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FIRST DIVISION

[G.R. No. 154973. June 21, 2005]

THE PRESIDENT OF PHILIPPINE DEPOSIT INSURANCE CORPORATION AS LIQUIDATOR OF PACIFIC BANKING CORPORATION, *petitioner, vs.* **HON. WILFREDO D. REYES, Pairing Judge, RTC Manila, Branch 31; ANG ENG JOO; ANG KEONG LAN; and E.J. ANG INTERNATIONAL, LTD., represented by FORNIER & FORNIER LAW,** *respondents*.

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NOT A REMEDY FOR ERRORS OF JUDGMENT THAT CAN BE CORRECTED BY APPEAL.—** A petition for *certiorari* is the proper remedy when a tribunal, board, or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal nor any plain, speedy, and adequate remedy at law. *Grave abuse of discretion* is defined as the capricious, whimsical exercise of judgment as is equivalent to lack of jurisdiction. An error of judgment committed in the exercise of its legitimate jurisdiction is not the same as *grave abuse of discretion*. Thus, the special writ of *certiorari* is not the remedy for errors of judgment that can be corrected by appeal.

2. **ID.; ID.; ID.; MAY BE TREATED AS AN APPEAL UNDER RULE 45 OF THE RULES OF CIVIL PROCEDURE IN THE INTEREST OF JUSTICE.—** Although denominated as a petition for *certiorari* under Rule 65 of the Rules of Civil Procedure, the petition assigns errors of judgment of the Court of Appeals. It does not allege grave abuse of discretion committed by the Court of Appeals. However, in the interest of justice, this Court shall treat the petition as an appeal under Rule 45 of the Rules of Civil Procedure especially since it was filed within the reglementary period for filing an appeal.

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3. ID.; JUDGMENT; LAW OF THE CASE; PRINCIPLE; CASE AT BAR.— According to the principle of the *law of the case*, "whatever is once irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case." To this the Court must adhere, whether the legal principles laid down were "correct on general principles or not," or "whether the question is right or wrong." As a result, upon the finality of the 11 September 1992 Order, the following issues were laid to rest: (1) the Singaporeans are deemed preferred creditors; and (2) they are entitled to the payment of their total investment amounting to US$2,531,632.18. The determination of interests or dividends was, however, deferred pending a report to be submitted by the Liquidator. It was only in the 12 May 1998 Order of the liquidation court that an interest was awarded, giving rise to a new question of law. Therefore, the award of interest is not a controlling legal rule or decision that had been previously established as between the parties, since the parties did not have the chance to argue on that issue.

4. ID.; DAMAGES; ACTUAL OR COMPENSATORY DAMAGES; INTEREST; GUIDELINES IN THE AWARD THEREOF.— In *Eastern Shipping Lines, Inc. v. Court of Appeals*, we laid down the following guidelines: I. When an obligation, regardless of its source, *i.e.*, law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages. II. With regard particularly to an award of interest, in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows: 1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code. 2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No

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interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged. 3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

5. ID.; ID.; ID.; ID.; ID.; AWARD OF 12% AND 6% INTEREST *PER ANNUM* UNWARRANTED IN CASE AT BAR; REASONS.— It is undisputed that the amount of US$2,531,632.58 remitted by the Singaporeans represented the 154,462 PaBC common shares previously issued to, and owned by, Mandarin Development Corporation bought by the Singaporeans at the price of US$16.39 per share. The investment was approved by the Central Bank under Monetary Board Resolution No. 323 dated 19 February 1982 and constituted about 11% of the total subscribed capital stock of PaBC. Clearly, the amount remitted to PaBC by the Singaporeans was an investment. An "investment" is an expenditure to acquire property or other assets in order to produce revenue. It is the placing of capital or laying out of money in a way intended to secure income or profit from its employment. "To invest" is to purchase securities of a more or less permanent nature, or to place money or property in business ventures or real estate, or otherwise lay it out, so that it may produce a revenue or income. Thus, unlike a deposit of money or a loan that earns interest, the investment of the Singaporeans cannot be assured of a dividend or an interest on the amount invested. For, interests or dividends are granted only after profits or gains are generated. We therefore agree with the Court of Appeals in holding that the amount of US$2,531,632.18 remitted by the Singaporeans

