is a statutory privilege, and it may be exercised only in the manner and in accordance with the provisions of the law.[12]

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 30 October 2003 and 2 November 2004 Resolutions of the Court of Appeals in CA-G.R. CV No. 73034.

SO ORDERED.

Puno (Chairperson), C.J., Corona, Leonardo-de Castro, and *Bersamin, JJ.,* concur.

THIRD DIVISION

[G.R. No. 168332. June 19, 2009]

ANA MARIA A. KORUGA, *petitioner, vs.* **TEODORO O. ARCENAS, JR., ALBERT C. AGUIRRE, CESAR S. PAGUIO, FRANCISCO A. RIVERA, and THE HONORABLE COURT OF APPEALS, THIRD DIVISION,** *respondents.*

[G.R. No. 169053. June 19, 2009]

TEODORO O. ARCENAS, JR., ALBERT C. AGUIRRE, CESAR S. PAGUIO, and FRANCISCO A. RIVERA, *petitioners, vs.* **HON. SIXTO MARELLA, JR., Presiding Judge, Branch 138, Regional Trial Court of Makati City, and ANA MARIA A. KORUGA,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; GENERAL BANKING LAW; BANK, DEFINED; BANKING BUSINESS, EXPLAINED.— It is clear that the acts complained of pertain to the conduct of Banco Filipino's banking business. A bank, as defined in the

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[12] *Id*.

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General Banking Law, refers to an entity engaged in the lending of funds obtained in the form of deposits. The banking business is properly subject to reasonable regulation under the police power of the state because of its nature and relation to the fiscal affairs of the people and the revenues of the state. Banks are affected with public interest because they receive funds from the general public in the form of deposits. It is the Government's responsibility to see to it that the financial interests of those who deal with banks and banking institutions, as depositors or otherwise, are protected. In this country, that task is delegated to the BSP, which pursuant to its Charter, is authorized to administer the monetary, banking, and credit system of the Philippines. It is further authorized to take the necessary steps against any banking institution if its continued operation would cause prejudice to its depositors, creditors and the general public as well.

2. ID.; NEW CENTRAL BANK ACT; THE MONETARY BOARD HAS THE EXCLUSIVE JURISDICTION OVER PROCEEDINGS FOR RECEIVERSHIP OF BANKS.— Koruga's invocation of the provisions of the Corporation Code is misplaced. In an earlier case with similar antecedents, we ruled that: The Corporation Code, however, is a general law applying to all types of corporations, while the New Central Bank Act regulates specifically banks and other financial institutions, including the dissolution and liquidation thereof. As between a general and special law, the latter shall prevail — *generalia specialibus non derogant*. Consequently, it is not the Interim Rules of Procedure on Intra-Corporate Controversies, or Rule 59 of the Rules of Civil Procedure on Receivership, that would apply to this case. Instead, Sections 29 and 30 of the *New Central Bank Act* should be followed x x x it is the Monetary Board that exercises exclusive jurisdiction over proceedings for receivership of banks. Crystal clear in Section 30 is the provision that says the "appointment of a receiver under this section shall be vested exclusively with the Monetary Board." The term "exclusively" connotes that only the Monetary Board can resolve the issue of whether a bank is to be placed under receivership and, upon an affirmative finding, it also has authority to appoint a receiver. This is further affirmed by the fact that the law allows the Monetary Board to take action "summarily and without need for prior hearing." And, as a clincher, the law explicitly provides that

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"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 a 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." From the foregoing disquisition, there is no doubt that the RTC has no jurisdiction to hear and decide a suit that seeks to place Banco Filipino under receivership.

3. ID.; ID.; A MINORITY STOCKHOLDER OF A BANK HAS NO STANDING TO QUESTION THE MONETARY BOARD'S ACTION.— [T]here is one other reason why Koruga's complaint before the RTC cannot prosper. Given her own admission — and the same is likewise supported by evidence — that she is merely a minority stockholder of Banco Filipino, she would not have the standing to question the Monetary Board's action. Section 30 of the New Central Bank Act provides: 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.

APPEARANCES OF COUNSEL

Bernas Law Office for Ana Maria A. Koruga.

Filemon L. Fernandez & Francisco A. Rivera for Teodoro O. Arcenans, Jr., *et al.*

Abelardo L. Aportadera, Jr. for Dr. Conrado P. Banzo & Gen. Ramon E. Montano.

Morales Rojas & Risos-Vidal for Orlando O. Samson and Jovito N. Hernandez.

D E C I S I O N

NACHURA, *J.*:

Before this Court are two petitions that originated from a Complaint filed by Ana Maria A. Koruga (Koruga) before the Regional Trial Court (RTC) of Makati City against the Board of Directors of Banco Filipino and the Members of the Monetary

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Board of the Bangko Sentral ng Pilipinas (BSP) for violation of the Corporation Code, for inspection of records of a corporation by a stockholder, for receivership, and for the creation of a management committee.

