Republic of the Philippines
Supreme Court
Manila

EN BANC

ADVOCATES FOR TRUTH IN LENDING, INC. and EDUARDO B. OLAGUER, Petitioners, - versus - **BANGKO SENTRAL MONETARY BOARD, represented by its Chairman, GOVERNOR ARMANDO M. TETANGCO, JR., and its incumbent members: JUANITA D. AMATONG, ALFREDO C. ANTONIO, PETER FAVILA, NELLY F. VILLAFUERTE, IGNACIO R. BUNYE and CESAR V. PURISIMA,** Respondents.	**G.R. No. 192986** Present: SERENO, *C.J.*, CARPIO, VELASCO, JR., LEONARDO-DE CASTRO, BRION,* PERALTA, BERSAMIN, DEL CASTILLO, ABAD, VILLARAMA, JR., PEREZ, MENDOZA, REYES, PERLAS-BERNABE, and LEONEN, *JJ.* Promulgated: **JANUARY 15, 2013**

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* On leave.

D E C I S I O N

REYES, *J.*:

Petitioners, claiming that they are raising issues of transcendental importance to the public, filed directly with this Court this Petition for C*ertiorari* under Rule 65 of the 1997 Rules of Court, seeking to declare that the Bangko Sentral ng Pilipinas Monetary Board (BSP-MB), replacing the Central Bank Monetary Board (CB-MB) by virtue of Republic Act (R.A.) No. 7653, has no authority to continue enforcing Central Bank Circular No. 905,[1] issued by the CB-MB in 1982, which "suspended" Act No. 2655, or the Usury Law of 1916.

Factual Antecedents

Petitioner "Advocates for Truth in Lending, Inc." (AFTIL) is a non-profit, non-stock corporation organized to engage in *pro bono* concerns and activities relating to money lending issues. It was incorporated on July 9, 2010,[2] and a month later, it filed this petition, joined by its founder and president, Eduardo B. Olaguer, suing as a taxpayer and a citizen.

R.A. No. 265, which created the Central Bank (CB) of the Philippines on June 15, 1948, empowered the CB-MB to, among others, set the maximum interest rates which banks may charge for all types of loans and other credit operations, within limits prescribed by the Usury Law. Section 109 of R.A. No. 265 reads:

> Sec. 109. *Interest Rates, Commissions and Charges*. — The Monetary Board may fix the maximum rates of interest which banks may pay on deposits and on other obligations.
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> The Monetary Board may, within the limits prescribed in the Usury Law fix the maximum rates of interest which banks may charge for different types of loans and for any other credit operations, or may fix the maximum differences which may exist between the interest or rediscount rates of the Central Bank and the rates which the banks may charge their customers if the respective credit documents are not to lose their eligibility for rediscount or advances in the Central Bank.
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> Any modifications in the maximum interest rates permitted for the borrowing or lending operations of the banks shall apply only to future operations and not to those made prior to the date on which the modification becomes effective.

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1 *Rollo*, pp. 48-56.

2 Id. at 40-45.

> In order to avoid possible evasion of maximum interest rates set by the Monetary Board, the Board may also fix the maximum rates that banks may pay to or collect from their customers in the form of commissions, discounts, charges, fees or payments of any sort. (Underlining ours)

On March 17, 1980, the Usury Law was amended by Presidential Decree (P.D.) No. 1684, giving the CB-MB authority to prescribe different maximum rates of interest which may be imposed for a loan or renewal thereof or the forbearance of ***any*** money, goods or credits, provided that the changes are effected gradually and announced in advance. Thus, Section 1-a of Act No. 2655 now reads:

> Sec. 1-a. The Monetary Board is hereby authorized to prescribe the maximum rate or rates of interest for the loan or renewal thereof or the forbearance of ***any*** money, goods or credits, and to change such rate or rates whenever warranted by prevailing economic and social conditions: Provided, That changes in such rate or rates may be effected gradually on scheduled dates announced in advance.
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> In the exercise of the authority herein granted the Monetary Board may prescribe higher maximum rates for loans of low priority, such as consumer loans or renewals thereof as well as such loans made by pawnshops, finance companies and other similar credit institutions although the rates prescribed for these institutions need not necessarily be uniform. The Monetary Board is also authorized to prescribe different maximum rate or rates for different types of borrowings, including deposits and deposit substitutes, or loans of financial intermediaries. (Underlining and emphasis ours)