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to PaBC was not a loan or forbearance of money in favor of PaBC. Hence No. II-1 of the guidelines in *Eastern Shipping Lines* does not come into play. Neither can we apply Central Bank Circular No. 416, which imposes the rate of 12% *per annum* on loans and forbearance of money. Nor can No. II-2 of the above-quoted guidelines be invoked because, as correctly pointed out by the Liquidator, the closure of the PaBC did not constitute a breach of obligation. Article 2209 of the Civil Code, which was relied upon by the Court of Appeals, does not find application either. That Article, which provides for 6% interest *per annum*, governs when there is a delay in the payment of a sum of money. Such is not the case here. Thus, the Court of Appeals' award of 6% interest on the Singaporeans' equity investment as actual or compensatory damages from the date of its remittance until the closure of PaBC has no leg to stand on and must, therefore, be deleted.

6. ID.; ID.; ID.; ID.; GRANT OF 12% INTEREST *PER ANNUM* FROM THE FINALITY OF THE COURT'S ORDER UNTIL ITS FULL SATISFACTION NOT A BAR FROM CLAIMING LIQUIDATING DIVIDENDS WHICH MAY HAVE ACCRUED FROM EQUITY INVESTMENT.— The interest that may be awarded as actual or compensatory damages in this case is that provided in No. II-3 of the afore-quoted guidelines. Upon the finality of the Order of 11 September 1992, the award of US$2,531,632.18 representing the Singaporeans' equity investment became a judgment debt. As such, it shall bear an interest of 12% *per annum* from the finality of the Order until its full satisfaction. However, the grant of the said interest does not bar the Singaporeans from claiming liquidating dividends which may have accrued from their equity investment after being determined by the Liquidator. In the liquidation of a corporation, after the payment of all corporate debts and liabilities, the remaining assets, if any, must be distributed to the stockholders in proportion to their interests in the corporation. The share of each stockholder in the assets upon liquidation is what is known as *liquidating dividend*. Verily, the Singaporeans are entitled to 11% of the total liquidating dividend, this being in proportion to their 11% interest of the total subscribed capital stock of PaBC.

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APPEARANCES OF COUNSEL

Office of the Chief legal Counsel (PDIC) for petitioners.
Fornier Fornier Saño & Lagumbay Law Firm for private respondents.

D E C I S I O N

DAVIDE, JR., *C.J.*:

May an investment in a corporation, whose existence has been terminated, be entitled to an interest in the concept of actual and compensatory damages from the time such investment was made until the closure of the corporation? This is the pivotal issue in this petition for *certiorari* filed by the President of the Philippine Deposit Insurance Corporation (PDIC), in his capacity as the Liquidator of the Pacific Banking Corporation (PaBC).

The antecedent facts are as follows:

On 5 July 1985, pursuant to Resolution No. 699 of the Monetary Board of the Central Bank of the Philippines, the PaBC was placed under receivership on the ground of insolvency. Subsequently, it was placed under liquidation, and a liquidator was designated.

On 7 April 1986, the Central Bank of the Philippines, through the Office of the Solicitor General, filed with the Regional Trial Court (RTC) of Manila, Branch 31, a petition for assistance in the liquidation of PaBC.

On 17 May 1991, Vitaliano N. Nañagas, President of the PDIC, was appointed by the Central Bank as Liquidator.