G.R. No. 168332

The first is a Petition for *Certiorari* under Rule 65 of the Rules of Court, docketed as G.R. No. 168332, praying for the annulment of the Court of Appeals (CA) Resolution[1] in CA-G.R. SP No. 88422 dated April 18, 2005 granting the prayer for a Writ of Preliminary Injunction of therein petitioners Teodoro O. Arcenas, Jr., Albert C. Aguirre, Cesar S. Paguio, and Francisco A. Rivera (Arcenas, *et al.*).

Koruga is a minority stockholder of Banco Filipino Savings and Mortgage Bank. On August 20, 2003, she filed a complaint before the Makati RTC which was raffled to Branch 138, presided over by Judge Sixto Marella, Jr.[2] Koruga's complaint alleged:

> 10.1 Violation of Sections 31 to 34 of the Corporation Code *("Code")* which prohibit self-dealing and conflicts of interest of directors and officers, thus:
>
> (a) For engaging in unsafe, unsound, and fraudulent banking practices that have jeopardized the welfare of the Bank, its shareholders, who includes among others, the Petitioner, and depositors. (sic)
>
> (b) For granting and approving loans and/or "loaned" sums of money to six (6) "dummy" borrower corporations *("Borrower Corporations")* which, at the time of loan approval, had no financial capacity to justify the loans. (sic)
>
> (c) For approving and accepting a *dacion en pago*, or payment of loans with property instead of cash, resulting to a diminished future cumulative interest income by the Bank and a decline in its liquidity position. (sic)
>
> (d) For knowingly giving "favorable treatment" to the Borrower Corporations in which some or most of them have

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[1] *Rollo* (G.R. No. 168332), pp. 48-49.

[2] Now a Justice of the Court of Appeals.

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interests, *i.e.* interlocking directors/officers thereof, interlocking ownerships. (sic)

(e) For employing their respective offices and functions as the Bank's officers and directors, or omitting to perform their functions and duties, with negligence, unfaithfulness or abuse of confidence of fiduciary duty, misappropriated or misapplied or ratified by inaction the misappropriation or misappropriations, of (sic) almost ₱1.6 Billion Pesos (sic) constituting the Bank's funds placed under their trust and administration, by unlawfully releasing loans to the Borrower Corporations or refusing or failing to impugn these, knowing before the loans were released or thereafter that the Bank's cash resources would be dissipated thereby, to the prejudice of the Petitioner, other Banco Filipino depositors, and the public.

10.2 Right of a stockholder to inspect the records of a corporation (including financial statements) under Sections 74 and 75 of the Code, as implemented by the Interim Rules;

(a) Unlawful refusal to allow the Petitioner from inspecting or otherwise accessing the corporate records of the bank despite repeated demand in writing, where she is a stockholder. (sic)

10.3 Receivership and Creation of a Management Committee pursuant to:

(a) Rule 59 of the 1997 Rules of Civil Procedure *("Rules")*;

(b) Section 5.2 of R.A. No. 8799;

(c) Rule 1, Section 1(a)(1) of the *Interim Rules*;

(d) Rule 1, Section 1(a)(2) of the Interim Rules;

(e) Rule 7 of the Interim Rules;

(f) Rule 9 of the Interim Rules; and

(g) The General Banking Law of 2000 and the New Central Bank Act.[3]

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[3] *Rollo* (G.R. No. 168332), pp. 7-9.

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On September 12, 2003, Arcenas, *et al*. filed their Answer raising, among others, the trial court's lack of jurisdiction to take cognizance of the case. They also filed a Manifestation and Motion seeking the dismissal of the case on the following grounds: (a) lack of jurisdiction over the subject matter; (b) lack of jurisdiction over the persons of the defendants; (c) forum-shopping; and (d) for being a nuisance/harassment suit. They then moved that the trial court rule on their affirmative defenses, dismiss the intra-corporate case, and set the case for preliminary hearing.

In an Order dated October 18, 2004, the trial court denied the Manifestation and Motion, ruling thus:

> The result of the procedure sought by defendants Arcenas, *et al.* (sic) is for the Court to conduct a preliminary hearing on the affirmative defenses raised by them in their Answer. This [is] proscribed by the Interim Rules of Procedure on Intracorporate (sic) Controversies because when a preliminary hearing is conducted it is "as if a Motion to Dismiss was filed" (Rule 16, Section 6, 1997 Rules of Civil Procedure). A Motion to Dismiss is a prohibited pleading under the Interim Rules, for which reason, no favorable consideration can be given to the Manifestation and Motion of defendants, Arcenas, *et al*.
>
> The Court finds no merit to (sic) the claim that the instant case is a nuisance or harassment suit.
>
> WHEREFORE, the Court defers resolution of the affirmative defenses raised by the defendants Arcenas, *et al*.[4]

Arcenas, *et al*. moved for reconsideration[5] but, on January 18, 2005, the RTC denied the motion.[6] This prompted Arcenas, *et al*. to file before the CA a Petition for *Certiorari* and Prohibition under Rule 65 of the Rules of Court with a prayer for the issuance of a writ of preliminary injunction and a temporary restraining order (TRO).[7]

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[4] CA *rollo*, p. 48.

[5] *Id.* at 52-60.

[6] *Id.* at 50.

[7] *Id.* at 2-47.

