



**Republic of the Philippines**  
**Supreme Court**  
**Manila**

**THIRD DIVISION**

**PHILIPPINE PRIMARK**  
**PROPERTIES, INC.,**  
 Petitioner,

**G.R. No. 263887**

Present:

- versus -

*CAGUIOA, J., Chairperson,*  
 INTING,  
 GAERLAN,  
 DIMAAMPAO, and  
 SINGH, JJ.

**CHINA BANKING**  
**CORPORATION TRUST AND**  
**ASSETS MANAGEMENT**  
**GROUP,**  
 Respondent.

**Promulgated:**

August 19, 2024

*MISCDOCBoff*

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**DECISION**

**INTING, J.:**

Before the Court is a Petition for Review on *Certiorari*<sup>1</sup> filed by the petitioner Philippine Primark Properties, Inc. (Primark) assailing the Decision<sup>2</sup> dated April 12, 2022, and Resolution<sup>3</sup> dated October 13, 2022, of the Court of Appeals (CA) in CA-G.R. CV No. 116479. The CA

<sup>1</sup> *Rollo*, pp. 9–41.

<sup>2</sup> *Id.* at 45–59. Penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Associate Justices Emily R. Aliño-Geluz and Jose Lorenzo R. Dela Rosa of the Fourteenth Division, Court of Appeals, Manila.

<sup>3</sup> *Id.* at 83–87. Penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Associate Justices Emily R. Aliño-Geluz and Jose Lorenzo R. Dela Rosa of the Former Fourteenth Division, Court of Appeals, Manila.

reversed and set aside the Order<sup>4</sup> dated November 16, 2020, of Branch 57, Regional Trial Court (RTC), Makati City (RTC-57) in Civil Case No. R-MKT-20-01679-SC which: (1) dismissed the Complaint for Interpleader filed by BDO Unibank, Inc. (BDO) against Primark and respondent China Banking Corporation Trust and Assets Management Group (CBC-TAMG); and (2) dismissed CBC-TAMG's cross-claims against Primark and the parties' respective counterclaims.<sup>5</sup>

### *The Antecedents*

On May 11, 2018, Primark entered into an Omnibus Notes Facility and Security Agreement (ONFSA) with China Banking Corporation (CBC) and China Bank Savings, Inc. (CBSI) (collectively, the Banks), where the Banks granted Primark a Notes Facility in the maximum aggregate amount of PHP 7 billion. Under the ONFSA, to secure Primark's obligations, the latter assigned all its present and future rights and interests over its receivables arising from its contracts of lease and/or similar contracts with its tenants in favor of CBC-TAMG as its assignee/security trustee. Both Primark and CBC-TAMG informed the tenants about the arrangement.<sup>6</sup>

Aside from the assignment of receivables, the ONFSA also required Primark to provide a Debt Service Reserve Account (DSRA). The DSRA must meet a certain maintaining balance (DSRA Maintaining Balance). In the event that Primark is unable to timely pay its loan obligations, CBC-TAMG was authorized to debit from the DSRA such amounts as may be necessary to pay the debt due to the Banks. In turn, within a certain period, Primark must replenish the debited funds to meet the DSRA Maintaining Balance.<sup>7</sup>

Primark was able to make 10 drawdowns under the ONFSA in the total amount of PHP 3,947,000,000.00. Thereafter, it requested CBC and CBSI to waive certain conditions precedent so that Primark may obtain additional borrowings under the ONFSA. It also proposed several amendments to the terms and conditions of the ONFSA. However, the Banks first required Primark to comply with the conditions precedent

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<sup>4</sup> *Id.* at 2344–2354. Penned by Acting Presiding Judge Ricardo A. Moldez II.

<sup>5</sup> *Id.* at 2383.

<sup>6</sup> *Id.* at 46–47.

<sup>7</sup> *Id.* at 46–49.

before the release of additional funds and before any discussion on the ONFSA amendments.<sup>8</sup>

In a Letter<sup>9</sup> dated August 13, 2019, Primark gave notice to CBC that it is abrogating the ONFSA on the ground that it is void *ab initio* for being a mere credit accommodation by CBC and CBSI to their directors, officers, stockholders, and related interests (DOSRI), in violation of Section 36<sup>10</sup> of the Republic Act No. 8791 or the General Banking Law. Primark also informed CBC-TAMG of the abrogation in a Letter<sup>11</sup> dated September 2, 2019.

Thereafter, on September 4, 2019, Primark failed to pay the interest due on its borrowings amounting to PHP 76,868,808.74. Pursuant to the ONFSA, CBC-TAMG debited the said amount from the DSRA, which then fell below the debt service reserve requirement. Primark likewise

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<sup>8</sup> *Id.* at 47.

<sup>9</sup> *Id.* at 1329–1334.

<sup>10</sup> 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 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.

<sup>11</sup> *Rollo*, p. 1339.

failed to cover the shortfall in the DSRA and was unable to meet the DSRA Maintaining Balance required under the ONFSA. Thus, it was declared in default on December 5, 2019.<sup>12</sup>

Meanwhile, on various dates from March 14, 2017, until August 3, 2018, Primark entered into Contracts of Lease<sup>13</sup> with BDO over its properties situated in several locations for the establishment of BDO's branches. On May 22, 2018,<sup>14</sup> August 3, 2018,<sup>15</sup> February 11, 2019,<sup>16</sup> and April 23, 2019,<sup>17</sup> Primark sent notices of Assignment of Receivables to BDO, informing the latter that it entered into a Security Assignment with CBC-TAMG, wherein Primark assigned to CBC-TAMG, as security, all of its receivables arising from the contracts of lease with BDO. Further, Primark stated in the notices that it was authorizing BDO, upon the instruction of CBC-TAMG, to pay and deliver the receivables to the bank account that may be designated by the latter.

BDO religiously paid and delivered the rental payments to Primark on their due dates. However, on February 4, 2020, BDO received a notice from CBC-TAMG denominated as Security Assignment<sup>18</sup> stating, among others:

In accordance with the provisions of the Security Assignment and the Receivable Assignment Notice, we hereby give notice to you that an Acceleration Event has occurred and that the Receivables have been assigned by the Assignor to the Security Trustee for the benefit of the Secured Parties. Thus, you are hereby instructed by the Security Trustee effective immediately upon your receipt of this notice (i) to cease complying with the instructions or demands in respect of the Receivables from the Assignor or any other party other than the Security Trustee; and (ii) not to recognize any attempt by the Assignor to claim or receive the Receivables, or to distribute or deliver to the Assignor or any other party any sum, security or other Property forming part of or arising from the Receivables, other than upon written instruction of the Security Trustee.<sup>19</sup>

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<sup>12</sup> *Id.* at 47–48.