On 26 June 1992, private respondents Ang Eng Joo, Ang Keong Lan, and E.J. Ang International Ltd. (hereafter Singaporeans), then represented by their attorney-in-fact Gonzalo C. Sy, filed their claim before the liquidating court. Citing Republic Act No. 5186, otherwise known as the *Investment Incentives Act*, they claimed to be preferred creditors and prayed for the return of their equity investment in the amount of US$2,531,632.18 with interest until the closure of the PaBC.

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After due hearing or on 11 September 1992, the liquidation court, through Presiding Judge Regino Veridiano II, issued an order that reads as follows:

> At this stage of the liquidation proceedings, the claimants who are foreign investors should already be paid. If there is any doubt as to whether claimants who are foreign investors should be treated as preferred claimants, the doubt should be resolved in favor of claimants since it is of judicial notice that government adopted the policy to entice foreign investors to help boost the economy. Claimants who are foreign investors should be treated with liberality such that they should be categorized among preferred creditors. Claimants were invited to invest at PaBC in 1981 and after a short period of less than four (4) years the bank was closed in 1985 due to mismanagement.[1]
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> xxx xxx xxx
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> WHEREFORE, premises considered, the Liquidator of PaBC is ordered to pay claimants through their Attorney-in-Fact Gonzalo C. Sy, their total investment of US$2,531,632.18 as preferred creditors. Dividends and/or interest that accrued in favor of claimants is hereby deferred pending study by the Liquidator who is hereby ordered to submit his report and recommendation within thirty (30) days from receipt of this Order.[2]

His motion for reconsideration having been denied, the Liquidator filed a notice of appeal. In an Order dated 28 October 1992, the liquidation court struck off the record the notice of appeal for having been filed beyond the 15-day period to appeal, and directed the execution of the Order of 11 September 1992.

The Liquidator thus filed a petition for *certiorari* before the Court of Appeals, which was, however, dismissed on the ground that the notice of appeal was correctly dismissed by the liquidation court for having been filed out of time. In our decision[3] of 20

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[1] *Rollo*, 463.

[2] *Pacific Banking Corporation Employees Organization v. Court of Appeals*, G.R. Nos. 109373 and 112991, 20 March 1995, 242 SCRA 492, 498.

[3] *Id*.

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March 1995 in G.R. Nos. 109373 and 112991, we sustained the Court of Appeals, but on a different ground. We held that while the Liquidator filed the notice of appeal within the reglementary 30-day period provided in special proceedings, he failed to file the requisite record on appeal, and thus the appeal was not perfected on time, causing the 11 September 1992 Order to become final and executory.

Consequently, the liquidation court, through the pairing judge Hon. Wilfredo D. Reyes, issued an Order dated 13 April 1998 implementing the execution order of 28 October 1992 by directing the President of the Land Bank of the Philippines (LBP) to release to the Sheriff the garnished amount of US$2,531,632.18 or its peso equivalent computed at the current exchange rate, to be paid to the Singaporeans.

The Bureau of Internal Revenue (BIR) and the Bangko Sentral ng Pilipinas promptly filed before the liquidation court separate motions to hold in abeyance the liquidation court's orders of 28 October 1992 and 13 April 1998.[4] The Liquidator also filed an urgent motion to prohibit the Singaporeans from withdrawing the money from their account with the LBP.[5] It was accompanied by an application for a temporary restraining order and/or preliminary injunction praying that Gonzalo C. Sy be prohibited from withdrawing the amount of ₱82,658,671.43 from his account with the LBP and be directed to return any funds that might already have been withdrawn by him.

On 12 May 1998, Judge Reyes issued an Order[6] denying the motions and ordered the payment of accrued legal interest on the Singaporeans' equity investment of US$2,531,632.18 at the rate of 12% per annum computed from 15 October 1981, the date the outward remittance and the investment were actually made, until its full payment, at the exchange rate prevailing at the time of payment.

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[4] *Rollo*, 94, 104.

[5] *Id.*, 104.

[6] *Id.*, 126-138.