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On February 9, 2005, the CA issued a 60-day TRO enjoining Judge Marella from conducting further proceedings in the case.[8]

On February 22, 2005, the RTC issued a Notice of Pre-trial[9] setting the case for pre-trial on June 2 and 9, 2005. Arcenas, *et al*. filed a Manifestation and Motion[10] before the CA, reiterating their application for a writ of preliminary injunction. Thus, on April 18, 2005, the CA issued the assailed Resolution, which reads in part:

> (C)onsidering that the Temporary Restraining Order issued by this Court on February 9, 2005 expired on April 10, 2005, it is necessary that a writ of preliminary injunction be issued in order not to render ineffectual whatever final resolution this Court may render in this case, after the petitioners shall have posted a bond in the amount of FIVE HUNDRED THOUSAND (₱500,000.00) PESOS.
>
> SO ORDERED.[11]

Dissatisfied, Koruga filed this Petition for *Certiorari* under Rule 65 of the Rules of Court. Koruga alleged that the CA effectively gave due course to Arcenas, *et al*.'s petition when it issued a writ of preliminary injunction without factual or legal basis, either in the April 18, 2005 Resolution itself or in the records of the case. She prayed that this Court restrain the CA from implementing the writ of preliminary injunction and, after due proceedings, make the injunction against the assailed CA Resolution permanent.[12]

In their Comment, Arcenas, *et al*. raised several procedural and substantive issues. They alleged that the Verification and Certification against Forum-Shopping attached to the Petition was not executed in the manner prescribed by Philippine law since, as admitted by Koruga's counsel himself, the same was only a facsimile.

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[8] *Id.* at 95-97.

[9] *Rollo* (G.R. No. 168332), p. 196.

[10] *Id.* at 197-198.

[11] *Id.* at 49.

[12] *Id.* at 40.

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They also averred that Koruga had admitted in the Petition that she never asked for reconsideration of the CA's April 18, 2005 Resolution, contending that the Petition did not raise pure questions of law as to constitute an exception to the requirement of filing a Motion for Reconsideration before a Petition for *Certiorari* is filed.

They, likewise, alleged that the Petition may have already been rendered moot and academic by the July 20, 2005 CA Decision,[13] which denied their Petition, and held that the RTC did not commit grave abuse of discretion in issuing the assailed orders, and thus ordered the RTC to proceed with the trial of the case.

Meanwhile, on March 13, 2006, this Court issued a Resolution granting the prayer for a TRO and enjoining the Presiding Judge of Makati RTC, Branch 138, from proceeding with the hearing of the case upon the filing by Arcenas, *et al*. of a ₱50,000.00 bond. Koruga filed a motion to lift the TRO, which this Court denied on July 5, 2006.

On the other hand, respondents Dr. Conrado P. Banzon and Gen. Ramon Montaño also filed their Comment on Koruga's Petition, raising substantially the same arguments as Arcenas, *et al*.

G.R. No. 169053

G.R. No. 169053 is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, with prayer for the issuance of a TRO and a writ of preliminary injunction filed by Arcenas, *et al.*

In their Petition, Arcenas, *et al*. asked the Court to set aside the Decision[14] dated July 20, 2005 of the CA in CA-G.R. SP No. 88422, which denied their petition, having found no grave

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[13] Penned by Associate Justice Eugenio S. Labitoria, with Associate Justices Eliezer R. delos Santos and Arturo D. Brion (now a member of this Court), concurring; *id.* at 259-277.

[14] *Rollo* (G.R. No. 169053), pp. 58-76.

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abuse of discretion on the part of the Makati RTC. The CA said that the RTC Orders were interlocutory in nature and, thus, may be assailed by *certiorari* or prohibition only when it is shown that the court acted without or in excess of jurisdiction or with grave abuse of discretion. It added that the Supreme Court frowns upon resort to remedial measures against interlocutory orders.

Arcenas, *et al*. anchored their prayer on the following grounds: that, in their Answer before the RTC, they had raised the issue of failure of the court to acquire jurisdiction over them due to improper service of summons; that the Koruga action is a nuisance or harassment suit; that there is another case involving the same parties for the same cause pending before the Monetary Board of the BSP, and this constituted forum-shopping; and that jurisdiction over the subject matter of the case is vested by law in the BSP.[15]

Arcenas, *et al*. assign the following errors:

I. THE COURT OF APPEALS, IN "FINDING NO GRAVE ABUSE OF DISCRETION COMMITTED BY PUBLIC RESPONDENT REGIONAL TRIAL COURT OF MAKATI, BRANCH 138, IN ISSUING THE ASSAILED ORDERS," FAILED TO CONSIDER AND MERELY GLOSSED OVER THE MORE TRANSCENDENT ISSUES OF THE LACK OF JURISDICTION ON THE PART OF SAID PUBLIC RESPONDENT OVER THE SUBJECT MATTER OF THE CASE BEFORE IT, *LITIS PENDENTIA* AND FORUM SHOPPING, AND THE CASE BELOW BEING A NUISANCE OR HARASSMENT SUIT, EITHER ONE AND ALL OF WHICH GOES/GO TO RENDER THE ISSUANCE BY PUBLIC RESPONDENT OF THE ASSAILED ORDERS A GRAVE ABUSE OF DISCRETION.