<sup>13</sup> *Id.* at 258–433.

<sup>14</sup> *Id.* at 434.

<sup>15</sup> *Id.* at 435.

<sup>16</sup> *Id.* at 436.

<sup>17</sup> *Id.* at 437.

<sup>18</sup> *Id.* at 438–439.

<sup>19</sup> *Id.* at 438.

On even date, CBC-TAMG also sent Instructions<sup>20</sup> to BDO to: (a) pay or deliver the receivables directly to it when they fall due under the lease agreements; (b) not recognize any attempt by Primark to claim or receive the receivables; (c) cease compliance with instructions from Primark or any party other than CBC-TAMG; and (d) comply with all the instructions of CBC-TAMG in respect of the receivables.<sup>21</sup>

On the next day, February 5, 2020, Primark sent a letter<sup>22</sup> to BDO telling the latter to ignore CBC-TAMG's notices because the Security Assignment was void *ab initio*. Thus, BDO should still deliver its rental payments to Primark. BDO, in its letter reply to CBC-TAMG dated February 17, 2020,<sup>23</sup> informed the latter that it cannot honor CBC-TAMG's instructions because of the letter that it received from Primark challenging the legality of the assignment.

With the conflicting claims of Primark and CBC-TAMG, BDO wrote a letter to Primark dated April 7, 2020,<sup>24</sup> stating that it will issue checks payable to Primark or CBC-TAMG for its rentals starting in March 2020.

In a letter<sup>25</sup> to BDO dated June 26, 2020, CBC-TAMG reiterated its earlier instruction to deliver the payment of rentals directly to it. For its part, Primark sent demand letters<sup>26</sup> to all the lessee BDO branches, all dated June 30, 2020, demanding the payment of rent and informing the latter that Primark will not recognize any payment made to unauthorized persons.

The foregoing antecedents prompted BDO to institute a Complaint for Interpleader with Prayer for Consignation<sup>27</sup> against Primark and CBC-TAMG before the RTC-57 (the first interpleader case). It prayed that Primark and CBC-TAMG be required to interplead and settle between themselves their rights over the rental payments, and that it be discharged from all its liabilities therefrom. In the meantime, BDO also prayed that it

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<sup>20</sup> *Id.* at 441–444.

<sup>21</sup> *Id.* at 443.

<sup>22</sup> *Id.* at 445.

<sup>23</sup> *Id.* at 446.

<sup>24</sup> *Id.* at 451.

<sup>25</sup> *Id.* at 479–480.

<sup>26</sup> *Id.* at 481–496.

<sup>27</sup> *Id.* at 249–257.



be allowed to consign to the RTC-57 the total amounts of the checks until Primark and CBC-TAMG have determined which between them is the rightful recipient of the rental payments.<sup>28</sup>

In its Answer with *Ad Cautelam* Counterclaim and Cross-Claim,<sup>29</sup> CBC-TAMG denied that the ONFSA and the Security Assignment executed in its favor by Primark are void.<sup>30</sup> By way of affirmative and special defenses, it countered that when Primark executed the ONFSA, it had already assigned all its receivables to CBC-TAMG as security for the performance of Primark's obligations in the same agreement. Pursuant to the ONFSA, in the event of default on the part of Primark, CBC-TAMG was entitled to claim the receivables. CBC-TAMG further argued that the ONFSA was valid and subsisting; thus, it cannot be unilaterally rescinded by Primark. At any rate, the latter was already estopped from assailing its validity.<sup>31</sup>

For its part, Primark raised as an affirmative defense in its Answer<sup>32</sup> that CBC-TAMG, with which it is being asked to interplead, has no standing to sue or be sued in court pursuant to Rule 3, Section 1 of the Rules of Court because it is a mere department/unit attached to CBC for its trust operations and fund management. Also, there is a pending action for declaration of nullity of contracts among Primark, CBC, and CBSI before Branch 58, RTC of Makati, docketed as Civil Case No. R-MKT-19-05512, involving the same ONFSA and documents referred to in the first interpleader case.<sup>33</sup>

### *The Ruling of the RTC*

In an Order<sup>34</sup> dated November 16, 2020, the RTC-57 dismissed BDO's first Complaint for Interpleader, CBC-TAMG's cross-claims against Primark, and the respective counterclaims of the parties. Thus:

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<sup>28</sup> *Id.* at 255–256.

<sup>29</sup> *Id.* at 513–590.

<sup>30</sup> *Id.* at 516.

<sup>31</sup> *Id.* at 536–539.

<sup>32</sup> *Id.* at 1650–1668.

<sup>33</sup> *Id.* at 2346–2347. RTC Order dated November 16, 2020.

<sup>34</sup> *Id.* at 2344–2354.

WHEREFORE, premises considered, this Court hereby resolves to:

1. DISMISS the BDO's Complaint for Interpleader due to CBC-TAMG's lack of legal capacity to be sued and for lack of cause of action;
2. DISMISS CBC-TAMG's cross-claims against BDO and Primark for lack of legal capacity to sue and for lack of cause of action; and,
3. DISMISS the respective counterclaims of the parties.

As a result of the above, CBC-TAMG's application for a Writ of Preliminary Injunction is now rendered moot.

SO ORDERED.<sup>35</sup>

The RTC-57 explained that under the Rules of Court, only natural or juridical persons, or entities authorized by law may be parties to a civil action. CBC-TAMG, as a department of CBC which is merely tasked to carry out the trust functions of the latter, is not an entity organized or incorporated under the law; thus, it cannot be a party to the interpleader case. Similarly, CBC-TAMG cannot be deemed as a real party-in-interest in the case because it is only concerned with carrying out CBC's trust functions. CBC-TAMG's interest in the case, if any, was merely incidental as it was CBC which will ultimately be affected by the result of the case.<sup>36</sup>

BDO filed a Motion for Reconsideration with Motion for Leave to Admit Attached Amended Complaint<sup>37</sup> impleading CBC as defendant instead of CBC-TAMG. However, the RTC-57 denied the Motions in an Order<sup>38</sup> dated December 11, 2020. Later, in a Manifestation before the RTC, BDO stated that it is no longer appealing the Orders dated November 16, 2020, and December 11, 2020.

On January 7, 2021, BDO filed a new Complaint for Interpleader and Consignation where CBC was impleaded as a defendant. The case

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<sup>35</sup> *Id.* at 155–156.

<sup>36</sup> *Id.* at 2349–2353.

<sup>37</sup> *Id.* at 2356–2368.

<sup>38</sup> *Id.* at 2636–2637.

was raffled to Branch 233, RTC, Makati City (RTC-233) and docketed as Civil Case No. R-MKT-21-00063-SC (the second interpleader case).