In its Resolution No. 2224 dated December 3, 1982,[3] the CB-MB issued CB Circular No. 905, Series of 1982, effective on January 1, 1983. Section 1 of the Circular, under its General Provisions, removed the ceilings on interest rates on loans or forbearance of ***any*** money, goods or credits, to wit:

> Sec. 1. The rate of interest, including commissions, premiums, fees and other charges, on a loan or forbearance of *any* money, goods, or credits, regardless of maturity and whether secured or unsecured, that may be charged or collected by any person, whether natural or juridical, shall **not** be subject to **any ceiling** prescribed under or pursuant to the Usury Law, as amended. (Underscoring and emphasis ours)

The Circular then went on to amend Books I to IV of the CB's "Manual of Regulations for Banks and Other Financial Intermediaries" (Manual of Regulations) by removing the applicable ceilings on specific interest rates. Thus, Sections 5, 9 and 10 of CB Circular No. 905 amended

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[3] Id. at 48-56.

Book I, Subsections 1303, 1349, 1388.1 of the Manual of Regulations, by removing the ceilings for interest and other charges, commissions, premiums, and fees applicable to commercial banks; Sections 12 and 17 removed the interest ceilings for thrift banks (Book II, Subsections 2303, 2349); Sections 19 and 21 removed the ceilings applicable to rural banks (Book III, Subsection 3152.3-c); and, Sections 26, 28, 30 and 32 removed the ceilings for non-bank financial intermediaries (Book IV, Subsections 4303Q.1 to 4303Q.9, 4303N.1, 4303P).[4]

On June 14, 1993, President Fidel V. Ramos signed into law R.A. No. 7653 establishing the Bangko Sentral ng Pilipinas (BSP) to replace the CB. The repealing clause thereof, Section 135, reads:

> Sec. 135. *Repealing Clause*. — Except as may be provided for in Sections 46 and 132 of this Act, Republic Act No. 265, as amended, the provisions of any other law, special charters, rule or regulation issued pursuant to said Republic Act No. 265, as amended, or parts thereof, which may be inconsistent with the provisions of this Act are hereby repealed. Presidential Decree No. 1792 is likewise repealed.

Petition for *Certiorari*

To justify their skipping the hierarchy of courts and going directly to this Court to secure a writ of *certiorari*, petitioners contend that the transcendental importance of their Petition can readily be seen in the issues raised therein, to wit:

> a) Whether under R.A. No. 265 and/or P.D. No. 1684, the CB-MB had the statutory or constitutional authority to prescribe the maximum rates of interest for all kinds of credit transactions and forbearance of money, goods or credit beyond the limits prescribed in the Usury Law;
> b) If so, whether the CB-MB exceeded its authority when it issued CB Circular No. 905, which removed all interest ceilings and thus suspended Act No. 2655 as regards usurious interest rates;
> c) Whether under R.A. No. 7653, the *new* BSP-MB may continue to enforce CB Circular No. 905.[5]

Petitioners attached to their petition copies of several Senate Bills and Resolutions of the 10th Congress, which held its sessions from 1995 to 1998, calling for investigations by the Senate Committee on Banks and Financial Institutions into alleged unconscionable commercial rates of

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4 Id. at 10-12.
5 Id. at 13.

interest imposed by these entities. Senate Bill (SB) Nos. 37[6] and 1860,[7] filed by Senator Vicente C. Sotto III and the late Senator Blas F. Ople, respectively, sought to amend Act No. 2655 by fixing the rates of interest on loans and forbearance of credit; Philippine Senate Resolution (SR) No. 1053,[8] 1073[9] and 1102,[10] filed by Senators Ramon B. Magsaysay, Jr., Gregorio B. Honasan and Franklin M. Drilon, respectively, urged the aforesaid Senate Committee to investigate ways to curb the high commercial interest rates then obtaining in the country; Senator Ernesto Maceda filed SB No. 1151 to prohibit the collection of more than two months of advance interest on any loan of money; and Senator Raul Roco filed SR No. 1144[11] seeking an investigation into an alleged cartel of commercial banks, called "Club 1821", reportedly behind the regime of high interest rates. The petitioners also attached news clippings[12] showing that in February 1998 the banks' prime lending rates, or interests on loans to their best borrowers, ranged from 26% to 31%.