II. THE FINDING OF THE COURT OF APPEALS OF "NO GRAVE ABUSE OF DISCRETION COMMITTED BY PUBLIC RESPONDENT REGIONAL TRIAL COURT OF MAKATI, BRANCH 138, IN ISSUING THE ASSAILED ORDERS," IS NOT IN ACCORD WITH LAW OR WITH

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[15] *Id*. at 8-9.

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> THE APPLICABLE DECISIONS OF THIS HONORABLE COURT.[16]

Meanwhile, in a Manifestation and Motion filed on August 31, 2005, Koruga prayed for, among others, the consolidation of her Petition with the Petition for Review on *Certiorari* under Rule 45 filed by Arcenas, *et al*., docketed as G.R. No. 169053. The motion was granted by this Court in a Resolution dated September 26, 2005.

Our Ruling

Initially, we will discuss the procedural issue.

Arcenas, *et al*. argue that Koruga's petition should be dismissed for its defective Verification and Certification Against Forum-Shopping, since only a facsimile of the same was attached to the Petition. They also claim that the Verification and Certification Against Forum-Shopping, allegedly executed in Seattle, Washington, was not authenticated in the manner prescribed by Philippine law and not certified by the Philippine Consulate in the United States.

This contention deserves scant consideration.

On the last page of the Petition in G.R. No. 168332, Koruga's counsel executed an Undertaking, which reads as follows:

> In view of that fact that the Petitioner is currently in the United States, undersigned counsel is attaching a facsimile copy of the Verification and Certification Against Forum-Shopping duly signed by the Petitioner and notarized by Stephanie N. Goggin, a Notary Public for the Sate (sic) of Washington. Upon arrival of the original copy of the Verification and Certification as certified by the Office of the Philippine Consul, the undersigned counsel shall immediately provide duplicate copies thereof to the Honorable Court.[17]

Thus, in a Compliance[18] filed with the Court on September 5, 2005, petitioner submitted the original copy of the duly notarized

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[16] *Id.* at 17-18.

[17] *Rollo* (G.R. No. 168332), p. 44.

[18] *Id.* at 286-288.

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and authenticated Verification and Certification Against Forum-Shopping she had executed.[19] This Court noted and considered the Compliance satisfactory in its Resolution dated November 16, 2005. There is, therefore, no need to further belabor this issue.

We now discuss the substantive issues in this case.

First, we resolve the prayer to nullify the CA's April 18, 2005 Resolution.

We hold that the Petition in G.R. No. 168332 has become moot and academic. The writ of preliminary injunction being questioned had effectively been dissolved by the CA's July 20, 2005 Decision. The dispositive portion of the Decision reads in part:

> The case is REMANDED to the court ***a quo*** for further proceedings and to resolve with deliberate dispatch the intra-corporate controversies and determine whether there was actually a valid service of summons. If, after hearing, such service is found to have been improper, then new summons should be served forthwith.[20]

Accordingly, there is no necessity to restrain the implementation of the writ of preliminary injunction issued by the CA on April 18, 2005, since it no longer exists.

However, this Court finds that the CA erred in upholding the jurisdiction of, and remanding the case to, the RTC.

The resolution of these petitions rests mainly on the determination of one fundamental issue: Which body has jurisdiction over the Koruga Complaint, the RTC or the BSP?

We hold that it is the BSP that has jurisdiction over the case.

A reexamination of the Complaint is in order.

Koruga's Complaint charged defendants with violation of Sections 31 to 34 of the Corporation Code, prohibiting self-

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[19] *Id.* at 290-292.

[20] *Rollo* (G.R. No. 169053), p. 75.

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dealing and conflict of interest of directors and officers; invoked her right to inspect the corporation's records under Sections 74 and 75 of the Corporation Code; and prayed for Receivership and Creation of a Management Committee, pursuant to Rule 59 of the Rules of Civil Procedure, the Securities Regulation Code, the Interim Rules of Procedure Governing Intra-Corporate Controversies, the General Banking Law of 2000, and the New Central Bank Act. She accused the directors and officers of Banco Filipino of engaging in unsafe, unsound, and fraudulent banking practices, more particularly, acts that violate the prohibition on self-dealing.

It is clear that the acts complained of pertain to the conduct of Banco Filipino's banking business. A bank, as defined in the *General Banking Law*,[21] refers to an entity engaged in the lending of funds obtained in the form of deposits.[22] The banking business is properly subject to reasonable regulation under the police power of the state because of its nature and relation to the fiscal affairs of the people and the revenues of the state. Banks are affected with public interest because they receive funds from the general public in the form of deposits. It is the Government's responsibility to see to it that the financial interests of those who deal with banks and banking institutions, as depositors or otherwise, are protected. In this country, that task is delegated to the BSP, which pursuant to its Charter, is authorized to administer the monetary, banking, and credit system of the Philippines. It is further authorized to take the necessary steps against any banking institution if its continued operation would cause prejudice to its depositors, creditors and the general public as well.[23]

The law vests in the BSP the supervision over operations and activities of banks. The *New Central Bank Act* provides:

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[21] Republic Act (R.A.) No. 8791.

