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THIRD DIVISION

[G.R. No. 176959. September 8, 2010]

METROPOLITAN BANK & TRUST COMPANY, INC. (as successor-in-interest of the banking operations of Global Business Bank, Inc. formerly known as PHILIPPINE BANKING CORPORATION), *petitioner, vs.* **THE BOARD OF TRUSTEES OF RIVERSIDE MILLS CORPORATION PROVIDENT AND RETIREMENT FUND, represented by ERNESTO TANCHI, JR., CESAR SALIGUMBA, AMELITA SIMON, EVELINA OCAMPO and CARLITOS Y. LIM, RMC UNPAID EMPLOYEES ASSOCIATION, INC., and THE INDIVIDUAL BENEFICIARIES OF THE PROVIDENT AND RETIREMENT FUND OF RMC,** *respondents.*

SYLLABUS

1. **CIVIL LAW; TRUST; ELUCIDATED.—** A trust is a "fiduciary relationship with respect to property which involves the existence of equitable duties imposed upon the holder of the title to the property to deal with it for the benefit of another." A trust is either express or implied. Express trusts are those which the direct and positive acts of the parties create, by some writing or deed, or will, or by words evincing an intention to create a trust.

2. **LABOR AND SOCIAL LEGISLATION; EMPLOYMENT; EMPLOYEES' TRUSTS OR BENEFIT PLANS.—** Employees' trusts or benefit plans are intended to provide economic assistance to employees upon the occurrence of certain contingencies, particularly, old age retirement, death, sickness, or disability. They give security against certain hazards to which members of the Plan may be exposed. They are independent and additional sources of protection for the working group and established for their exclusive benefit and for no other purpose.

3. **ID.; ID.; TERMINATION; DISMISSAL FOR JUST CAUSE DISTINGUISHED FROM DISMISSAL FOR AUTHORIZED**

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CAUSE.— Under the Labor Code, as amended, an employee may be dismissed for just or authorized causes. A dismissal for just cause under Article 282 of the Labor Code, as amended, implies that the employee is guilty of some misfeasance towards his employer, *i.e.* the employee has committed serious misconduct in relation to his work, is guilty of fraud, has perpetrated an offense against the employer or any immediate member of his family, or has grossly and habitually neglected his duties. Essentially, it is an act of the employee that sets off the dismissal process in motion. On the other hand, a dismissal for an authorized cause under Article 283 and 284 of the Labor Code, as amended, does not entail any wrongdoing on the part of the employee. Rather, the termination of employment is occasioned by the employer's exercise of management prerogative or by the illness of the employee – matters beyond the worker's control. The distinction between just and authorized causes for dismissal lies in the fact that payment of separation pay is required in dismissals for an authorized cause but not so in dismissals for just cause. The rationale behind this rule was explained in the case of *Phil. Long Distance Telephone Co. v. NLRC* and reiterated in *San Miguel Corporation v. Lao*, thus: We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice. x x x *The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged.* At best[,] it may mitigate the penalty but it certainly will not condone the offense.

4. COMMERCIAL LAW; CORPORATION LAW; DISSOLVED CORPORATION TO CONTINUE AS BODY CORPORATE FOR THREE (3) YEARS; TRUSTEE THEREOF MAY COMMENCE SUIT WHICH CAN PROCEED FINAL JUDGMENT EVEN BEYOND THREE (3) YEAR PERIOD OF LIQUIDATION.— Under Section 122 of the Corporation Code,

a dissolved corporation shall nevertheless continue as a body corporate for three (3) years for the purpose of prosecuting and defending suits by or against it and enabling it to settle and close its affairs, to dispose and convey its property and to distribute its assets, but not for the purpose of continuing the business for which it was established. Within those three (3) years, the corporation may appoint a trustee or receiver who shall carry out the said purposes beyond the three (3)-year winding-up period. Thus, a trustee of a dissolved corporation may commence a suit which can proceed to final judgment even beyond the three (3)-year period of liquidation.

5. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; PROPRIETY THEREOF.— Article 2208(2) of the Civil Code allows the award of attorney's fees in cases where the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest. Attorney's fees may be awarded by a court to one (1) who was compelled to litigate with third persons or to incur expenses to protect his or her interest by reason of an unjustified act or omission of the party from whom it is sought.

APPEARANCES OF COUNSEL

Sedigo & Associates for petitioner.

Nathaniel F. Sauz for RMC Unpaid Employees Association Inc. & the Beneficiaries of Provident Fund.

Tan & Venturanza Law Offices for Ernesto Tanchi, Jr.

D E C I S I O N

VILLARAMA, JR., *J.*:

This petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, prays for the reversal of the Decision[1] dated November 7, 2006 and Resolution[2] dated

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[1] *Rollo*, pp. 38-45. Penned by Associate Justice Estela M. Perlas-Bernabe and concurred in by Associate Justices Renato C. Dacudao and Rosmari D. Carandang.

[2] *Id.* at 63.

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March 5, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 76642. The CA had affirmed the Decision[3] dated June 27, 2002 of the Regional Trial Court (RTC), Branch 137, Makati City in Civil Case No. 97-997 which declared invalid the reversion or application of the Riverside Mills Corporation Provident and Retirement Fund (RMCPRF) to the outstanding obligation of Riverside Mills Corporation (RMC) with Philippine Banking Corporation (Philbank).

The facts are as follows:

On November 1, 1973, RMC established a Provident and Retirement Plan[4] (Plan) for its regular employees. Under the Plan, RMC and its employees shall each contribute 2% of the employee's current basic monthly salary, with RMC's contribution to increase by 1% every five (5) years up to a maximum of 5%. The contributions shall form part of the provident fund (the Fund) which shall be held, invested and distributed by the Commercial Bank and Trust Company. Paragraph 13 of the Plan likewise provided that the Plan "may be amended or terminated by the Company at any time on account of business conditions, but no such action shall operate to permit any part of the assets of the Fund to be used for, or diverted to purposes other than for the exclusive benefit of the members of the Plan and their … beneficiaries. In no event shall any part of the assets of the Fund revert to [RMC] before all liabilities of the Plan have been satisfied."[5]

On October 15, 1979, the Board of Trustees of RMCPRF (the Board) entered into an Investment Management Agreement[6] (Agreement) with Philbank (now, petitioner Metropolitan Bank and Trust Company). Pursuant to the Agreement, petitioner shall act as an agent of the Board and shall hold, manage, invest and reinvest the Fund in Trust Account No. 1797 in its behalf.

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[3] *Id.* at 89-98.

[4] Records, Vol. 2, pp. 409-411.

[5] *Id.*

[6] *Id.* at 295-301.

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The Agreement shall be in force for one (1) year and shall be deemed automatically renewed unless sooner terminated either by petitioner bank or by the Board.

In 1984, RMC ceased business operations. Nonetheless, petitioner continued to render investment services to respondent Board. In a letter[7] dated September 27, 1995, petitioner informed respondent Board that Philbank's Board of Directors had decided to apply the remaining trust assets held by it in the name of RMCPRF against part of the outstanding obligations of RMC.

Subsequently, respondent RMC Unpaid Employees Association, Inc. (Association), representing the terminated employees of RMC, learned of Trust Account No. 1797. Through counsel, they demanded payment of their share in a letter[8] dated February 4, 1997. When such demand went unheeded, the Association, along with the individual members of RMCPRF, filed a complaint for accounting against the Board and its officers, namely, Ernesto Tanchi, Jr., Carlitos Y. Lim, Amelita G. Simon, Evelina S. Ocampo and Cesar Saligumba, as well as petitioner bank. The case was docketed as Civil Case No. 97-997 in the RTC of Makati City, Branch 137.