Petitioners contend that under Section 1-a of Act No. 2655, as amended by P.D. No. 1684, the CB-MB was authorized only to prescribe or set the maximum rates of interest for a loan or renewal thereof or for the forbearance of any money, goods or credits, and to change such rates whenever warranted by prevailing economic and social conditions, the changes to be effected gradually and on scheduled dates; that nothing in P.D. No. 1684 authorized the CB-MB to lift or suspend the limits of interest on all credit transactions, when it issued CB Circular No. 905. They further insist that under Section 109 of R.A. No. 265, the authority of the CB-MB was clearly only to fix the banks' maximum rates of interest, but always within the limits prescribed by the Usury Law.

Thus, according to petitioners, CB Circular No. 905, which was promulgated without the benefit of any prior public hearing, is void because it violated Article 5 of the New Civil Code, which provides that "Acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity."

They further claim that just weeks after the issuance of CB Circular No. 905, the benchmark 91-day Treasury bills (T-bills),[13] then known as "Jobo" bills[14] shot up to 40% *per annum*, as a result. The banks

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6 Id. at 31-32.
7 Id. at 33.
8 Id. at 34-35.
9 Id. at 36-37.
10 Id. at 38.
11 Id. at 30.
12 Id. at 26-29.
13 Treasury bills are government debt securities issued by the Bureau of the Treasury with maturities of less than 1 year.
14 Named after CB Governor Jose "Jobo" Fernandez.

immediately followed suit and re-priced their loans to rates which were even higher than those of the "Jobo" bills. Petitioners thus assert that CB Circular No. 905 is also unconstitutional in light of Section 1 of the Bill of Rights, which commands that "no person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws."

Finally, petitioners point out that R.A. No. 7653 did not re-enact a provision similar to Section 109 of R.A. No. 265, and therefore, in view of the repealing clause in Section 135 of R.A. No. 7653, the BSP-MB has been stripped of the power either to prescribe the maximum rates of interest which banks may charge for different kinds of loans and credit transactions, or to suspend Act No. 2655 and continue enforcing CB Circular No. 905.

Ruling

The petition must fail.

A. The Petition is procedurally infirm.

The decision on whether or not to accept a petition for *certiorari*, as well as to grant due course thereto, is addressed to the sound discretion of the court.[15] A petition for *certiorari* being an extraordinary remedy, the party seeking to avail of the same must strictly observe the procedural rules laid down by law, and non-observance thereof may not be brushed aside as mere technicality.[16]

As provided in Section 1 of Rule 65, a writ of *certiorari* is directed against a tribunal exercising judicial or quasi-judicial functions.[17] Judicial functions are exercised by a body or officer clothed with authority to determine what the law is and what the legal rights of the parties are with respect to the matter in controversy. Quasi-judicial function is a term that applies to the action or discretion of public administrative officers or bodies given the authority to investigate facts or ascertain the existence of facts,

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15 *Chong v. Dela Cruz*, G.R. No. 184948, July 21, 2009, 593 SCRA 311, 313-314.

16 *Sea Power Shipping Enterprises, Inc. v. Court of Appeals*, 412 Phil. 603, 611 (2001).