[22] R.A. No. 8791, Sec. 3 (3.1).

[23] *Central Bank of the Philippines v. Court of Appeals*, G.R. No. 88353, May 8, 1992, 208 SCRA 652, 684-685.

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Section 25. *Supervision and Examination.* — The Bangko Sentral shall have supervision over, and conduct periodic or special examinations of, banking institutions and quasi-banks, including their subsidiaries and affiliates engaged in allied activities.[24]

Specifically, the BSP's supervisory and regulatory powers include:

4.1 The issuance of rules of conduct or the establishment of standards of operation for uniform application to all institutions or functions covered, taking into consideration the distinctive character of the operations of institutions and the substantive similarities of specific functions to which such rules, modes or standards are to be applied;

4.2 The **conduct of examination to determine compliance with laws and regulations if the circumstances so warrant as determined by the Monetary Board**;

4.3 **Overseeing to ascertain that laws and Regulations are complied with**;

4.4 **Regular investigation which shall not be oftener than once a year from the last date of examination to determine whether an institution is conducting its business on a safe or sound basis**: *Provided,* That the deficiencies/irregularities found by or discovered by an audit shall be immediately addressed;

4.5 **Inquiring into the solvency and liquidity of the institution** (2-D); or

4.6 Enforcing prompt corrective action.[25]

Koruga alleges that "the dispute in the trial court involves the manner with which the Directors' (sic) have handled the Bank's affairs, specifically the fraudulent loans and *dacion en pago* authorized by the Directors in favor of several dummy corporations known to have close ties and are indirectly controlled by the Directors."[26] Her allegations, then, call for the examination

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[24] R.A. No. 7653.

[25] R.A. No. 8791, Sec. 4. (Emphasis supplied.)

[26] Memorandum, *rollo* (G.R. No. 169053), p. 717.

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of the allegedly questionable loans. Whether these loans are covered by the prohibition on self-dealing is a matter for the BSP to determine. These are not ordinary intra-corporate matters; rather, they involve banking activities which are, by law, regulated and supervised by the BSP. As the Court has previously held:

> It is well-settled in both law and jurisprudence that the Central Monetary Authority, through the Monetary Board, is vested with exclusive authority to assess, evaluate and determine the condition of any bank, and finding such condition to be one of insolvency, or that its continuance in business would involve a probable loss to its depositors or creditors, forbid bank or non-bank financial institution to do business in the Philippines; and shall designate an official of the BSP or other competent person as receiver to immediately take charge of its assets and liabilities.[27]

Correlatively, the *General Banking Law of 2000* specifically deals with loans contracted by bank directors or officers, thus:

> **SECTION 36. Restriction on Bank Exposure to Directors, Officers, Stockholders and Their Related Interests.** — No director or officer of any bank shall, directly or indirectly, for himself or as the representative or agent of others, borrow from such bank nor shall he become a guarantor, indorser or surety for loans from such bank to others, or in any manner be an obligor or incur any contractual liability to the bank except with the written approval of the majority of all the directors of the bank, excluding the director concerned: Provided, That such written approval shall not be required for loans, other credit accommodations and advances granted to officers under a fringe benefit plan approved by the Bangko Sentral. The required approval shall be entered upon the records of the bank and a copy of such entry shall be transmitted forthwith to the appropriate supervising and examining department of the Bangko Sentral.
>
> Dealings of a bank with any of its directors, officers or stockholders and their related interests shall be upon terms not less favorable to the bank than those offered to others.
>
> After due notice to the board of directors of the bank, the office of any bank director or officer who violates the provisions of this

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[27] *Miranda v. Philippine Deposit Insurance Corporation*, G.R. No. 169334, September 8, 2006, 501 SCRA 288, 298.

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Section may be declared vacant and the director or officer shall be subject to the penal provisions of the New Central Bank Act.

The Monetary Board may regulate the amount of loans, credit accommodations and guarantees that may be extended, directly or indirectly, by a bank to its directors, officers, stockholders and their related interests, as well as investments of such bank in enterprises owned or controlled by said directors, officers, stockholders and their related interests. However, the outstanding loans, credit accommodations and guarantees which a bank may extend to each of its stockholders, directors, or officers and their related interests, shall be limited to an amount equivalent to their respective unencumbered deposits and book value of their paid-in capital contribution in the bank: Provided, however, That loans, credit accommodations and guarantees secured by assets considered as non-risk by the Monetary Board shall be excluded from such limit: Provided, further, That loans, credit accommodations and advances to officers in the form of fringe benefits granted in accordance with rules as may be prescribed by the Monetary Board shall not be subject to the individual limit.

The Monetary Board shall define the term "related interests."

