution *shall not preclude the institution of appropriate action against the director, trustee or officer of the corporation responsible* for said violation: Provided, farther, That nothing in this section shall be construed to repeal the other causes for dissolution of a corporation provided in this Code.[31]

The two private respondents countered that that 10% of UCPB's net profit was allotted for bonuses to directors and officers, which by practice had been made without a board resolution and without question from Bangko Sentral ng Pilipinas (BSP) examiners. They also contended that the bank's 1997 financial statements, which formed their basis for the bonus declaration, showed a consolidated net income of PHP 2.115 billion. Meanwhile, they attributed the PHP 4.4 billion losses to the depreciation of the market values of foreclosed real properties in 1998, which should be appropriately charged to the years 1999 to 2003. Carreon added that both the internal auditors and the independent auditors did not attest to the losses, and that the presumption of regular performance of duties should operate in her favor.

The Department of Justice (DOJ) Task Force on Bank Fraud Cases found probable cause to indict the two respondents for violation of Section 31 in relation to Section 144 of the old Corporation Code, and filed the corresponding information before the Regional Trial Court of Makati City. Upon Antiporda's petition for review, the public respondent, the Secretary of Justice, set aside the resolution and directed the withdrawal of the information, ruling that Section 144 was not applicable to violations of Section 31 because the latter already provided for the remedy of civil action for damages.

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30 CORP. CODE (1980), § 31. (Emphasis supplied.)

31 § 144. (Emphasis supplied.)

The CA agreed with the Secretary of Justice, adding that applying Section 144 to acts committed under Section 31 would unduly extend its application to situations not intended by the legislature, thus violating as well the principle of strict construction of penal laws. Consequently, the appellate court applied Article 1146 of the Civil Code in determining the prescriptive period of such an action.

At the Supreme Court, UCPB contended that the civil sanction for damages was not the same as the imposition of penalties—the former being a pecuniary compensation for an injury done or a wrong sustained as a consequence of a breach of contractual obligation, a tortious act, or an illegal act, and the latter for the suffering inflicted by the State for the transgression of a law. Citing *Ramos v. Gonong*,[32] UCPB claimed that civil liability was not part of the penalty of the crime committed and, when imposed, was neither part of nor intended to be merged into the punishment of the crime. Thus, considering that Section 31 only referred to "[a]ll damages [...] suffered by the corporation" and that civil liability was not a penalty for the commission of a crime, a violation of Section 31 was not "specifically penalized [under the Code]," using the words in Section 144.

The Court, however, reiterated its ruling in *Ient v. Tullett Prebon (Philippines), Inc.*[33] that a violation of Section 31 was not considered a violation of any provision of the Code not otherwise penalized therein pursuant to Section 144.

In *Ient*, the Court pointed out that Sections 31 to 34 of the old Corporation Code were introduced to define the acts covered and the consequence of such acts or omissions amounting to a failure to fulfill a director's or a corporate officer's fiduciary duties to the corporation. It added that what the legislators intended was to codify through said provisions the common law concepts of corporate opportunity and fiduciary obligations of corporate officers, as found in American jurisprudence. There was nothing that indicated a deviation of any sort from the common practice and an enforcement of fiduciary obligations through penal sanction aside from civil liability. The Court also pointed out a concern among the drafters that even the imposition of the civil sanctions under Section 31 might discourage competent persons from serving as corporate directors. Lastly, the Code was intended as a regulatory measure, not as a penal statute. Since the Code was intended to encourage the use of the corporate entity as a vehicle for economic growth, a strict construction of Section 31 as penal offenses in relation to

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[32] G.R. No. 42010, 72 SCRA 559, Aug. 31, 1976.

[33] G.R. Nos. 189158 and 189530, 814 SCRA 184, Jan. 11, 2017.

Section 144 is untenable. Had the drafters intended to attach penal sanctions, Section 31 could have been stated in the same manner as Section 74.[34]

The Court added that, although the old Corporation Code was applicable in the present case, whether or not the same framework applies under the Revised Corporation Code of the Philippines (RCC) will depend on the facts of the proceeding where the Court will have to resolve the coverage or applicability of the equivalent of Section 144 (Section 170 under the RCC) to the equivalent of Section 31 (Section 30 under the RCC). The new provisions state:

> SECTION 30. *Liability of Directors, Trustees or Officers.* — Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be *liable jointly and severally for all damages resulting therefrom* suffered by the corporation, its stockholders or members and other persons.
>
> A director, trustee or officer shall not attempt to acquire, or acquire any interest adverse to the corporation in respect of any matter which has been reposed in them in confidence, and upon which, equity imposes a disability upon themselves to deal in their own behalf; otherwise, the said director, trustee or officer shall be *liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation.*[35]
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> SECTION 170. *Other Violations of the Code; Separate Liability.* — Violations of any of the other provisions of this Code or its amendments *not otherwise specifically penalized therein* shall be punished by a fine of not less than Ten thousand pesos (P10,000.00) but not more than One million pesos (P1,000,000.00). If the violation is

[34] *Id.* at 221–31. CORP. CODE (1980), § 74 states: "Any officer or agent of the corporation who shall refuse to allow any director, trustee, stockholder or member of the corporation to examine and copy excerpts from its records or minutes, in accordance with the provisions of this Code, shall be liable to such director, trustee, stockholder or member for damages, and in addition, *shall be guilty of an offense which shall be punishable under Section 144 of this Code*: Provided, That if such refusal is pursuant to a resolution or order of the Board of Directors or Trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal: and Provided, further , That it shall be a defense to any action under this section that the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making his demand." (Emphasis supplied.)