For its part, CBC-TAMG filed a Notice of Appeal.<sup>39</sup>

*The Ruling of the CA*

In the assailed Decision<sup>40</sup> dated April 12, 2022, the CA reversed the RTC Order dated November 16, 2020<sup>41</sup> and remanded the case to the latter for further proceedings, viz.:

WHEREFORE, premises considered, the appeal is GRANTED. The Order dated November 16, 2020 of the Regional Trial Court, Branch 57, Makati City, in Civil Case No. R-MKT-20-01679-SC, is REVERSED and SET ASIDE. The case is REMANDED to the Regional Trial Court, Branch 57, Makati City, for further proceedings to allow China Banking Corporation – Trust & Asset Management Group to present evidence on its counterclaims and cross-claims. Further, let Civil Case No. R-MKT-21-00063-SC before RTC-Branch 233, Makati City, be consolidated with Civil Case No. R-MKT-20-01679-SC considering that these actions involve the same issues and parties.

SO ORDERED.<sup>42</sup>

*First*, the CA ruled that CBC-TAMG had the capacity to sue and be sued because it was performing trust functions. As a trust entity, CBC-TAMG possessed the general powers incident to corporations pursuant to Section 83<sup>43</sup> of Republic Act No. 8791, which includes the

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<sup>39</sup> *Id.* at 2629–2633.

<sup>40</sup> *Id.* at 45–59.

<sup>41</sup> *Id.* at 2344–2354.

<sup>42</sup> *Id.* at 58.

<sup>43</sup> SECTION 83. *Powers of a Trust Entity.* — A trust entity, in addition to the general powers incident to corporations, shall have the power to:

- 83.1. Act as trustee on any mortgage or bond issued by any municipality, corporation, or any body politic and to accept and execute any trust consistent with law;
- 83.2. Act under the order or appointment of any court as guardian, receiver, trustee, or depositary of the estate of any minor or other incompetent person, and as receiver and depositary of any moneys paid into court by parties to any legal proceedings and of property of any kind which may be brought under the jurisdiction of the court;
- 83.3. Act as the executor of any will when it is named the executor thereof;
- 83.4. Act as administrator of the estate of any deceased person, with the will annexed, or as administrator of the estate of any deceased person when there is no will;



capacity to sue and be sued.<sup>44</sup>

*Second*, the CA opined that CBC-TAMG was a real party-in-interest in BDO's first interpleader case. Under the ONFSA, it was not only authorized to collect the receivables, but was also capacitated to institute suits to prevent their impairment. As the security trustee, among others, CBC-TAMG's interest in the outcome of the case was real, material, and direct.<sup>45</sup>

*Third*, the CA held that Primark was estopped from questioning the legal capacity of CBC-TAMG, given that it dealt with CBC-TAMG as if it were a juridical entity. Primark even appointed CBC-TAMG as its attorney-in-fact and conveyed the properties to CBC-TAMG when it executed the assignment of receivables. In other words, Primark, through its actions, acknowledged and admitted the legal capacity of CBC-TAMG; thus, it cannot now be permitted to conveniently assail CBC-TAMG's legal capacity.<sup>46</sup>

Primark filed a Motion for Reconsideration,<sup>47</sup> but the CA denied it in the herein assailed Resolution<sup>48</sup> dated October 13, 2022.

Hence, the present petition before the Court.<sup>49</sup>

#### *The Petition*

Primark contends that the CA erred in giving due course to CBC-TAMG's appeal. The RTC-57 dismissed BDO's first interpleader case on the ground that CBC-TAMG did not have any juridical personality; thus, it lacked the legal capacity to sue and be sued. According to Primark, this dismissal was based on technicality; it is not a judgment on the merits and, therefore, one without prejudice. Pursuant to

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83.5. Accept and execute any trust for the holding, management, and administration of any estate, real or personal, and the rents, issues and profits thereof; and

83.6. Establish and manage common trust funds, subject to such rules and regulations as may be prescribed by the Monetary Board.

<sup>44</sup> *Rollo*, pp. 52–54.

<sup>45</sup> *Id.* at 57.

<sup>46</sup> *Id.* at 54–55.

<sup>47</sup> *Id.* at 60–81.

<sup>48</sup> *Id.* at 83–87.

<sup>49</sup> *Id.* at 9–41.

Rule 41, Section 1(g) of the Rules of Court, no appeal may be taken from an order dismissing an action without prejudice. In such a case, the aggrieved party may file an appropriate special civil action as provided under Rule 65 of the Rules of Court.<sup>50</sup>

Moreover, Primark points out that CBC-TAMG's appeal before the CA only involved questions of law, i.e., legal capacity/personality to sue or be sued and estoppel, which are not reviewable by the CA pursuant to Rule 41, Section 2(c) of the Rules of Court.<sup>51</sup>

Further, Primark maintains that the CA erred in reinstating the first interpleader case despite the fact that BDO did not appeal therefrom and CBC-TAMG's appeal only involved the dismissal of its counterclaim and cross-claim.

Finally, Primark asserts that the CA erred when it held that CBC-TAMG had the capacity to sue and be sued, and that Primark was estopped from assailing its legal personality. It avers that CBC-TAMG was not created by operation of law and is not a corporation within the definition provided in the Corporation Code. It is a mere department or unit attached to CBC for the latter's trust operations and fund management.<sup>52</sup>

CBC-TAMG filed its Comment,<sup>53</sup> stating that the Petition is fatally defective for being non-compliant with Rule 45, Section 4(d) of the Rules of Court, which requires the Petition to be accompanied by material portions of the record; hence it should be dismissed outright. Moreover, CBC-TAMG counters that the CA correctly took cognizance of its notice of appeal in that the RTC-57 Order dated November 16, 2020, is a final order of dismissal. While BDO did not appeal said RTC-57 Order, it did not affect CBC-TAMG's right to appeal the dismissal of its counterclaims and cross-claims.<sup>54</sup>

CBC-TAMG further submits that contrary to Primark's assertions, it raised mixed questions of fact and law in its appeal before the CA. It also insists that it has the capacity to sue and be sued and is a real

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<sup>50</sup> *Id.* at 20–21.

<sup>51</sup> *Id.* at 22–23, 25.

<sup>52</sup> *Id.* at 28–30.

<sup>53</sup> *Id.* at 165–244.

<sup>54</sup> *Id.* at 193.

party-in-interest in the first interpleader case. It argues that Primark should not be allowed to abuse the judicial process and asserts that parties who do not come to court with clean hands cannot be allowed to profit from their own wrongdoing.<sup>55</sup>

In its Reply,<sup>56</sup> Primark reiterates its arguments in the Petition and further adds that the documents required by the Rules of Court were accordingly attached thereto, i.e., the assailed CA Decision and Resolution.