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Finally, on 15 May 1998, Judge Reyes issued another Order[7] directing the President of the Philippine National Bank (PNB) to release the garnished amount sufficient to cover the additional sum of ₱172,374,220.64.

Aggrieved by these orders, the BIR, PDIC, and the Liquidator filed before the Court of Appeals a petition for *certiorari*, *mandamus*, and prohibition with a prayer for a temporary restraining order[8] assailing Judge Reyes' Orders of 13 April 1998, 12 May 1998, and 15 May 1998.

In its decision[9] of 31 January 2002, the Court of Appeals affirmed the Orders of 13 April 1998 and 15 May 1998, but modified the Order of 12 May 1998 as follows:

(1) [P]ayment of accrued legal interest in the sum of ₱56,034,877.04 still left uncollected shall be made to private respondents, Singaporeans, directly or through their new attorney-in-fact and legal counsel, the law firm of Fornier & Fornier;

(2) [E]njoining respondent Gonzalo C. Sy from withdrawing the garnished amount from his savings/current account with the Land Bank of the Philippines or any other bank in which funds released from the garnished accounts of PaBC, LBP and PNB have been deposited; and

(3) [A]n amount equivalent to 15% of the remaining garnished amount or the balance of accrued legal interest of Pesos 56,034,877.04 shall be withheld and remitted to petitioner Bureau of Internal Revenue, without prejudice to the right of said petitioner to make other assessments for taxes in the future.

Consequently, the writ of preliminary injunction issued on September 14, 1998 is hereby DISSOLVED. By virtue hereof, the garnished amount from the savings/current account with the Land Bank of the Philippines

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[7] *Id.*, 139.

[8] *Id.*, 140-171.

[9] *Id.*, 55-56. Per Associate Justice Bienvenido L. Reyes, with Presiding Justice Ma. Alicia Austria-Martinez (now Supreme Court Associate Justice) and Associate Justice Roberto A. Barrios concurring.

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or any other bank in which funds released from the garnished accounts of PaBC, LBP and PNB have been deposited may now be released only to private respondents, Singaporeans, directly or through their new attorney-in-fact and legal counsel, the law firm of Fornier & Fornier.[10]

After an unsuccessful motion for reconsideration,[11] the Liquidator came before us assigning the following errors:

4.1

THE RESPONDENT APPELLATE COURT COMMITTED A FUNDAMENTAL ERROR OF FACT AND LAW WHEN IT DECLARED THE SINGAPOREANS' EQUITY INVESTMENT WITH CLOSED PACIFIC BANKING CORPORATION ENTITLED TO PAYMENT OF INTEREST.

4.2

THE RESPONDENT APPELLATE COURT COMMITTED A FUNDAMENTAL ERROR OF FACT AND LAW WHEN IT APPLIED THE LANDMARK CASE OF *EASTERN SHIPPING LINES, INC. V. CA* (G.R. NO. 97412, JULY 12, 1994) IN FIXING THE RATES OF INTEREST AND/OR DIVIDENDS THAT ALLEGEDLY ACCRUED ON THE EQUITY INVESTMENT OF THE SINGAPOREANS ON PABC.

4.3

ASSUMING FOR THE SAKE OF ARGUMENT THAT PABC IS LIABLE FOR COMPENSATORY DAMAGES TO THE SINGAPOREAN EQUITY HOLDERS, ACCRUAL OF THE 6% INTEREST RATE SHOULD COMMENCE FROM DEMAND.

4.4

ASSUMING FOR THE SAKE OF ARGUMENT THE CORRECTNESS OF THE RESPONDENT APPELLATE COURT'S IMPOSITION OF THE 6% AND 12% INTEREST RATE ON THE EQUITY INVESTMENTS OF THE SINGAPOREAN EQUITY HOLDERS, THE LATTER SHOULD ONLY BE ENTITLED TO A TOTAL AMOUNT OF ₱73,246,702.21 BY WAY OF THE ALLEGED ACCRUED DIVIDENDS AND/OR INTERESTS.