17 Sec. 1. *Petition for certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his 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 in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

hold hearings, and draw conclusions from them as a basis for their official action using discretion of a judicial nature.[18]

The CB-MB (now BSP-MB) was created to perform executive functions with respect to the establishment, operation or liquidation of banking and credit institutions, and branches and agencies thereof.[19] It does not perform judicial or quasi-judicial functions. Certainly, the issuance of CB Circular No. 905 was done in the exercise of an executive function. *Certiorari* will not lie in the instant case.[20]

B. Petitioners have no *locus standi* to file the Petition

Locus standi is defined as "a right of appearance in a court of justice on a given question." In private suits, Section 2, Rule 3 of the 1997 Rules of Civil Procedure provides that "every action must be prosecuted or defended in the name of the real party in interest," who is "the party who stands to be benefited or injured by the judgment in the suit or the party entitled to the avails of the suit." Succinctly put, a party's standing is based on his own right to the relief sought.[21]

Even in public interest cases such as this petition, the Court has generally adopted the "direct injury" test that the person who impugns the validity of a statute must have "a personal and substantial interest in the case such that he has sustained, or will sustain direct injury as a result."[22] Thus, while petitioners assert a public right to assail CB Circular No. 905 as an illegal executive action, it is nonetheless required of them to make out a sufficient interest in the vindication of the public order and the securing of relief. It is significant that in this petition, the petitioners do not allege that they sustained any personal injury from the issuance of CB Circular No. 905.

Petitioners also do not claim that public funds were being misused in the enforcement of CB Circular No. 905. In *Kilosbayan, Inc. v. Morato,*[23] involving the on-line lottery contract of the PCSO, there was no allegation that public funds were being misspent, which according to the Court would

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[18] *Chamber of Real Estate and Builders' Associations, Inc. (CREBA) v. Energy Regulatory Commission (ERC)*, G.R. No. 174697, July 8, 2010, 624 SCRA 556, 571.

[19] *Central Bank of the Philippines v. CA*, 158 Phil. 986, 993 (1974).

[20] In *Philnabank Employees Association v. Estanislao* (G.R. No. 104209, November 16, 1993, 227 SCRA 804), the Supreme Court refused to issue a writ of *certiorari* against the Secretaries of Finance and of Labor after noting that they did not act in any judicial or quasi-judicial capacity but were merely promulgating the implementing rules of R.A. No. 6971, the Productivity Incentives Act of 1990.

[21] *Prof. David v. Pres. Macapagal-Arroyo*, 522 Phil. 705, 755-756 (2006). (Citations omitted)

[22] *People of the Philippines and HSBC v. Vera*, 65 Phil. 56, 89 (1937).

[23] 320 Phil. 171 (1995); 316 Phil. 652 (1995).

have made the action a public one, "and justify relaxation of the requirement that an action must be prosecuted in the name of the real party-in-interest." The Court held, moreover, that the status of *Kilosbayan* as a people's organization did not give it the requisite personality to question the validity of the contract. Thus:

> Petitioners do not in fact show what particularized interest they have for bringing this suit. It does not detract from the high regard for petitioners as civic leaders to say that their interest falls short of that required to maintain an action under the Rule 3, Sec. 2.[24]

C. The Petition raises no issues of transcendental importance.

In the 1993 case of *Joya v. Presidential Commission on Good Government*,[25] it was held that no question involving the constitutionality or validity of a law or governmental act may be heard and decided by the court unless there is compliance with the legal requisites for judicial inquiry, namely: (a) that the question must be raised by the proper party; (b) that there must be an actual case or controversy; (c) that the question must be raised at the earliest possible opportunity; and (d) that the decision on the constitutional or legal question must be necessary to the determination of the case itself.

In *Prof. David v. Pres. Macapagal-Arroyo*,[26] the Court summarized the requirements before taxpayers, voters, concerned citizens, and legislators can be accorded a standing to sue, *viz*:

> (1) the cases involve constitutional issues;
> (2) for taxpayers, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;
> (3) for voters, there must be a showing of obvious interest in the validity of the election law in question;
> (4) for concerned citizens, there must be a showing that the issues raised are of transcendental importance which must be settled early; and
> (5) for legislators, there must be a claim that the official action complained of infringes upon their prerogatives as legislators.

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24 Id. at 696.
25 G.R. No. 96541, August 24, 1993, 225 SCRA 568.
26 Supra note 21.

While the Court may have shown in recent decisions a certain toughening in its attitude concerning the question of legal standing, it has nonetheless always made an exception where the transcendental importance of the issues has been established, notwithstanding the petitioners' failure to show a direct injury.[27] In *CREBA v. ERC*,[28] the Court set out the following instructive guides as determinants on whether a matter is of transcendental importance, namely: (1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in the questions being raised. Further, the Court stated in *Anak Mindanao Party-List Group v. The Executive Secretary*[29] that the rule on standing will not be waived where these determinants are not established.