#### *The Issues*

The issues to be resolved in the case are whether the CA erred: *first*, in giving due course to CBC-TAMG's appeal; *second*, in reinstating the complaint of BDO even though the latter did not appeal from the RTC-57 Order; and *third*, in ruling that CBC-TAMG has the legal capacity to sue and be sued.

#### *The Ruling of the Court*

The Court grants the Petition.

Preliminarily, CBC-TAMG points out that the Petition must be dismissed outright for being non-compliant with Rule 45, Section 4(d) of the Rules of Court. The said provision states:

SECTION 4. *Contents of petition.* — The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner and shall (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received; (c) set forth concisely a statement of the matters involved, and the reasons or arguments relied on for the allowance of

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<sup>55</sup> *Id.* at 193–194.

<sup>56</sup> *Id.* at 2840–2861.



the petition; **(d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court *a quo* and the requisite number of plain copies thereof, and such material portions of the record as would support the petition;** and (e) contain a sworn certification against forum shopping as provided in the last paragraph of section 2, Rule 42. (Emphasis supplied)

In compliance with the Resolution of the Court dated January 11, 2023, Primark submitted certified true copies of the assailed CA Decision and Resolution.<sup>57</sup> Likewise, in its Petition, Primark attached copies of its Motion for Reconsideration filed before the CA and BDO's Motion To Withdraw Complaint filed before the RTC-57. The Court finds these attachments as substantial compliance with Rule 45, Section 4(d) of the Rules of Court that would support the arguments in the Petition.

At any rate, in *Cancio v. Performance Foreign Exchange Corp.*,<sup>58</sup> the Court held that failure to attach material portions of the record will not necessarily cause the outright dismissal of a petition for review under Rule 45 of the Rules of Court:

The failure to attach material portions of the record will not necessarily cause the outright dismissal of the petition. While Rule 45, Section 4 of the Rules of Court requires that the petition "be accompanied by ... such material portions of the record as would support the petition," this Court may still give due course if there is substantial compliance with the Rules.<sup>59</sup>

Considering as well that CBC-TAMG, in its Comment to the Petition, also attached copies of the relevant portions of the record, it will serve the higher interest of justice that the case be decided on the merits rather than be dismissed on mere technicality.

*On the first issue: the proper remedy  
from the order of dismissal without  
prejudice*

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<sup>57</sup> *Id.* at 136–162.

<sup>58</sup> 832 Phil. 212 (2018).

<sup>59</sup> *Id.* at 226–227.

On the first issue which raises a procedural matter, Primark contends that the RTC-57 Order dated November 16, 2020, dismissing the first interpleader case on the ground of CBC-TAMG's lack of capacity to sue and be sued was a dismissal without prejudice. Accordingly, no appeal may be taken therefrom pursuant to Rule 41, Section 1(g) of the Rules of Court.<sup>60</sup> Thus, the CA allegedly erred when it gave due course to CBC-TAMG's appeal.

Primark's contention is tenable. To recall, the Order<sup>61</sup> of the RTC-57 dated November 16, 2020, resolved Primark's affirmative defenses, particularly CBC-TAMG's capacity and personality to sue or be sued. In the said Order, the RTC-57 dismissed BDO's first Complaint for Interpleader; CBC-TAMG's cross-claim against Primark; and the parties' respective counterclaims.

The question now is whether the RTC-57 Order dated November 16, 2020, is a dismissal without prejudice which would eventually determine the proper remedy of CBC-TAMG therefrom.

Rule 15, Section 13 of the 2019 Revised Rules of Court states the instances when an order dismissing an action is considered as one with prejudice which shall bar the refiling of the same action or claim, to wit:

SECTION 13. *Dismissal with prejudice.* — Subject to the right of appeal, an order granting a motion to dismiss or an affirmative defense that the cause of action is barred by a prior judgment or by the statute of limitations; that the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned or otherwise extinguished; or that the claim on which the action is founded is unenforceable under the provisions of the statute of frauds, shall bar the refiling of the same action or claim.

Conversely, an order granting an affirmative defense anchored on grounds other than those stated in the foregoing provision, such as lack of legal capacity to sue and be sued, is a dismissal *without* prejudice and does not preclude the refiling of the same action.

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<sup>60</sup> *Rollo*, pp. 20–21.

<sup>61</sup> *Id.* at 2344–2354.

In connection thereto, Rule 41, Section 1 of the Rules enumerates the instances when no appeal may be taken from an order or judgment of the trial court. Thus:

SECTION 1. *Subject of appeal.* — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

- (a) An order denying a petition for relief or any similar motion seeking relief from judgement;
- (b) An interlocutory order;
- (c) An order disallowing or dismissing an appeal;
- (d) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;
- (e) An order of execution;
- (f) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and
- (g) An order dismissing an action without prejudice.**

In any of the foregoing circumstances, the aggrieved party may file an appropriate special civil action as provided in Rule 65. (Emphasis supplied)

Verily, Rule 41, Section 1(g) of the Rules expressly states that no appeal may be taken from an order dismissing an action without prejudice. In such case, the remedy available to the aggrieved party is to file an appropriate special civil action under Rule 65 of the Rules of Court.<sup>62</sup>

As applied in the present case, the dismissal of the first interpleader case and CBC-TAMG's counterclaim and cross-claim was based on the latter's lack of legal capacity to sue and be sued. Hence, the dismissal was *without* prejudice and the remedy of the parties thereto was to file a petition for *certiorari* under Rule 65. Here, however, instead of filing a special civil action, CBC-TAMG filed an appeal before the CA questioning the dismissal of its counterclaim against BDO and cross-claim against Primark.

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<sup>62</sup> See *Heirs of Sadhwani v. Sadhwani*, 859 Phil. 385, 394 (2019).

Given that CBC-TAMG availed itself of the wrong remedy against the RTC's dismissal order by filing an appeal instead of a Rule 65 special civil action for *certiorari*, the CA should have dismissed the appeal. The RTC's order of dismissal of the first interpleader case and the counterclaims and cross-claim of the parties thereto should have been assailed in a Rule 65 petition.

*On the second issue: CBC-TAMG's appeal only involved the dismissal of its counterclaim and cross-claim; the CA did not reinstate BDO's first complaint for interpleader*

Primark avers that the CA erred in reinstating the first interpleader case despite the fact that BDO did not file an appeal therefrom and even filed a Motion To Withdraw the complaint. According to Primark, CBC-TAMG's appeal only involved the dismissal of its counterclaim against BDO and cross-claim against Primark. Thus, the CA committed a reversible error when it compelled BDO to litigate the Complaint that it has already abandoned.