On June 2, 1998, during the trial, the Board passed a Resolution[9] in court declaring that the Fund belongs exclusively to the employees of RMC. It authorized petitioner to release the proceeds of Trust Account No. 1797 through the Board, as the court may direct. Consequently, plaintiffs amended their complaint to include the Board as co-plaintiffs.

On June 27, 2002, the RTC rendered a decision in favor of respondents. The trial court declared invalid the reversion and application of the proceeds of the Fund to the outstanding obligation of RMC to petitioner bank. The *fallo* of the decision reads:

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[7] *Id.* at 316.

[8] *Id.* at 427-428.

[9] Records, Vol. I, p. 241.

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WHEREFORE, judgment is hereby rendered:

1. Declaring INVALID the reversion or application of the Riverside Mills Corporation Provident and Retirement Fund as payment for the outstanding obligation of Riverside Mills Corporation with defendant Philippine Banking Corporation.

2. Defendant Philippine Banking Corporation (now [Global Bank]) is hereby ordered to:

   a. Reverse the application of the Riverside Mills Corporation Provident and Retirement Fund as payment for the outstanding obligation of Riverside Mills Corporation with defendant Philippine Banking Corporation;

   b. Render a complete accounting of the Riverside Mills Corporation Provident and Retirement Fund; the Fund will then be subject to disposition by plaintiff Board of Trustees in accordance with law and the Provident Retirement Plan;

   c. Pay attorney's fees equivalent to 10% of the total amounts due to plaintiffs Riverside Mills Unpaid Employees Association and the individual beneficiaries of the Riverside Mills Corporation Provident and Retirement Fund; and costs of suit.

3. The Riverside Mills Corporation Provident and Retirement Fund is ordered to determine the beneficiaries of the FUND entitled to benefits, the amount of benefits per beneficiary, and pay such benefits to the individual beneficiaries.

SO ORDERED.[10]

On appeal, the CA affirmed the trial court. It held that the Fund is distinct from RMC's account in petitioner bank and may not be used except for the benefit of the members of RMCPRF. Citing Paragraph 13 of the Plan, the appellate court stressed that the assets of the Fund shall not revert to the Company until after the liabilities of the Plan had been satisfied. Further, the Agreement was specific that upon the termination of the Agreement, petitioner shall deliver the Fund to the Board

[10] *Rollo,* pp. 97-98.

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or its successor, and not to RMC as trustor. The CA likewise sustained the award of attorney's fees to respondents.[11]

Hence, this petition.

Before us, petitioner makes the following assignment of errors:

I.

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE REVERSION AND APPLICATION BY PHILBANK OF THE FUND IN PAYMENT OF THE LOAN OBLIGATIONS OF RIVERSIDE MILLS CORPORATION WERE INVALID.[12]

II.

THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN DECLARING THAT "BY HAVING ENTERED INTO AN AGREEMENT WITH THE BOARD, (PHILBANK) IS NOW ESTOPPED TO QUESTION THE LATTER'S AUTHORITY AS WELL AS THE TERMS AND CONDITIONS THEREOF."[13]

III.

THE HONORABLE COURT COMMITTED REVERSIBLE ERROR IN AWARDING ATTORNEY'S FEES TO PLAINTIFFS-APPELLEES ON THE BASIS THAT "[PHILBANK] WAS REMISS IN ITS DUTY TO TREAT RMCPRF'S ACCOUNT WITH THE HIGHEST DEGREE OF CARE CONSIDERING THE FIDUCIARY NATURE OF THEIR RELATIONSHIP, PERFORCE, THE PLAINTIFFS-APPELLEES WERE COMPELLED TO LITIGATE TO PROTECT THEIR RIGHT."[14]

The fundamental issue for our determination is whether the proceeds of the RMCPRF may be applied to satisfy RMC's debt to Philbank.

Petitioner contends that RMC's closure in 1984 rendered the RMCPRF Board of Trustees *functus officio* and devoid of authority to act on behalf of RMCPRF. It thus belittles the

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[11] *Id.* at 43-44.

[12] *Id.* at 22.