In the instant case, there is no allegation of misuse of public funds in the implementation of CB Circular No. 905. Neither were borrowers who were actually affected by the suspension of the Usury Law joined in this petition. Absent any showing of transcendental importance, the petition must fail.

More importantly, the Court notes that the instant petition adverted to the regime of high interest rates which obtained at least 15 years ago, when the banks' prime lending rates ranged from 26% to 31%,[30] or even 29 years ago, when the 91-day *Jobo* bills reached 40% *per annum*. In contrast, according to the BSP, in the first two (2) months of 2012 the bank lending rates averaged 5.91%, which implies that the banks' prime lending rates were lower; moreover, deposit interests on savings and long-term deposits have also gone very low, averaging 1.75% and 1.62%, respectively.[31]

Judging from the most recent auctions of T-bills, the savings rates must be approaching 0%. In the auctions held on November 12, 2012, the rates of 3-month, 6-month and 1-year T-bills have dropped to 0.150%, 0.450% and 0.680%, respectively.[32] According to *Manila Bulletin*, this very low interest regime has been attributed to "high liquidity and strong investor demand amid positive economic indicators of the country."[33]

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27 Id.

28 Supra note 18.

29 G.R. No. 166052, August 29, 2007, 531 SCRA 583.

30 *Rollo*, p. 27. In contrast, as reported in the October 10, 2012 issue of the *Philippine Daily Inquirer*, Section B-2-1, a recent 25-year treasury bond issue, government securities which mature in more than a year, carried an annual rate of 6.125%, way below 31%. It fetched ₱63 billion, more than double the government's original offer of ₱30 billion.

31 See www.bsp.gov.ph/statistics.online.asp.

32 *Manila Bulletin* article, November 13, 2012, p. B-1: "Treasury Bill Yields Tumble to Record Lows, 91-Day at 0.150%"

33 Id.

While the Court acknowledges that cases of transcendental importance demand that they be settled promptly and definitely, brushing aside, if we must, technicalities of procedure,[34] the delay of at least 15 years in the filing of the instant petition has actually rendered moot and academic the issues it now raises.

For its part, BSP-MB maintains that the petitioners' allegations of constitutional and statutory violations of CB Circular No. 905 are really mere challenges made by petitioners concerning the wisdom of the Circular. It explains that it was in view of the global economic downturn in the early 1980's that the executive department through the CB-MB had to formulate policies to achieve economic recovery, and among these policies was the establishment of a market-oriented interest rate structure which would require the removal of the government-imposed interest rate ceilings.[35]

D. The CB-MB merely suspended the effectivity of the Usury Law when it issued CB Circular No. 905.

The power of the CB to effectively suspend the Usury Law pursuant to P.D. No. 1684 has long been recognized and upheld in many cases. As the Court explained in the landmark case of *Medel v. CA*,[36] citing several cases, CB Circular No. 905 "did not repeal nor in anyway amend the Usury Law but simply suspended the latter's effectivity;"[37] that "a [CB] Circular cannot repeal a law, [for] only a law can repeal another law;"[38] that "by virtue of CB Circular No. 905, the Usury Law has been rendered ineffective;"[39] and "Usury has been legally non-existent in our jurisdiction. Interest can now be charged as lender and borrower may agree upon."[40]

In *First Metro Investment Corp. v. Este Del Sol Mountain Reserve, Inc*.[41] cited in *DBP v. Perez*,[42] we also belied the contention that the CB was engaged in self-legislation. Thus:

> Central Bank Circular No. 905 did not repeal nor in any way amend the Usury Law but simply suspended the latter's effectivity. The illegality of usury is wholly the creature of legislation. A Central Bank Circular

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34 *Araneta v. Dinglasan*, 84 Phil. 368, 373 (1949).
35 *Rollo*, pp. 79-80, 103-105.
36 359 Phil. 820 (1998).
37 *Security Bank and Trust Co. v. RTC-Makati, Branch 61*, 331 Phil. 787, 793 (1996).
38 *Palanca v. Court of Appeals*, G.R. No. 106685, December 2, 1994, 238 SCRA 593, 601.
39 *Sps. Florendo v. CA*, 333 Phil. 535, 546 (1996).
40 *People v. Dizon*, 329 Phil. 685, 696 (1996).
41 420 Phil. 902 (2001).
42 484 Phil. 843 (2004).