A perusal of the records would confirm that CBC-TAMG filed its appeal praying, among others, that the CA declare: (1) that it has the legal capacity/personality to sue or be sued; and (2) that it is entitled to prosecute its counterclaim against BDO and its cross-claim against Primark.<sup>63</sup> In the assailed Decision, the CA granted the relief prayed for by reversing and setting aside the RTC Order and remanding the case to the RTC for further proceedings to allow CBC-TAMG to present evidence on its counterclaim and cross-claim. The decretal portion of the CA Decision reads:

WHEREFORE, premises considered, the appeal is GRANTED. The Order dated November 16, 2020 of the Regional Trial Court, Branch 57, Makati City, in Civil Case No. R-MKT-20-01679-SC, is REVERSED and SET ASIDE. The case is REMANDED to the Regional Trial Court, Branch 57, Makati City, for further proceedings to allow China Banking Corporation – Trust & Asset Management Group to present evidence on its counterclaims and cross-claims. Further, let Civil Case No. R-MKT-21-00063-SC before RTC-Branch

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<sup>63</sup> *Rollo*, p. 2693.

233, Makati City, be consolidated with Civil Case No. R-MKT-20-01679-SC considering that these actions involve the same issues and parties.

SO ORDERED.<sup>64</sup>

Clearly, the case was remanded to the RTC-57 for further proceedings *only for the purpose of hearing the counterclaim and cross-claim of CBC-TAMG*. To recall, BDO earlier withdrew its appeal from the RTC-57 Order dated November 16, 2020, and instead opted to file the second case for interpleader, this time, impleading CBC as the defendant. Thus, contrary to the impression of Primark, the assailed CA Decision did not reinstate the first interpleader case filed by BDO which did not even question the dismissal of the case in the first place. As it was only CBC-TAMG that further questioned the RTC-57 Order, the assailed CA Decision expressly referred only to its counterclaim and cross-claim which were the subject thereof.

Still, whether CBC-TAMG possesses the legal capacity to prosecute its counterclaim and cross-claim, and to sue and be sued, is an entirely different matter, as further discussed below.

*On the third issue: CBC-TAMG's legal capacity to sue and be sued*

In resolving the issue on CBC-TAMG's legal capacity to sue, it should be emphasized that BDO already instituted the second Complaint for Interpleader where CBC was impleaded as a defendant, thereby replacing CBC-TAMG. The case was raffled to RTC-233, docketed as Civil Case No. R-MKT-21-00063-SC. Significantly, in the herein assailed CA Decision, Civil Case No. R-MKT-21-00063-SC, or the second interpleader case, was ordered consolidated with Civil Case No. R-MKT-20-01679-SC, the first interpleader case, from which the present Petition originated.

In ruling that CBC-TAMG's counterclaim and cross-claim may prosper, the CA explained in the assailed Decision as follows:

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<sup>64</sup> *Id.* at 58.



CBC-TAMG's legal capacity proceeds from the fact that reference to CBC-TAMG is reference to CBC itself acting through its trust department in performing its trust functions. Section 411 of the Manual of Regulation for Banks (Manual of Regulation) of the Bangko Sentral ng Pilipinas, in relation to Section 79 of Republic Act No. 8791 (RA 8791), as amended, provides that banks may engage in trust and other fiduciary business after obtaining prior approval of the Monetary Board. Section 412 of the Manual of Regulation further requires that the trust and other fiduciary business of a bank shall be carried out through a trust department which shall be organizationally, operationally, administratively and functionally separate and distinct from the other departments of the institution and that no bank shall undertake any of the trust and other fiduciary business outside the direct control, authority and management of the trust department. Thus, under the law and the rules, CBC can only carry out its trust and other fiduciary business through CBC-TAMG.

Indeed, a "trust entity" is defined in Section 403(a)(1) of the Manual Regulation as referring to a bank through its specifically designated business unit to perform trust functions. It bears stressing that under Section 83 of RA 8791, a trust entity possesses the general powers incident to corporations, which should include the capacity to sue and be sued, as provided in Section 35 of RA 11232. In point of fact, the ONFSA, to which Primark is a party, describes CBC-TAMG as "a banking corporation duly organized and existing under the laws of the Republic of the Philippines and authorized to perform trust and other fiduciary duties." It is thus evident that when one refers to CBC-TAMG, one refers to CBC performing its trust and other fiduciary business through its trust department. CBC-TAMG is clearly CBC's duly authorized and designated independent business unit through which CBC carries out its trust and fiduciary business.<sup>65</sup> (Citations omitted)

In the Petition, Primark maintains that CBC-TAMG was not created by operation of law. It is a mere department or unit attached to CBC engaged in the latter's trust operation and fund management. Thus, it does not have the capacity or standing to sue or be sued independent of CBC to which it belongs.

In *Columbia Pictures, Inc. v. Court of Appeals*,<sup>66</sup> the Court defined and differentiated between lack of legal capacity to sue, on the one hand, and lack of personality to sue, on the other hand, to wit:

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<sup>65</sup> *Id.* at 52-54.

<sup>66</sup> 329 Phil. 875 (1996).

Among the grounds for a motion to dismiss under the Rules of Court are lack of legal capacity to sue and that the complaint states no cause of action. Lack of legal capacity to sue means that the plaintiff is not in the exercise of his civil rights, or does not have the necessary qualification to appear in the case, or does not have the character or representation he claims. On the other hand, a case is dismissible for lack of personality to sue upon proof that the plaintiff is not the real party in interest, hence grounded on failure to state a cause of action. The term “lack of capacity to sue” should not be confused with the term “lack of personality to sue.” While the former refers to a plaintiff’s general disability to sue, such as on account of minority, insanity, incompetence, *lack of juridical personality* or any other general disqualifications of a party, the latter refers to the fact that the plaintiff is not the real party-in-interest. Correspondingly, the first can be a ground for a motion to dismiss based on the ground of lack of legal capacity to sue, whereas the second can be used as a ground for a motion to dismiss based on the fact that the complaint, on the face thereof, evidently states no cause of action.<sup>67</sup> (Emphasis supplied; citations omitted)

Corollarily, Rule 3, Section 1 of the Rules of Court provides that only natural or juridical persons, or entities authorized by law may be parties in a civil action.<sup>68</sup> In turn, Article 44 of the Civil Code lists down juridical persons as follows:

ARTICLE 44. The following are juridical persons:

- (1) The State and its political subdivisions;
- (2) Other corporations, institutions and entities for public interest or purpose, created by law; their personality begins as soon as they have been constituted according to law;
- (3) Corporations, partnerships and associations for private interest or purpose to which the law grants a juridical personality, separate and distinct from that of each shareholder, partner or member.