[13] *Id.* at 26.

[14] *Id.* at 28.

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RMCPRF Board Resolution dated June 2, 1998, authorizing the release of the Fund to several of its supposed beneficiaries. Without known claimants of the Fund for eleven (11) years since RMC closed shop, it was justifiable for petitioner to consider the Fund to have "technically reverted" to, and formed part of RMC's assets. Hence, it could be applied to satisfy RMC's debts to Philbank. Petitioner also disputes the award of attorney's fees in light of the efforts taken by Philbank to ascertain claims before effecting the reversion.

Respondents for their part, belie the claim that petitioner exerted earnest efforts to ascertain claims. Respondents cite petitioner's omission to publish a notice in newspapers of general circulation to locate claims against the Fund. To them, petitioner's act of addressing the letter dated September 27, 1995 to the Board is a recognition of its authority to act for the beneficiaries. For these reasons, respondents believe that the reversion of the Fund to RMC is not only unwarranted but unconscionable. For being compelled to litigate to protect their rights, respondents also defend the award of attorney's fees to be proper.

The petition has no merit.

A trust is a "fiduciary relationship with respect to property which involves the existence of equitable duties imposed upon the holder of the title to the property to deal with it for the benefit of another." A trust is either express or implied. Express trusts are those which the direct and positive acts of the parties create, by some writing or deed, or will, or by words evincing an intention to create a trust.[15]

Here, the RMC Provident and Retirement Plan created an express trust to provide retirement benefits to the regular employees of RMC. RMC retained legal title to the Fund but held the same in trust for the employees-beneficiaries. Thus, the allocation under the Plan is directly credited to each member's account:

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[15] *Development Bank of the Philippines v. Commission on Audit*, G.R. No. 144516, February 11, 2004, 422 SCRA 459, 472.

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6. Allocation:

a. Monthly Contributions:

1. Employee – to be **credited to his account**.

2. Employer – to be **credited to the respective member's account** as stated under the contribution provision.

b. Investment Earnings – semestral valuation of the fund shall be made and any earnings or losses shall **be credited or debited, as the case may be, to each member's account** in proportion to his account balances based on the last proceeding (sic) [preceding] accounting period.

c. Forfeitures – shall be retained in the fund.[16] (Emphasis supplied.)

The trust was likewise a revocable trust as RMC reserved the power to terminate the Plan after all the liabilities of the Fund to the employees under the trust had been paid. Paragraph 13 of the Plan provided that "[i]n no event shall any part of the assets of the Fund revert to the Company before all liabilities of the Plan have been satisfied."

Relying on this clause, petitioner, as the Fund trustee, considered the Fund to have "technically reverted" to RMC, allegedly after no further claims were made thereon since November 1984. Thereafter, it applied the proceeds of the Fund to RMC's debt with the bank pursuant to Paragraph 9 of Promissory Note No. 1618-80[17] which RMC executed on May 12, 1981. The pertinent provision of the promissory note reads:

IN THE EVENT THAT THIS NOTE IS NOT PAID AT MATURITY OR WHEN THE SAME BECOMES DUE UNDER ANY OF THE PROVISIONS HEREOF, I/WE HEREBY AUTHORIZE THE BANK AT ITS OPTION AND WITHOUT NOTICE, TO APPLY TO THE PAYMENT OF THIS NOTE, ANY AND ALL MONEYS, SECURITIES AND THINGS OF VALUE WHICH MAY BE IN ITS HAND OR ON

[16] Records, Vol. 2, p. 409.

[17] *Id.* at 512.