> cannot repeal a law. Only a law can repeal another law. x x x.[43]

In *PNB v. Court of Appeals*,[44] an escalation clause in a loan agreement authorized the PNB to unilaterally increase the rate of interest to 25% *per annum*, plus a penalty of 6% *per annum* on past dues, then to 30% on October 15, 1984, and to 42% on October 25, 1984. The Supreme Court invalidated the rate increases made by the PNB and upheld the 12% interest imposed by the CA, in this wise:

> P.D. No. 1684 and C.B. Circular No. 905 no more than allow contracting parties to stipulate freely regarding any subsequent adjustment in the interest rate that shall accrue on a loan or forbearance of money, goods or credits. In fine, they can agree to adjust, upward or downward, the interest previously stipulated. x x x.[45]

Thus, according to the Court, by lifting the interest ceiling, CB Circular No. 905 merely upheld the parties' freedom of contract to agree freely on the rate of interest. It cited Article 1306 of the New Civil Code, under which the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.

E. The BSP-MB has authority to enforce CB Circular No. 905.

Section 1 of CB Circular No. 905 provides that "*The rate of interest, including commissions, premiums, fees and other charges, on a loan or forbearance of* ***any*** *money, goods, or credits, regardless of maturity and whether secured or unsecured, that may be charged or collected by* ***any*** *person, whether natural or juridical, shall not be subject to any ceiling prescribed under or pursuant to the Usury Law, as amended*." It does not purport to suspend the Usury Law only as it applies to banks, but to all lenders.

Petitioners contend that, granting that the CB had power to "suspend" the Usury Law, the *new* BSP-MB did not retain this power of its predecessor, in view of Section 135 of R.A. No. 7653, which expressly repealed R.A. No. 265. The petitioners point out that R.A. No. 7653 did not reenact a provision similar to Section 109 of R.A. No. 265.

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[43] Supra note 41, at 914, citing *Medel v. CA*, supra note 36, at 829; *Security Bank and Trust v. RTC-Makati, Branch 61*, supra note 37; *Palanca v. CA*, supra note 38.

[44] G.R. No. 107569, November 8, 1994, 238 SCRA 20.

[45] Id. at 25.

A closer perusal shows that Section 109 of R.A. No. 265 covered only loans extended by banks, whereas under Section 1-a of the Usury Law, as amended, the BSP-MB may prescribe the maximum rate or rates of interest for all loans or renewals thereof or the forbearance of any money, goods or credits, including those for loans of low priority such as consumer loans, as well as such loans made by pawnshops, finance companies and similar credit institutions. It even authorizes the BSP-MB to prescribe different maximum rate or rates for different types of borrowings, including deposits and deposit substitutes, or loans of financial intermediaries.

Act No. 2655, an earlier law, is much broader in scope, whereas R.A. No. 265, now R.A. No. 7653, merely supplemented it as it concerns loans by banks and other financial institutions. Had R.A. No. 7653 been intended to repeal Section 1-a of Act No. 2655, it would have so stated in unequivocal terms.

Moreover, the rule is settled that repeals by implication are not favored, because laws are presumed to be passed with deliberation and full knowledge of all laws existing pertaining to the subject.[46] An implied repeal is predicated upon the condition that a substantial conflict or repugnancy is found between the new and prior laws. Thus, in the absence of an express repeal, a subsequent law cannot be construed as repealing a prior law unless an irreconcilable inconsistency and repugnancy exists in the terms of the new and old laws.[47] We find no such conflict between the provisions of Act 2655 and R.A. No. 7653.

F. The lifting of the ceilings for interest rates does not authorize stipulations charging excessive, unconscionable, and iniquitous interest.