The next question is whether CBC-TAMG falls under any of the foregoing enumeration.

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<sup>67</sup> *Id.* at 900–901.

<sup>68</sup> SECTION 1. *Who may be parties; plaintiff and defendant.* — Only natural or juridical persons, or entities authorized by law may be parties in a civil action. The term “plaintiff” may refer to the claiming party, the counter-claimant, the cross-claimant, or the third (fourth, etc.)[-]party plaintiff. The term “defendant” may refer to the original defending party, the defendant in a counterclaim, the cross-defendant, or the third (fourth, etc.)[-]party defendant.

The records bear that CBC-TAMG does not *fall* into any of the juridical persons recognized in Article 44 of the Civil Code. In fact, it does not deny that it is *not* a corporation organized and existing under the laws of the Philippines. However, to support its claim that it has the capacity to sue and be sued, it relies on the fact that the Monetary Board of the Bangko Sentral ng Pilipinas (BSP) authorized CBC to engage in trust and other fiduciary business pursuant to Section 79<sup>69</sup> of the General Banking Law. In connection thereto, Section 412 of the 2021 Manual of Regulations for Banks (MORB) issued by the BSP prescribes the organization and management of a bank's trust and other fiduciary business where it states, among others, that the bank's trust department shall "be organizationally, operationally, administratively[,] and functionally *separate and distinct* from the other departments and/or business of the institution."<sup>70</sup>

Thus, CBC-TAMG asserts that as a trust entity that performs the trust business of CBC, under Section 83<sup>71</sup> of the General Banking Law, it possesses general powers incident to corporations which include the capacity to sue and be sued.<sup>72</sup>

CBC-TAMG is mistaken. Section 412 of the 2021 MORB, upon which it anchors its claim that it has the capacity to sue and be sued, unequivocally states that it is the *bank* that is authorized to engaged in a trust and fiduciary business:

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<sup>69</sup> SECTION 79. *Authority to Engage in Trust Business.* — Only a stock corporation or a person duly authorized by the Monetary Board to engage in trust business shall act as a trustee or administer any trust or hold property in trust or on deposit for the use, benefit, or behoof of others. For purposes of this Act, such a corporation shall be referred to as a trust entity.

<sup>70</sup> *Rollo*, pp. 225–226. (Emphasis supplied)

<sup>71</sup> SECTION 83. *Powers of a Trust Entity.* — A trust entity, in addition to the general powers incident to corporations, shall have the power to:

- 83.1. Act as trustee on any mortgage or bond issued by any municipality, corporation, or any body politic and to accept and execute any trust consistent with law;
- 83.2. Act under the order or appointment of any court as guardian, receiver, trustee, or depository of the estate of any minor or other incompetent person, and as receiver and depository of any moneys paid into court by parties to any legal proceedings and of property of any kind which may be brought under the jurisdiction of the court;
- 83.3. Act as the executor of any will when it is named the executor thereof;
- 83.4. Act as administrator of the estate of any deceased person, with the will annexed, or as administrator of the estate of any deceased person when there is no will;
- 83.5. Accept and execute any trust for the holding, management, and administration of any estate, real or personal, and the rents, issues and profits thereof; and
- 83.6. Establish and manage common trust funds, subject to such rules and regulations as may be prescribed by the Monetary Board.

<sup>72</sup> *Rollo*, pp. 228–229.

## 412. ORGANIZATION AND MANAGEMENT

**Organization.** A bank authorized to engage in trust and other fiduciary business shall, pursuant to Sec. 411, include in its by-laws, provisions on the organization plan or structure of the department, office or unit which shall conduct such business. The by-laws shall also include provisions on the creation of a trust committee, the appointment of a trust officer and other subordinate officers and a clear definition of their duties and responsibilities as well as their line and staff functional relationships within the organization which shall be in accordance with the following guidelines.

- a. **Trust and other fiduciary business of a bank shall be carried out through a trust department** which shall be organizationally, operationally, administratively and functionally separate and distinct from the other departments and/or businesses of the institution.

A bank which is also engaged in investment management activities, shall conduct the same only through its trust department and the responsibilities of the board of directors, trust committee and trust officer shall be construed to include the proper administration and management of investment management activities.

No bank shall undertake any of the trust and other fiduciary business and, whenever applicable, investment management activities outside the direct control, authority and management of the trust department or through any department or office which is involved in the other businesses of the bank, such as the Treasury, Funds Management or any similar department, otherwise, any such business shall be considered part of the bank's real liabilities[.] (Emphasis supplied)

To be sure, CBC-TAMG's existence is not separate and distinct from CBC. In fact, the CA Decision expressly states that CBC-TAMG's legal capacity proceeds from the fact that reference to the latter is reference to CBC itself, acting through its trust department. Nonetheless, the CA ruled that CBC-TAMG may still be considered as one with legal capacity to sue and be sued because it is a trust entity that is endowed with corporate powers.<sup>73</sup> CBC-TAMG echoes the CA ruling and characterizes

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<sup>73</sup> *Id* at 52-53.

itself as a trust department with corporate powers based on Section 83 of the General Banking Law.

CBC-TAMG is confusing the procedure for the operation of a trust business and is putting the cart before the horse. There is nothing in the General Banking Law that creates such a fantastical animal that CBC-TAMG claims to be, i.e., a trust *department* exercising the general powers incident to corporations separately and independently from the bank that it belongs to.

By relating Section 83 with Sections 79, 81, and 82 of the General Banking Law, it becomes obvious that the statute does *not* confer a separate juridical personality upon a trust department of a bank. Instead, the law requires that *before* a stock corporation, such as CBC, may be allowed to operate a trust business, it must be duly authorized to do so by the Monetary Board, and it is this duly authorized stock corporation that is considered as a “trust entity” under Section 83 of the statute, *viz.*:

SECTION 79. *Authority to Engage in Trust Business.* — Only a *stock corporation* or a person *duly authorized by the Monetary Board* to engage in trust business shall act as a trustee or administer any trust or hold property in trust or on deposit for the use, benefit, or behalf of others. For purposes of this Act, *such a corporation shall be referred to as a trust entity.*

....