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DEPOSIT OR OTHERWISE **BELONGING TO ME/US** AND, FOR THIS PURPOSE, I/WE HEREBY, JOINTLY AND SEVERALLY, IRREVOCABLY CONSTITUTE AND APPOINT THE SAID BANK TO BE MY/OUR TRUE ATTORNEY-IN-FACT WITH FULL POWER AND AUTHORITY FOR ME/US AND IN MY/OUR NAME AND BEHALF, AND WITHOUT PRIOR NOTICE, TO NEGOTIATE, SELL AND TRANSFER ANY MONEYS, SECURITIES AND THINGS OF VALUE WHICH IT MAY HOLD, BY PUBLIC OR PRIVATE SALE, AND APPLY THE PROCEEDS THEREOF TO THE PAYMENT OF THIS NOTE. (Emphasis supplied.)

Petitioner contends that it was justified in supposing that reversion had occurred because its efforts to locate claims against the Fund from the National Labor Relations Commission (NLRC), the lower courts, the CA and the Supreme Court proved futile.

We are not convinced.

Employees' trusts or benefit plans are intended to provide economic assistance to employees upon the occurrence of certain contingencies, particularly, old age retirement, death, sickness, or disability. They give security against certain hazards to which members of the Plan may be exposed. They are independent and additional sources of protection for the working group and established for their exclusive benefit and for no other purpose.[18] Here, while the Plan provides for a reversion of the Fund to RMC, this cannot be done until all the liabilities of the Plan have been paid. And when RMC ceased operations in 1984, the Fund became liable for the payment not only of the benefits of qualified retirees at the time of RMC's closure but also of those who were separated from work as a consequence of the closure. Paragraph 7 of the Retirement Plan states:

Separation from Service:

A member who is separated from the service of the Company before satisfying the conditions for retirement due to resignation **or any reason other than dismissal for cause shall be paid the balance**

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[18] *Commissioner of Internal Revenue v. Court of Appeals*, G.R. No. 95022, March 23, 1992, 207 SCRA 487, 495.

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of his account as of the last day of the month prior to separation. The amount representing the Company's contribution and income thereon standing to the credit of the separating member shall be paid to him as follows:

Completed Years of Membership	% of Company's Contribution and Earnings Thereon Payable
0 – 5	NIL
6 – 10	20%
11 – 15	40%
16 – 20	60%
21 – 25	80%
25 – over	100%

A member who is separated for cause shall not be entitled to withdraw the total amount representing his contribution and that of the Company including the earned interest thereon, and the employer's contribution shall be retained in the fund.[19] (Emphasis supplied.)

The provision makes reference to a member-employee who is dismissed for cause. Under the Labor Code, as amended, an employee may be dismissed for just or authorized causes. A dismissal for just cause under Article 282[20] of the Labor Code, as amended, implies that the employee is guilty of some

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[19] Records, Vol. 2, pp. 409-410.

[20] ART. 282. *TERMINATION BY EMPLOYER*.-An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

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misfeasance towards his employer, *i.e.* the employee has committed serious misconduct in relation to his work, is guilty of fraud, has perpetrated an offense against the employer or any immediate member of his family, or has grossly and habitually neglected his duties. Essentially, it is an act of the employee that sets off the dismissal process in motion.

On the other hand, a dismissal for an authorized cause under Article 283[21] and 284[22] of the Labor Code, as amended, does not entail any wrongdoing on the part of the employee. Rather, the termination of employment is occasioned by the employer's exercise of management prerogative or by the illness of the employee – matters beyond the worker's control.

The distinction between just and authorized causes for dismissal lies in the fact that payment of separation pay is required in dismissals for an authorized cause but not so in dismissals

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[21] ART. 283. *CLOSURE OF ESTABLISHMENT AND REDUCTION OF PERSONNEL*. - The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the worker and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or at least (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered as one (1) whole year.

[22] ART. 284. *DISEASE AS GROUND FOR TERMINATION*. - An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: *Provided*, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

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for just cause. The rationale behind this rule was explained in the case of *Phil. Long Distance Telephone Co. v. NLRC*[23] and reiterated in *San Miguel Corporation v. Lao*,[24] thus:

> We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice.
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> *The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged.* At best[,] it may mitigate the penalty but it certainly will not condone the offense.