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[10] *Rollo*, 82-83.

[11] *Id.*, 86-92.

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4.5

FOLLOWING THE JANUARY 31, 2002 DECISION OF THE RESPONDENT APPELLATE COURT WHICH DIRECTED THE PAYMENT OF ALLEGED ACCRUED DIVIDENDS AND/OR INTEREST COMMENCING ON OCTOBER 15, 1981 WHERE THE PREVAILING EXCHANGE RATE WAS ₱8.067 TO A DOLLAR, THE OVERPAYMENT TO THE SINGAPOREAN EQUITY HOLDERS SHALL AMOUNT TO ₱182,893,303.55.[12]

Anent the first issue, the Liquidator interprets the affirmation by the Court of Appeals of the 12 May 1998 Order of Judge Reyes as amounting to an unlawful grant of undeclared dividends. He argues that the only fruits that can arise from an equity investment are dividends declared from unrestricted retained earnings by the Board of Directors in accordance with the Corporation Code. Absent a declaration in this case, the interest awarded has no legal basis.

As for the second and third issues, the Liquidator argues that no actual damages can arise from the closure of the bank. The ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals*[13] is not applicable because that case clearly refers to an award of interest in the concept of actual and compensatory damages in case of breach of an obligation. The failure of PaBC to return the Singaporeans' equity investment because of its closure is not a breach of an obligation — the closure being akin to a *force majeure*. If indeed PaBC is liable to the Singaporeans for actual and compensatory damages, accrual thereof should be reckoned from the date of demand pursuant to Article 1169 of the Civil Code. Instead of running from 15 October 1981 when the Singaporeans bought their shares in PaBC, the 6% interest rate should be reckoned from 26 June 1992, the date the Singaporeans filed their claim in the liquidation court.

The Liquidator likewise asserts that there is already an overpayment of accrued dividends or interests. The liquidation court's Order of 12 May 1998 awarded an interest of 12% *per*

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[12] *Rollo*, 24-25.

[13] G.R. No. 97412, 12 July 1994, 234 SCRA 78.

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annum to be computed from 15 October 1981 (the date of actual remittance of the investment) until full payment. Pursuant to that Order, the PNB released ₱116,339,343.60. On appeal, however, the Court of Appeals modified the decision and awarded an interest of 6% *per annum* from 15 October 1981 up to PaBC's closure, as well as an interest of 12% *per annum* from 11 October 1992, when the 11 September 1992 Order became final and executory, until 17 April 1998, when the equity investment of US$2,531,632.18 was fully paid. With the prevailing exchange rate of ₱8.067 to a dollar on 15 October 1981, the total peso equivalent of the Singaporeans' claim is only ₱30,230,338.29 — ₱20,422,676.80 of which represents the principal equity investment of US$2,531,632.18 and ₱9,807,661.49, as alleged accrued interest. As of 18 May 1998, the total releases to the Singaporeans from the garnished funds of the PaBC amounted to ₱213,123,641.84. There is therefore an overpayment of ₱182,893,303.55. Thus, the order of the Court of Appeals to further release ₱56,034,877.04 from the garnished funds would result to unjust enrichment in favor of the Singaporeans.

For their part, the Singaporeans assert that the Court of Appeals committed no error in affirming their entitlement to accrued interests in the amount of ₱56,034,877.04 and in ordering its payment less 15% in taxes as agreed upon by the BIR. The Order of 11 September 1992 included the payment of the principal due the Singaporeans as preferred creditors, but it deferred the payment of interest on the principal for study by the Liquidator. Unfortunately, no study and recommendation was done since September 1992; thus, the liquidation court took it upon itself to arithmetically compute and fix the amount of interest at the legal rate of 12% *per annum* as reflected in the Order of 12 May 1998. Likewise, the award of 12% interest has become the law of the case with respect to the Liquidator and the Singaporeans.