The limit on loans, credit accommodations and guarantees prescribed herein shall not apply to loans, credit accommodations and guarantees extended by a cooperative bank to its cooperative shareholders.[28]

Furthermore, the authority to determine whether a bank is conducting business in an unsafe or unsound manner is also vested in the Monetary Board. The *General Banking Law of 2000* provides:

SECTION 56. Conducting Business in an Unsafe or Unsound Manner. — In determining whether a particular act or omission, which is not otherwise prohibited by any law, rule or regulation affecting banks, quasi-banks or trust entities, may be deemed as conducting business in an unsafe or unsound manner for purposes of this Section, the Monetary Board shall consider any of the following circumstances:

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[28] Emphasis supplied.

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56.1. The act or omission has resulted or may result in material loss or damage, or abnormal risk or danger to the safety, stability, liquidity or solvency of the institution;

56.2. The act or omission has resulted or may result in material loss or damage or abnormal risk to the institution's depositors, creditors, investors, stockholders or to the Bangko Sentral or to the public in general;

56.3. The act or omission has caused any undue injury, or has given any unwarranted benefits, advantage or preference to the bank or any party in the discharge by the director or officer of his duties and responsibilities through manifest partiality, evident bad faith or gross inexcusable negligence; or

56.4. The act or omission involves entering into any contract or transaction manifestly and grossly disadvantageous to the bank, quasi-bank or trust entity, whether or not the director or officer profited or will profit thereby.

Whenever a bank, quasi-bank or trust entity persists in conducting its business in an unsafe or unsound manner, the Monetary Board may, without prejudice to the administrative sanctions provided in Section 37 of the New Central Bank Act, take action under Section 30 of the same Act and/or immediately exclude the erring bank from clearing, the provisions of law to the contrary notwithstanding.

Finally, the *New Central Bank Act* grants the Monetary Board the power to impose administrative sanctions on the erring bank:

Section 37. *Administrative Sanctions on Banks and Quasi-banks.* — Without prejudice to the criminal sanctions against the culpable persons provided in Sections 34, 35, and 36 of this Act, **the Monetary Board may**, **at its discretion, impose upon any bank or quasi-bank, their directors and/or officers**, for any willful violation of its charter or by-laws, willful delay in the submission of reports or publications thereof as required by law, rules and regulations; any refusal to permit examination into the affairs of the institution; any willful making of a false or misleading statement to the Board or the appropriate supervising and examining department or its examiners; any willful failure or refusal to comply with, or violation of, any banking law or any order, instruction or regulation issued by the Monetary Board, or any order, instruction or ruling by the Governor;

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or any commission of irregularities, and/or conducting business in an unsafe or unsound manner as may be determined by the Monetary Board, the following administrative sanctions, whenever applicable:

(a) fines in amounts as may be determined by the Monetary Board to be appropriate, but in no case to exceed Thirty thousand pesos (₱30,000) a day for each violation, taking into consideration the attendant circumstances, such as the nature and gravity of the violation or irregularity and the size of the bank or quasi-bank;

(b) suspension of rediscounting privileges or access to Bangko Sentral credit facilities;

(c) suspension of lending or foreign exchange operations or authority to accept new deposits or make new investments;

(d) suspension of interbank clearing privileges; and/or

(e) revocation of quasi-banking license.

Resignation or termination from office shall not exempt such director or officer from administrative or criminal sanctions.

The Monetary Board may, whenever warranted by circumstances, preventively suspend any director or officer of a bank or quasi-bank pending an investigation: Provided, That should the case be not finally decided by the Bangko Sentral within a period of one hundred twenty (120) days after the date of suspension, said director or officer shall be reinstated in his position: Provided, further, That when the delay in the disposition of the case is due to the fault, negligence or petition of the director or officer, the period of delay shall not be counted in computing the period of suspension herein provided.

The above administrative sanctions need not be applied in the order of their severity.

Whether or not there is an administrative proceeding, if the institution and/or the directors and/or officers concerned continue with or otherwise persist in the commission of the indicated practice or violation, the Monetary Board may issue an order requiring the institution and/or the directors and/or officers concerned to cease and desist from the indicated practice or violation, and may further order that immediate action be taken to correct the conditions resulting from such practice or violation. The cease and desist order shall be immediately effective upon service on the respondents.

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The respondents shall be afforded an opportunity to defend their action in a hearing before the Monetary Board or any committee chaired by any Monetary Board member created for the purpose, upon request made by the respondents within five (5) days from their receipt of the order. If no such hearing is requested within said period, the order shall be final. If a hearing is conducted, all issues shall be determined on the basis of records, after which the Monetary Board may either reconsider or make final its order.

The Governor is hereby authorized, at his discretion, to impose upon banking institutions, for any failure to comply with the requirements of law, Monetary Board regulations and policies, and/or instructions issued by the Monetary Board or by the Governor, fines not in excess of Ten thousand pesos (₱10,000) a day for each violation, the imposition of which shall be final and executory until reversed, modified or lifted by the Monetary Board on appeal.[29]

Koruga also accused Arcenas, *et al*. of violation of the Corporation Code's provisions on self-dealing and conflict of interest. She invoked Section 31 of the Corporation Code, which defines the liability of directors, trustees, or officers of a corporation for, among others, acquiring any personal or pecuniary interest in conflict with their duty as directors or trustees, and Section 32, which prescribes the conditions under which a contract of the corporation with one or more of its directors or trustees — the so-called "self-dealing directors"[30] — would be valid. She also alleged that Banco Filipino's directors violated Sections 33 and 34 in approving the loans of corporations with interlocking ownerships, *i.e.*, owned, directed, or managed by close associates of Albert C. Aguirre.