SECTION 81. *Registration of Articles of Incorporation and By-Laws of a Trust Entity.* — The Securities and Exchange Commission shall not register the articles of incorporation and by-laws or any amendment thereto, of any trust entity, *unless accompanied by a certificate of authority issued by the Bangko Sentral.*

SECTION 82. *Minimum Capitalization.* — A trust entity, before it can engage in trust or other fiduciary business, shall comply with the *minimum paid-in capital requirement* which will be determined by the Monetary Board

SECTION 83. *Powers of a Trust Entity.* — A trust entity, *in addition to the general powers incident to corporations*, shall have the power to:

.... (Emphasis supplied)



Section 83 of the General Banking Law simply recognizes that a duly incorporated stock corporation already possesses general corporate powers pursuant to Section 35<sup>74</sup> of Republic Act No. 11232 or the Revised Corporation Code, including the power to sue and be sued. However, if a stock corporation, such as CBC, obtains the requisite authority from the BSP to engage in a trust business, the corporation is granted the specific powers enumerated in Section 83 of the General Banking Law, *in addition to* the powers that had already been conferred upon it by the Revised Corporation Code. By no means of imagination can Section 83 of the General Banking Law be interpreted as one that confers a separate juridical personality upon a mere department of a corporation.

Moreover, contrary to CBC-TAMG's argument, a simple perusal of Section 132 in relation to Section 412 of the 2021 MORB readily reveals that the trust committee in charge of the trust department of a bank is *not* independent of or completely separated from the bank's board of directors. Instead, the trust committee is *responsible* to the board, who retains its power of control over the bank's business and *all* of its resources, although the directors must ensure the *independence* of the trust department from the activities of the bank proper, *viz.*:

#### 132 BOARD OF DIRECTORS

Powers/Corporate powers of the board of directors. *The corporate powers of an institution shall be exercised, its business conducted, and all its resources controlled through its board of directors.* The powers of the board of directors as conferred by law are original and cannot be revoked by the stockholders. The directors shall hold their office charged with the duty to exercise sound and objective judgment for the best interest of the institution.

....

#### 412 ORGANIZATION AND MANAGEMENT

....

- a. Trust and other fiduciary business of a bank shall be carried out through a trust department which shall be organizationally,

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<sup>74</sup> SECTION 35. *Corporate Powers and Capacity.* — Every corporation incorporated under this Code has the power and capacity:  
 (a) To sue and be sued in its corporate name[.]

operationally, administratively and functionally separate and distinct from the other departments and/or businesses of the institution.

....

- b. The trust department, trust officer and other subordinate officers of the trust department shall only be directly responsible to the bank's trust committee which shall, in turn, *be only directly responsible to the bank's board of directors.*

....

#### Responsibilities of administration

- a. Board of directors

*The responsibilities of the board of directors in relation to trust activities of a bank shall be those set forth under Sec. 132. The board of directors shall ensure an appropriate degree of independence between the activities of the bank proper and its trust department. (Emphasis supplied)*

Pertinently, the Court has been guided by American case law in interpreting the nature of a bank's trust and fiduciary business, as well as the bank's obligations under the trust agreement.<sup>75</sup> In this regard, several American states require banks to operate their trust business separate from their general business, similar to the requirements of the General Banking Law. In those jurisdictions, the American courts have held that *the separate departments of a banking institution cannot be considered as independent entities but must be deemed as a single corporation:*

*Many banking institutions are organized with several departments such as commercial, savings, trust, bond, loan, real estate, etc. Interdepartmental transactions in such banks cannot be regarded as dealing at arm's length, as between independent entities. Departmental banks, after all, are single corporate entities, managed by a single board of directors and owned by shareholders who participate in the combined profits and losses of the several departments. Transactions therefore, between separate departments, affecting a trust for which the bank is trustee, do not create any immunity against self-dealing as between the bank and the trust, because such transactions, in fact, constitute self-dealing.<sup>76</sup> (Emphasis supplied; citations omitted)*

<sup>75</sup> See *Securities and Exchange Commission v. Laigo*, 768 Phil. 239 (2015).

<sup>76</sup> *In re Binder: Squire v. Emsley*, 137 Ohio St. 26, 39-40, 27 N.E.2d 939, 948 (1940).

American case law recognizes that a bank may create separate departments because its duty to its clients may differ, depending on the business involved. For instance, it may maintain a savings department, where the bank stands as a *trustee* of its *cestui que trust*, and also have a commercial department, where its relationship to the client is that of a common law debtor to its creditor.<sup>77</sup> Nonetheless, the bank is still considered as a single corporate entity, although it may be authorized to act in both a fiduciary and commercial capacity through its departments.<sup>78</sup> *Each department of the bank cannot be considered as a separate entity because title to all corporate property is held by the bank as a single corporate entity; the directors are the officers of that one corporation; and the departments are managed by a single board of directors and owned by the same shareholders.*<sup>79</sup>

The foregoing disquisition in American jurisprudence finds application in the present case. Verily, CBC merely maintains CBC-TAMG as a separate department or unit under CBC's corporate structure. Although Section 87<sup>80</sup> of the General Banking Law requires that the trust business and all funds, properties or securities received by the trust shall be kept separate and distinct from the bank's general business, including all other funds, properties, and assets of the bank, Section 412 in relation to Section 132 of the 2021 MORB clearly provides that the trust department, through the trust committee, is still responsible to CBC's board of directors. The board retains the power of control over *all* of the bank's business and resources, including assets that are held in trust by CBC. It cannot therefore be said that CBC-TAMG possesses a personality separate and distinct from CBC.

In addition, the requirement under Section 87 of the General Banking Law for the bank to separate its trust and fiduciary business from its general business must be read in its proper context, i.e., the bank's fiduciary duty over the assets that are held in trust. Related thereto is

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<sup>77</sup> *Comm'r of Banks, petitioner, In re Prudential Tr. Co.*, 240 Mass. 478, 483-484, 134 N.E. 253, 255 (1922). (Emphasis supplied)

<sup>78</sup> *Barker v. First National Bank*, 20 F. Supp. 185, 188 (N.D. Ala. 1937); *First National Bank v. Commercial Bank & Tr. Co.*, 163 Va. 162, 170-171, 175 S.E. 775, 777-778 (1934).

<sup>79</sup> *Barker v. First National Bank*, 20 F. Supp. 185, 188 (N.D. Ala. 1937). (Emphasis supplied)

<sup>80</sup> SECTION 87. *Separation of Trust Business from General Business.* — The trust business and all funds, properties or securities received by any trust entity as executor, administrator, guardian, trustee, receiver, or depository shall be kept separate and distinct from the general business including all other funds, properties, and assets of such trust entity. The accounts of all such funds, properties, or securities shall likewise be kept separate and distinct from the accounts of the general business of the trust entity.