The Singaporeans also argue that the petition should be dismissed because it assails errors of judgment, not errors of jurisdiction. They submit that the filing of a special civil action for *certiorari* rather than an appeal is wrong, improper, and fatal to the case. Moreover, the issue of overpayment is a question

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of fact that could not be threshed out in a special civil action for *certiorari*.

We shall first tackle the procedural issue of the propriety of the petition filed by the Liquidator.

A petition for *certiorari* is the proper remedy when a tribunal, board, or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal nor any plain, speedy, and adequate remedy at law.[14] *Grave abuse of discretion* is defined as the capricious, whimsical exercise of judgment as is equivalent to lack of jurisdiction. An error of judgment committed in the exercise of its legitimate jurisdiction is not the same as *grave abuse of discretion*. Thus, the special writ of *certiorari* is not the remedy for errors of judgment that can be corrected by appeal.[15]

Although denominated as a petition for *certiorari* under Rule 65 of the Rules of Civil Procedure, the petition assigns errors of judgment of the Court of Appeals. It does not allege grave abuse of discretion committed by the Court of Appeals. However, in the interest of justice, this Court shall treat the petition as an appeal under Rule 45 of the Rules of Civil Procedure especially since it was filed within the reglementary period for filing an appeal. Sections 1 and 2 of Rule 45 of the 1997 Rules of Civil Procedure provide:

SECTION 1. *Filing of petition with Supreme Court.* — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

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[14] Section 1, Rule 65, 1997 Rules of Civil Procedure.

[15] *Montecillo v. Civil Service Commission*, G.R. No. 131954, 28 June 2001, 360 SCRA 99, 104.

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SEC. 2. *Time for filing; extension*. — The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition.

The records show that the Liquidator received on 30 August 2002 a copy of the resolution of the Court of Appeals denying his motion for reconsideration. He had fifteen days, or until 14 September 2002, to file a petition for review on *certiorari*. Since 14 September 2002 fell on a Saturday, he could file his petition on the next working day, which was 16 September 2002.[16] Indeed, the Liquidator filed the instant petition and paid the necessary docket and legal fees on 16 September 2002.

Before delving into the merits of the case, it bears stressing that we are constrained to make our judgment according to the confines set by the 11 September 1992 Order of the liquidation court.

According to the principle of the *law of the case*, "whatever is once irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case."[17] To this the Court must adhere, whether the legal principles laid down were "correct on general principles or not," or "whether the question is right or wrong."[18]

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[16] SECTION 1. *How to compute time*. — In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day (Rule 22 of the 1997 Rules of Civil Procedure).

[17] *Padillo v. Court of Appeals*, G.R. No. 119707, 29 November 2001, 371 SCRA 27, citing *Zarate v. Director of Lands*, 39 Phil. 747, 749-750 (1919).

[18] *Id*.; See also *Esperas v. Court of Appeals*, G.R. No. 121182, 2 October 2000, 341 SCRA 583.

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As a result, upon the finality of the 11 September 1992 Order, the following issues were laid to rest: (1) the Singaporeans are deemed preferred creditors; and (2) they are entitled to the payment of their total investment amounting to US$2,531,632.18.

The determination of interests or dividends was, however, deferred pending a report to be submitted by the Liquidator. It was only in the 12 May 1998 Order of the liquidation court that an interest was awarded, giving rise to a new question of law. Therefore, the award of interest is not a controlling legal rule or decision that had been previously established as between the parties, since the parties did not have the chance to argue on that issue.