[35] REV. CORP. CODE, § 30. (Emphasis supplied.)

> committed by a corporation, the same may, after notice and hearing, be dissolved in appropriate proceedings before the Commission: Provided, That such dissolution shall not preclude the institution of appropriate action against the director, trustee, or officer of the corporation responsible for said violation: Provided, further, That nothing in this section shall be construed to repeal the other causes for dissolution of a corporation provided in this Code.
>
> Liability for any of the foregoing offenses shall be separate from any other administrative, civil, or criminal liability under this Code and other laws.[36]

The RCC also introduced a provision that allows the Securities and Exchange Commission to impose administrative sanctions, which include the imposition of a fine, the issuance of a permanent cease-and-desist order, the suspension or revocation of the certificate of incorporation, and the dissolution of the corporation, after due notice and hearing.[37] However, the Court held that the RCC's present wording reinforces the present interpretation, i.e., violations of Section 31 (now Section 30) are not covered by Section 144 (now Section 170). Although the present provision clarifies that it applies to "Other Violations of the Code" and provides for "Separate Liability," the Court opined that such language remains consistent with the violations contemplated under the old Section 144 as the operative phrase "not otherwise specifically penalized therein" is retained, just as those in the present section are similarly retained.

Having held that violations of Section 31 were not covered by Section 144, the Court ruled that Article 1146 of the Civil Code, not Act No. 3326, governed the determination of the prescriptive period of the petitioner's action. Consequently, UCPB's petition was denied, and the CA's decision and resolution were affirmed.

V. BANKING LAW

A. *Hermosa Savings and Loan Bank v. Development Bank of the Philippines*[38]

The Development Bank of the Philippines (DBP) obtained a loan from the National Economic and Development Authority (NEDA) through the Industrial Guarantee and Loan Fund (IGLF). DBP, in turn, made the

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[36] § 170. (Emphasis supplied.)
[37] *See* REV. CORP. CODE, § 158.
[38] G.R. No. 200635, Feb. 1, 2021.

proceeds available to petitioner Hermosa Savings and Loan Bank ("Hermosa Bank") in the form of loans. Hermosa Bank would later fail to pay the amortizations due on the loans. This prompted DBP to file a complaint against Hermosa Bank and its officers before Branch 136 of the RTC in Makati City.

The BSP, upon examining Hermosa Bank's accounts, notified DBP of its suspicions of tampering and alteration of the loan documents and certificates of title evidencing ownership of the collaterals submitted by the bank. DBP conducted its own verification and found several fraudulent, deceitful, and unlawful acts in the preparation and execution of the loans and their collateral documents. Thus, DBP prayed for the issuance of a writ of preliminary attachment before the RTC. The trial court did so upon posting by DBP of a bond, with a notice of garnishment subsequently served. In a subsequent order, the RTC lifted the writ and then reinstated it, pursuant to a later decision by the CA.

Four years later, the Monetary Board of the BSP closed Hermosa Bank and placed it under receivership with the Philippine Deposit Insurance Corporation (PDIC), which initiated a liquidation proceeding with the RTC in Dinalupihan, Bataan ("Liquidation Court"). The bank and its officers then moved to dismiss the complaint filed before the RTC, arguing that the same should be filed instead with the Liquidation Court and that the RTC no longer had jurisdiction pursuant to Section 30 of the New Central Bank Act,[39] which provided for the proceedings for the liquidation of a bank.

The RTC dismissed the complaint, but later reinstated the same upon DBP's motion for reconsideration. In another order, the RTC dismissed the complaint for lack of jurisdiction, but with the subsequent designation of Branch 136 as a Family Court, the case was re-raffled to Branch 57, which also denied DBP's motion for reconsideration. The CA reversed the RTC, ruling that jurisdiction, once acquired, is not lost upon the instance of the parties and continues until the case is terminated.

The Supreme Court granted Hermosa Bank's petition, reaffirming its holding in *Barrameda v. Rural Bank of Canaman*[40] that the procedural rule on adherence of jurisdiction is not absolute. The Court held in *Barrameda* that one exception is when the change in jurisdiction is curative in character and that Section 30 of the New Central Bank Act is curative in character when it declared that the liquidation court has jurisdiction in the same proceedings to assist in the adjudication of the disputed claims against the insolvent bank.[41]

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[39] Rep. Act No. 7653 (1993).

[40] G.R. No. 176260, 636 SCRA 119, Nov. 24, 2010.

[41] *Id.* at 127–28.

The Court explained that the rationale therefor is to prevent multiplicity of actions against the insolvent bank and to establish due process and orderliness in the liquidation of said bank.[42]

Thus, the Court held that, if DBP's suit were to be allowed to proceed, it would unduly prejudice its depositors and other creditors, as DBP's claim would consequently be prioritized over their respective claims. Consequently, DBP's suit before the RTC was dismissed with the reinstatement of the RTC's earlier dismissal orders.

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[42] *Id.* at 128, *citing* Manalo v. Ct. of Appeals, G.R. No. 141297, 366 SCRA 752, 762, Oct. 8, 2001.