In *San Miguel Corporation v. Lao*, we reversed the CA ruling which granted retirement benefits to an employee who was found by the Labor Arbiter and the NLRC to have been properly dismissed for willful breach of trust and confidence.

Applied to this case, the penal nature of the provision in Paragraph 7 of the Plan, whereby a member separated for cause shall not be entitled to withdraw the contributions made by him and his employer, indicates that the "separation for cause" being referred to therein is any of the just causes under Article 282 of the Labor Code, as amended.

To be sure, the cessation of business by RMC is an authorized cause for the termination of its employees. Hence, not only those qualified for retirement should receive their total benefits under the Fund, but those laid off should also be entitled to collect the balance of their account as of the last day of the month prior to RMC's closure. In addition, the Plan provides

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[23] No. 80609, August 23, 1988, 164 SCRA 671, 682.

[24] G.R. Nos. 143136-37, July 11, 2002, 384 SCRA 504, 511.

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that the separating member shall be paid a maximum of 40% of the amount representing the Company's contribution and its income standing to his credit. Until these liabilities shall have been settled, there can be no reversion of the Fund to RMC.

Under Paragraph 6[25] of the Agreement, petitioner's function shall be limited to the liquidation and return of the Fund to the Board upon the termination of the Agreement. Paragraph 14 of said Agreement further states that "it shall be the duty of the Investment Manager to assign, transfer, and pay over to its successor or successors all cash, securities, and other properties held by it constituting the fund less any amounts constituting the charges and expenses which are authorized [under the Agreement] to be payable from the Fund."[26] Clearly, petitioner had no power to effect reversion of the Fund to RMC.

The reversion petitioner effected also could hardly be said to have been done in good faith and with due regard to the rights of the employee-beneficiaries. The restriction imposed under Paragraph 13 of the Plan stating that "in no event shall any part of the assets of the Fund revert to the Company before all liabilities of the Plan have been satisfied," demands more than a passive stance as that adopted by petitioner in locating claims against the Fund. Besides, the beneficiaries of the Fund are readily identifiable – the regular or permanent employees of RMC who were qualified retirees and those who were terminated as a result of its closure. Petitioner needed only to secure a list of the employees concerned from the Board of Trustees which was its principal under the Agreement and the trustee of the Plan or from RMC which was the trustor of the Fund under the Retirement Plan. Yet, petitioner notified respondent Board of Trustees only after Philbank's Board of

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[25] The power, duties and discretion conferred upon the Investment Manager by virtue of this Agreement shall continue for purposes of **liquidation and return of the Fund only**, after the notice of termination of this Agreement has been served in writing **until final delivery of the Fund to the Board of Trustees** or its successors-in-interest or assigns. (Emphasis supplied.) Records, Vol. 2, p. 297.

[26] Records, Vol. 2, p. 299.

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Directors had decided to apply the remaining trust assets of RMCPRF to the liabilities of the company.

Petitioner nonetheless assails the authority of the Board of Trustees to issue the Resolution of June 2, 1998 recognizing the exclusive ownership of the Fund by the employees of RMC and authorizing its release to the beneficiaries as may be ordered by the trial court. Petitioner contends that the cessation of RMC's operations ended not only the Board members' employment in RMC, but also their tenure as members of the RMCPRF Board of Trustees.

Again, we are not convinced. Paragraph 13 of the Plan states that "[a]lthough it is expected that the Plan will continue indefinitely, it may be amended or terminated by the Company at any time on account of business conditions." There is no dispute as to the management prerogative on this matter, considering that the Fund consists primarily of contributions from the salaries of members-employees and the Company. However, it must be stressed that the RMC Provident and Retirement Plan was primarily established for the benefit of regular and permanent employees of RMC. As such, the Board may not unilaterally terminate the Plan without due regard to any accrued benefits and rightful claims of members-employees. Besides, the Board is bound by Paragraph 13 prohibiting the reversion of the Fund to RMC before all the liabilities of the Plan have been satisfied.