A perusal of the 12 May 1998 Order shows that the liquidation court awarded interest not as a form of accrued dividends or return of investment, but as actual and compensatory damages. Categorically, the order states:

> The December 16, 1993 decision of the Court of Appeals ruled that the remittance of earnings of this type of foreign investment is guaranteed (*CA decision, p. 15, emphasis supplied*). Legal interests are earnings and they are provided for by law arising from the withholding of funds due to a party. They are not computed on the amount of earnings of a business.[19]

We take note of the fact that when the trial court, in its Order of 11 September 1992, declared the Singaporeans to have the status of preferred creditors, it did so only for the purpose of giving them priority in the order of payment upon the liquidation of the PaBC. Relying only on the *Investment Incentive Act*, the trial court did not decide whether the Singaporeans' investment was a loan or equity. Since the Singaporeans were declared preferred creditors for a limited purpose, it does not follow that the court likewise implied that the original remittance of the Singaporeans was in the nature of a loan or forbearance of money, goods, or credit.

The Court of Appeals found that the equity investment of US$2,531,632.18 was not a loan or forbearance of money;

[19] *Rollo,* 135.

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hence, Central Bank Circular No. 416, prescribing 12% interest *per annum* on loans or forbearance of money, goods, or credit is inapplicable. It applied Article 2209 of the Civil Code, which provides for the legal interest of 6% *per annum* in the absence of a stipulation to the contrary. Thus, the Court of Appeals modified the Order of 12 May 1998 and reduced the rate of interest on the investment of US$2,531,632.18 from 12% to 6% to run from 15 October 1981 — when the outward remittance and equity investment was actually made — up to the closure of PaBC. Also, following *Eastern Shipping Lines, Inc. v. Court of Appeals* it upheld the grant of 12% interest on the monetary award of US$2,531,632.18 to run from the date of the finality of the 11 September 1992 Order until its satisfaction.

In *Eastern Shipping Lines, Inc. v. Court of Appeals*, we laid down the following guidelines:

I. When an obligation, regardless of its source, *i.e.*, law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

II. With regard particularly to an award of interest, in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the

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> demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.
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> 3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.[20]

It is undisputed that the amount of US$2,531,632.58 remitted by the Singaporeans represented the 154,462 PaBC common shares previously issued to, and owned by, Mandarin Development Corporation bought by the Singaporeans at the price of US$16.39 per share. The investment was approved by the Central Bank under Monetary Board Resolution No. 323 dated 19 February 1982 and constituted about 11% of the total subscribed capital stock of PaBC. Clearly, the amount remitted to PaBC by the Singaporeans was an investment.

An "investment" is an expenditure to acquire property or other assets in order to produce revenue. It is the placing of capital or laying out of money in a way intended to secure income or profit from its employment. "To invest" is to purchase securities of a more or less permanent nature, or to place money or property in business ventures or real estate, or otherwise lay it out, so that it may produce a revenue or income.[21]

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[20] *Eastern Shipping Lines, Inc. v. Court of Appeals*, *supra* note 13, at 95-97.

[21] BLACK'S *LAW DICTIONARY* 741 (5th ed.).

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Thus, unlike a deposit of money or a loan that earns interest, the investment of the Singaporeans cannot be assured of a dividend or an interest on the amount invested. For, interests or dividends are granted only after profits or gains are generated.

We therefore agree with the Court of Appeals in holding that the amount of US$2,531,632.18 remitted by the Singaporeans to PaBC was not a loan or forbearance of money in favor of PaBC. Hence No. II-1 of the above-quoted guidelines in *Eastern Shipping Lines* does not come into play. Neither can we apply Central Bank Circular No. 416, which imposes the rate of 12% *per annum* on loans and forbearance of money. Nor can No. II-2 of the above-quoted guidelines be invoked because, as correctly pointed out by the Liquidator, the closure of the PaBC did not constitute a breach of obligation. Article 2209 of the Civil Code, which was relied upon by the Court of Appeals, does not find application either. That Article, which provides for 6% interest *per annum*, governs when there is a delay in the payment of a sum of money. Such is not the case here.

Thus, the Court of Appeals' award of 6% interest on the Singaporeans' equity investment as actual or compensatory damages from the date of its remittance until the closure of PaBC has no leg to stand on and must, therefore, be deleted.