Sections 31 to 34 of the Corporation Code provide:

Section 31. *Liability of directors, trustees or officers.* — Directors or trustees who wilfully 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

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[29] Emphasis supplied.

[30] *See Prime White Cement Corporation v. Honorable Intermediate Appellate Court, et al.*, G.R. No. 68555, March 19, 1993, 220 SCRA 103.

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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.

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 in 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.

Section 32. *Dealings of directors, trustees or officers with the corporation.* — A contract of the corporation with one or more of its directors or trustees or officers is voidable, at the option of such corporation, unless all the following conditions are present:

1. That the presence of such director or trustee in the board meeting in which the contract was approved was not necessary to constitute a quorum for such meeting;

2. That the vote of such director or trustee was not necessary for the approval of the contract;

3. That the contract is fair and reasonable under the circumstances; and

4. That in case of an officer, the contract has been previously authorized by the board of directors.

Where any of the first two conditions set forth in the preceding paragraph is absent, in the case of a contract with a director or trustee, such contract may be ratified by the vote of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock or of at least two-thirds (2/3) of the members in a meeting called for the purpose: Provided, That full disclosure of the adverse interest of the directors or trustees involved is made at such meeting: Provided, however, That the contract is fair and reasonable under the circumstances.

Section 33. *Contracts between corporations with interlocking directors*. — Except in cases of fraud, and provided the contract is fair and reasonable under the circumstances, a contract between two or more corporations having interlocking directors shall not be invalidated on that ground alone: Provided, That if the interest of the interlocking director in one corporation is substantial and his

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interest in the other corporation or corporations is merely nominal, he shall be subject to the provisions of the preceding section insofar as the latter corporation or corporations are concerned.

Stockholdings exceeding twenty (20%) percent of the outstanding capital stock shall be considered substantial for purposes of interlocking directors.

Section 34. *Disloyalty of a director.* — Where a director, by virtue of his office, acquires for himself a business opportunity which should belong to the corporation, thereby obtaining profits to the prejudice of such corporation, he must account to the latter for all such profits by refunding the same, unless his act has been ratified by a vote of the stockholders owning or representing at least two-thirds (2/3) of the outstanding capital stock. This provision shall be applicable, notwithstanding the fact that the director risked his own funds in the venture.

Koruga's invocation of the provisions of the Corporation Code is misplaced. In an earlier case with similar antecedents, we ruled that:

The Corporation Code, however, is a general law applying to all types of corporations, while the New Central Bank Act regulates specifically banks and other financial institutions, including the dissolution and liquidation thereof. As between a general and special law, the latter shall prevail — *generalia specialibus non derogant*.[31]

Consequently, it is not the Interim Rules of Procedure on Intra-Corporate Controversies,[32] or Rule 59 of the Rules of Civil Procedure on Receivership, that would apply to this case. Instead, Sections 29 and 30 of the *New Central Bank Act* should be followed, *viz.*:

Section 29. *Appointment of Conservator.* — Whenever, on the basis of a report submitted by the appropriate supervising or examining department, the Monetary Board finds that a bank or a quasi-bank is

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[31] *In Re: Petition for Assistance in the Liquidation of the Rural Bank of Bokod (Benguet), Inc., PDIC v. Bureau of Internal Revenue*, G.R. No. 158261, December 18, 2006, 511 SCRA 123, 141, citing *Laureano v. Court of Appeals*, 381 Phil. 403, 411-412 (2000).

[32] A.M. No. 01-2-04-SC dated April 1, 2001.

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in a state of continuing inability or unwillingness to maintain a condition of liquidity deemed adequate to protect the interest of depositors and creditors, the Monetary Board may appoint a conservator with such powers as the Monetary Board shall deem necessary to take charge of the assets, liabilities, and the management thereof, reorganize the management, collect all monies and debts due said institution, and exercise all powers necessary to restore its viability. The conservator shall report and be responsible to the Monetary Board and shall have the power to overrule or revoke the actions of the previous management and board of directors of the bank or quasi-bank.

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The Monetary Board shall terminate the conservatorship when it is satisfied that the institution can continue to operate on its own and the conservatorship is no longer necessary. The conservatorship shall likewise be terminated should the Monetary Board, on the basis of the report of the conservator or of its own findings, determine that the continuance in business of the institution would involve probable loss to its depositors or creditors, in which case the provisions of Section 30 shall apply.

Section 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:

(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;

(b) has insufficient realizable assets, as determined by the Bangko Sentral, to meet its liabilities; or

(c) cannot continue in business without involving probable losses to its depositors or creditors; or

(d) has willfully 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.**

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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.

The designation of a conservator under Section 29 of this Act or **the appointment of a receiver under this section shall be vested exclusively with the Monetary Board**. Furthermore, the designation of a conservator is not a precondition to the designation of a receiver.[33]

On the strength of these provisions, it is the Monetary Board that exercises exclusive jurisdiction over proceedings for receivership of banks.