As to the contention that the functions of the Board of Trustees ceased upon with RMC's closure, the same is likewise untenable.

Under Section 122[27] of the Corporation Code, a dissolved corporation shall nevertheless continue as a body corporate

[27] SEC. 122. *Corporate liquidation*. - Every corporation whose charter expires by its own limitation or is annulled by forfeiture or otherwise, or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for three (3) years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and enabling it to settle and close its affairs, to dispose of and convey its property and to distribute its assets, but not for the purpose of continuing the business for which it was established.

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for three (3) years for the purpose of prosecuting and defending suits by or against it and enabling it to settle and close its affairs, to dispose and convey its property and to distribute its assets, but not for the purpose of continuing the business for which it was established. Within those three (3) years, the corporation may appoint a trustee or receiver who shall carry out the said purposes beyond the three (3)-year winding-up period. Thus, a trustee of a dissolved corporation may commence a suit which can proceed to final judgment even beyond the three (3)-year period of liquidation.[28]

In the same manner, during and beyond the three (3)-year winding-up period of RMC, the Board of Trustees of RMCPRF may do no more than settle and close the affairs of the Fund. The Board retains its authority to act on behalf of its members, *albeit,* in a limited capacity. It may commence suits on behalf of its members but not continue managing the Fund for purposes of maximizing profits. Here, the Board's act of issuing the Resolution authorizing petitioner to release the Fund to its beneficiaries is still part of the liquidation process, that is, satisfaction of the liabilities of the Plan, and does not amount to doing business. Hence, it was properly within the Board's power to promulgate.

At any time during said three (3) years, said corporation is authorized and empowered to convey all of its property to trustees for the benefit of stockholders, members, creditors, and other persons in interest. From and after any such conveyance by the corporation of its property in trust for the benefit of its stockholders, members, creditors and others in interest, all interests which the corporation had in the property terminates, the legal interest vests in the trustees, and the beneficial interest in the stockholders, members, creditors or other persons in interest.

Upon winding up of the corporate affairs, any asset distributable to any creditor or stockholder or member who is unknown or cannot be found shall be escheated to the city or municipality where such assets are located.

Except by decrease of capital stock and as otherwise allowed by this Code, no corporation shall distribute any of its assets or property except upon lawful dissolution and after payment of all its debts and liabilities.

[28] *Knecht v. United Cigarette Corp.*, G.R. No. 139370, July 4, 2002, 384 SCRA 45, 57, citing *Reburiano v. Court of Appeals*, G.R. No. 102965, January 21, 1999, 301 SCRA 342, 353.

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Anent the award of attorney's fees to respondents, we find the same to be in order. Article 2208(2) of the Civil Code allows the award of attorney's fees in cases where the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest. Attorney's fees may be awarded by a court to one (1) who was compelled to litigate with third persons or to incur expenses to protect his or her interest by reason of an unjustified act or omission of the party from whom it is sought.[29]

Here, petitioner applied the Fund in satisfaction of the obligation of RMC without authority and without bothering to inquire regarding unpaid claims from the Board of Trustees of RMCPRF. It wrote the members of the Board only after it had decided to revert the Fund to RMC. Upon being met with objections, petitioner insisted on the reversion of the Fund to RMC, despite the clause in the Plan that prohibits such reversion before all liabilities shall have been satisfied, thereby leaving respondents with no choice but to seek judicial relief.

WHEREFORE, the petition for review on *certiorari* is hereby *DENIED*. The Decision dated November 7, 2006 and the Resolution dated March 5, 2007 of the Court of Appeals in CA-G.R. CV No. 76642 are *AFFIRMED*.

With costs against the petitioner.

SO ORDERED.

Carpio Morales (Chairperson), Bersamin, Del Castillo,[*] and *Sereno, JJ.,* concur.

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[29] *Republic v. Court of Appeals*, G.R. No. 160379, August 14, 2009, 596 SCRA 57, 76.

[*] Designated additional member per Special Order No. 879 dated August 13, 2010.