The interest that may be awarded as actual or compensatory damages in this case is that provided in No. II-3 of the afore-quoted guidelines. Upon the finality of the Order of 11 September 1992, the award of US$2,531,632.18 representing the Singaporeans' equity investment became a judgment debt. As such, it shall bear an interest of 12% *per annum* from the finality of the Order until its full satisfaction.

However, the grant of the said interest does not bar the Singaporeans from claiming liquidating dividends which may have accrued from their equity investment after being determined by the Liquidator. In the liquidation of a corporation, after the payment of all corporate debts and liabilities, the remaining assets, if any, must be distributed to the stockholders in proportion to their interests in the corporation. The share of each stockholder

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in the assets upon liquidation is what is known as *liquidating dividend*.[22] Verily, the Singaporeans are entitled to 11% of the total liquidating dividend, this being in proportion to their 11% interest of the total subscribed capital stock of PaBC.

Anent the fourth issue, the Court is unable to determine the veracity of the alleged overpayments in the absence of verified records on the total payments made in favor of the Singaporeans. The award of the Court of Appeals of ₱56,034,877.04 representing uncollected interest is likewise unsubstantiated because it was not shown how the amount was derived.

To resolve this question of fact, the case is hereby remanded to the trial court to recompute the payments *vis-à-vis* the total amount due the Singaporeans, also considering the undisputed award of 12% interest per annum on the judgment debt of US$2,531,632.18 to be reckoned from 22 October 1992,[23] when the 11 September 1992 Order became final, until its full satisfaction.

WHEREFORE, the decision of the Court of Appeals of 31 January 2002 in CA-G.R. SP No. 47878 is hereby *AFFIRMED* insofar as the respondents *ANG ENG JOO, ANG KEONG LAN, and E.J. ANG INTERNATIONAL, LTD.*, are entitled to the payment of 12% interest *per annum* in the form of actual or

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[22] 2 JOSE CAMPOS, JR., AND MARIA CLARA L. CAMPOS, *THE CORPORATION CODE* 417 (1990 ed).

[23] The Liquidator received the Order of 11 September 1992 on 16 September 1992. On 30 September 1992, he filed a motion for reconsideration, which was denied in the liquidation court's Order of 2 October 1992. He received the denial order on 5 October 1992. From 16 September 1992 until 30 September 1992, the period for him to appeal had run for 14 days but was tolled by the motion for reconsideration. It commenced to run again on 5 October 1992 upon his receipt of the denial of his motion for reconsideration. He, therefore, had 16 days more or until 21 October 1992 to perfect his appeal. While he filed the notice of appeal on 14 October 1992, which was within the 30-day appeal period, he failed to file the record on appeal. Having failed to do so, the 11 September 1992 order became final and executory on 22 October 1992 (see *Pacific Banking Corporation Employees Organization v. Court of Appeals*, *supra* note 2, at 498).

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compensatory damages on the judgment award of US$2,531,632.18 to run from 22 October 1992, when the 11 September 1992 Order of the Regional Trial Court of Manila, Branch 31, became final and executory, until the amount is fully paid. The said decision is, however, *MODIFIED* as follows:

1. The award of interest at the rate of 6% *per annum* as actual or compensatory damages from 15 October 1981 until the closure of PaBC is hereby deleted for lack of basis without prejudice, however, to liquidating dividends or interests as may be determined by the Liquidator.

2. The Regional Trial Court of Manila, Branch 31, is hereby directed to make a recomputation of all the total amounts paid by the petitioner Liquidator in favor of the private respondent Singaporeans taking into account the exact amount due them, and to issue the proper orders for payment, if warranted. The amount due shall include the 12% rate of legal interests on the judgment debt of US$2,531,632.18.

SO ORDERED.

Quisumbing, Ynares-Santiago, Carpio, and *Azcuna, JJ.*, concur.