Crystal clear in Section 30 is the provision that says the "appointment of a receiver under this section shall be vested exclusively with the Monetary Board." The term "exclusively" connotes that only the Monetary Board can resolve the issue of whether a bank is to be placed under receivership and, upon an affirmative finding, it also has authority to appoint a receiver. This is further affirmed by the fact that the law allows the Monetary Board to take action "summarily and without need for prior hearing."

And, as a clincher, the law explicitly provides that "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 a 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."

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[33] Emphasis supplied.

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From the foregoing disquisition, there is no doubt that the RTC has no jurisdiction to hear and decide a suit that seeks to place Banco Filipino under receivership.

Koruga herself recognizes the BSP's power over the allegedly unlawful acts of Banco Filipino's directors. The records of this case bear out that Koruga, through her legal counsel, wrote the Monetary Board[34] on April 21, 2003 to bring to its attention the acts she had enumerated in her complaint before the RTC. The letter reads in part:

> Banco Filipino and the current members of its Board of Directors should be placed under investigation for violations of banking laws, the commission of irregularities, and for conducting business in an unsafe or unsound manner. They should likewise be placed under preventive suspension by virtue of the powers granted to the Monetary Board under Section 37 of the Central Bank Act. These blatant violations of banking laws should not go by without penalty. They have put Banco Filipino, its depositors and stockholders, and the entire banking system (sic) in jeopardy.
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> x x x x x x x x x
>
> We urge you to look into the matter in your capacity as regulators. Our clients, a minority stockholders, (sic) and many depositors of Banco Filipino are prejudiced by a failure to regulate, and taxpayers are prejudiced by accommodations granted by the BSP to Banco Filipino[35]

In a letter dated May 6, 2003, BSP Supervision and Examination Department III Director Candon B. Guerrero referred Koruga's letter to Arcenas for comment.[36] On June 6, 2003, Banco Filipino's then Executive Vice President and Corporate Secretary Francisco A. Rivera submitted the bank's comments essentially arguing that Koruga's accusations lacked legal and factual bases.[37]

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[34] *Rollo* (G.R. No. 169053), pp. 266-272.

[35] *Id.* at 271-272. (Citations omitted.)

[36] *Id.* at p.457.

[37] *Id.* at pp. 459-462.

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On the other hand, the BSP, in its Answer before the RTC, said that it had been looking into Banco Filipino's activities. An October 2002 Report of Examination (ROE) prepared by the Supervision and Examination Department (SED) noted certain *dacion* payments, out-of-the-ordinary expenses, among other dealings. On July 24, 2003, the Monetary Board passed Resolution No. 1034 furnishing Banco Filipino a copy of the ROE with instructions for the bank to file its comment or explanation within 30 to 90 days under threat of being fined or of being subjected to other remedial actions. The ROE, the BSP said, covers substantially the same matters raised in Koruga's complaint. At the time of the filing of Koruga's complaint on August 20, 2003, the period for Banco Filipino to submit its explanation had not yet expired.[38]

Thus, the court's jurisdiction could only have been invoked after the Monetary Board had taken action on the matter and only 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.

Finally, there is one other reason why Koruga's complaint before the RTC cannot prosper. Given her own admission — and the same is likewise supported by evidence — that she is merely a minority stockholder of Banco Filipino, she would not have the standing to question the Monetary Board's action. Section 30 of the New Central Bank Act provides:

> 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.

All the foregoing discussion yields the inevitable conclusion that the CA erred in upholding the jurisdiction of, and remanding the case to, the RTC. Given that the RTC does not have jurisdiction over the subject matter of the case, its refusal to dismiss the case on that ground amounted to grave abuse of discretion.

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[38] CA *rollo*, p. 460.

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WHEREFORE, the foregoing premises considered, the Petition in G.R. No. 168332 is *DISMISSED*, while the Petition in G.R. No. 169053 is *GRANTED*. The Decision of the Court of Appeals dated July 20, 2005 in CA-G.R. SP No. 88422 is hereby *SET ASIDE*. The Temporary Restraining Order issued by this Court on March 13, 2006 is made *PERMANENT*. Consequently, Civil Case No. 03-985, pending before the Regional Trial Court of Makati City, is *DISMISSED*.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Velasco, Jr., and *Peralta, JJ.,* concur.

EN BANC

[G.R. No. 168693. June 19, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JESSIE MARIANO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; MERE TOUCHING OF THE LABIA SUFFICIENT TO CONSUMMATE RAPE.— We find that the medical findings of Dr. Bandonil are not incompatible with the victim's claim of rape. He categorically declared that the possible cause for the swelling of the victim's hymen could be the male organ which would connote that accused-appellant's penis indeed touched the labia of AAA's organ. The mere touching by the male organ of the labia of the pudendum of the woman's private part is sufficient to consummate rape. The fact that there was no deep penetration of the victim's vagina and that her hymen was intact does not negate rape, since this crime is committed even with the slightest penetration of a woman's sex organ. Significantly, in a number of cases, we