Section 80,<sup>81</sup> which *prohibits the trust entity from entering into a sale, assignment, or lending transaction with any of the other departments of the same trust entity*, subject to certain exceptions. The law obviously recognizes that a trust imposes upon the bank a *fiduciary duty* to the beneficiary; hence, the bank must treat the trust account with the highest degree of care.<sup>82</sup> As the trustee, the bank must administer the trust assets for the benefit of the beneficiary.<sup>83</sup> It cannot *commingle* the trust assets with its own, or to use the trust assets for the bank's ordinary commercial transactions, in violation of the trust.<sup>84</sup>

Evidently, contrary to CBC-TAMG's postulations, Sections 83 and 87 of the General Banking Law were *not* intended to confer a separate personality upon a trust department of bank. Instead, the separation of the trust department from the other departments of the bank, as well as the segregation of the trust assets from the bank's assets and general business, is required by law *for the protection of the beneficiary*, by ensuring that the trust assets are not commingled with the assets of the bank or used for the latter's ordinary commercial transactions. The statutory provisions regulate *how* the bank operates the trust business *vis-à-vis* its general

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<sup>81</sup> SECTION 80. *Conduct of Trust Business.* — A trust entity shall administer the funds or property under its custody *with the diligence that a prudent man* would exercise in the conduct of an enterprise of a like character and with similar aims. *No trust entity* shall, for the account of the trustor or the beneficiary of the trust, purchase or acquire property from, or sell, transfer, assign or lend money or property to, or purchase debt instruments of, *any of the departments, . . . of the trust entity, . . .* unless the transaction is specifically authorized by the trustor and the relationship of the trustee and the other party involved in the transaction is fully disclosed to the trustor or beneficiary of the trust prior to the transaction. The Monetary Board shall promulgate such rules and regulations as may be necessary to prevent circumvention of this prohibition or the evasion of the responsibility herein imposed on a trust entity.

<sup>82</sup> *Securities and Exchange Commission v. Laigo*, 768 Phil. 239 (2015); *Spouses Reyes v. Court of Appeals*, 415 Phil. 258 (2001). (Emphasis supplied)

<sup>83</sup> *Secuya v. Vda. de Selma*, 383 Phil. 126 (2000); *Spouses Villamil v. Court of Appeals*, 284-A Phil. 132 (1992).

<sup>84</sup> *First National Bank v. Commercial Bank & Tr. Co.*, 163 Va. 162, 170-71, 175 S.E. 775, 777-78 (1934), which reads:

. . . Mr. Thompson, for his part, understood that the money was to be held by the trust department until proper investment could be found for it, and that *the affairs of that department were kept separate from the other department of the bank*. The money was never invested according to Mr. Thompson's understanding and as contemplated by the bank's officers when it was deposited, *but immediately upon its receipt was appropriated by the bank to its own use. Under these circumstances we do not think the bank, in the proper exercise of the trust imposed upon it, could rightly make a general deposit of the said trust fund with itself, and by commingling said funds with its own in its ordinary commercial transactions change the existing fiduciary relation to that of debtor and creditor and then claim it had thereby acquired title to said fund. The bank, though authorized to act in both a fiduciary and commercial capacity, constituted but a single corporate entity.* It could not rightly destroy the trust relation and claim the fiduciary funds in question had become its own on the debtor and creditor theory merely by the process, figuratively speaking, of shifting such funds from one hand to the other. . . (Emphasis supplied)

operations, not a grant of separate juridical personality to a mere trust department or unit of a banking corporation.

All told, the trust entity referred to in Chapter IX of the General Banking Law is CBC, and not CBC-TAMG, which only serves as CBC's trust department. Thus, CBC-TAMG's insistence that it has a legal capacity to sue on its own, independent of CBC, cannot prosper. That CBC-TAMG does not exist as a juridical entity separate from CBC necessarily affects its legal capacity to proceed with its counterclaim and cross-claim in the first interpleader case. Hence, the CA Decision<sup>85</sup> that allowed CBC-TAMG to prosecute its counterclaim and cross-claim in the first interpleader case, and directed the consolidation of the first interpleader case with the second interpleader case, must be set aside.

The Court stresses that BDO already instituted the second interpleader case that impleaded CBC in place of CBC-TAMG. The second interpleader case is therefore the proper avenue for the parties to litigate their claims against each other. Besides, CBC-TAMG could only hold a property *in trust* for the beneficiary. Under Rule 3, Section 3<sup>86</sup> of the Rules of Court, a trustee or someone acting in a fiduciary capacity is only a *representative* of the beneficiary, who is considered as the real party-in-interest.<sup>87</sup> Given its fiduciary functions, CBC-TAMG cannot prosecute any claim under the ONFSA or Security Assignment separately from the beneficiary thereof.

There is therefore more reason for the Court to dismiss CBC-TAMG's counter-claim and cross-claim in the first interpleader case, and to simply allow the proceedings in the second interpleader case to continue, as it is in the latter case where CBC, as the trust beneficiary *and* trust entity, has already been impleaded. A contrary ruling would result in an absurd situation where CBC-TAMG, as a mere representative of the trust beneficiary, is allowed to litigate in the first interpleader case

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<sup>85</sup> *Rollo*, p. 58.

<sup>86</sup> SECTION 3. *Representatives as parties.* — Where the action is allowed to be prosecuted and defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real property in interest. A representative may be a trustee of an expert trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. An agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal.

<sup>87</sup> *Balayan Bay Rural Bank, Inc. v. National Livelihood Development Corp.*, 770 Phil. 30 (2015). (Emphasis supplied)

against the same parties, while at the same time, the trust beneficiary, including CBC, is prosecuting the same claims under the same agreements and against the same parties, but in another venue – the second interpleader case. That is textbook forum shopping which should be prohibited.

At this point and, considering the second interpleader case, the Court no longer finds the need to further discuss the issue on lack of personality to sue and estoppel on the part of Primark. The issues surrounding the ONFSA, particularly which party has the right over the rental payments of BDO, will be best threshed out in the said case.

**WHEREFORE**, the Petition for Review on *Certiorari* is **GRANTED**. The Decision dated April 12, 2022, and Resolution dated October 13, 2022, of the Court of Appeals in CA-G.R. CV No. 116479 are **REVERSED** and **SET ASIDE**. The counterclaim and cross-claim of China Banking Corporation-Trust and Asset Management Group in Civil Case No. R-MKT-20-01679-SC are **DISMISSED** for lack of capacity to sue.

**SO ORDERED.**



**HENRI JEAN PAUL B. INTING**  
*Associate Justice*

WE CONCUR:



**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*



**SAMUEL H. GAERLAN**  
*Associate Justice*



**JAPAR B. DIMAAMPAO**  
*Associate Justice*



**MARIA FILOMENA D. SINGH**

*Associate Justice*

**ATTESTATION**

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



**ALFREDO BENJAMIN S. CAGUIOA**

*Associate Justice*

*Chairperson, Third Division*

**CERTIFICATION**

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



**ALEXANDER G. GESMUNDO**

*Chief Justice*