It is settled that nothing in CB Circular No. 905 grants lenders a *carte blanche* authority to raise interest rates to levels which will either enslave their borrowers or lead to a hemorrhaging of their assets.[48] As held in *Castro v. Tan*:[49]

> The imposition of an unconscionable rate of interest on a money debt, even if knowingly and voluntarily assumed, is immoral and unjust. It is tantamount to a repugnant spoliation and an iniquitous deprivation of

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[46] *Sps. Recana, Jr. v. CA*, 402 Phil. 26, 35 (2001), citing *City Government of San Pablo, Laguna v. Reyes*, 364 Phil. 842 (1999).

[47] *Berces v. Guingona*, 311 Phil. 614, 620 (1995).

[48] *Spouses Solangon v. Salazar*, 412 Phil. 816, 822 (2001), citing *Sps. Almeda v. CA*, 326 Phil. 309 (1996).

[49] G.R. No. 168940, November 24, 2009, 605 SCRA 231

> property, repulsive to the common sense of man. It has no support in law, in principles of justice, or in the human conscience nor is there any reason whatsoever which may justify such imposition as righteous and as one that may be sustained within the sphere of public or private morals.[50]

Stipulations authorizing iniquitous or unconscionable interests have been invariably struck down for being contrary to morals, if not against the law.[51] Indeed, under Article 1409 of the Civil Code, these contracts are deemed inexistent and void *ab initio*, and therefore cannot be ratified, nor may the right to set up their illegality as a defense be waived.

Nonetheless, the nullity of the stipulation of usurious interest does not affect the lender's right to recover the principal of a loan, nor affect the other terms thereof.[52] Thus, in a usurious loan with mortgage, the right to foreclose the mortgage subsists, and this right can be exercised by the creditor upon failure by the debtor to pay the debt due. The debt due is considered as without the stipulated excessive interest, and a legal interest of 12% *per annum* will be added in place of the excessive interest formerly imposed,[53] following the guidelines laid down in the landmark case of *Eastern Shipping Lines, Inc. v. Court of Appeals*,[54] regarding the manner of computing legal interest:

> 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:
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> 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.
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> 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 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

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50 Id. at 232-233, citing *Ibarra v. Aveyro*, 37 Phil. 273, 282 (1917).

51 *Medel v. CA*, supra note 36, at 830.

52 *First Metro Investment Corp. v. Este del Sol Mountain Reserve, Inc.*, supra note 41, at 918.

53 See *Castro v. Tan*, supra note 49, at 240; *Heirs of Zoilo Espiritu v. Landrito*, G.R. No. 169617, April 3, 2007, 520 SCRA 383, 394; *Cuaton v. Salud*, 465 Phil. 999 (2004); *Sps. Almeda v. CA*, supra note 48; *First Metro Investment Corp. v. Este Del Sol Mountain Reserve, Inc.*, supra note 41, at 918; *Ruiz v. Court of Appeals*, 449 Phil. 419, 433-435 (2003); S*pouses Solangon v. Salazar*, supra note 48.

54 G.R. No. 97412, July 12, 1994, 234 SCRA 78.

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.[55] (Citations omitted)

The foregoing rules were further clarified in *Sunga-Chan v. Court of Appeals,*[56] as follows:

Eastern Shipping Lines, Inc. synthesized the rules on the imposition of interest, if proper, and the applicable rate, as follows: The 12% *per annum* rate under CB Circular No. 416 shall apply only to loans or forbearance of money, goods, or credits, as well as to judgments involving such loan or forbearance of money, goods, or credit, while the 6% *per annum* under Art. 2209 of the Civil Code applies "when the transaction involves the payment of indemnities in the concept of damage arising from the breach or a delay in the performance of obligations in general," with the application of both rates reckoned "from the time the complaint was filed until the [adjudged] amount is fully paid." In either instance, the reckoning period for the commencement of the running of the legal interest shall be subject to the condition "that the courts are vested with discretion, depending on the equities of each case, on the award of interest."[57] (Citations omitted)

WHEREFORE, premises considered, the Petition for *certiorari* is **DISMISSED**.

SO ORDERED.

BIENVENIDO L. REYES
Associate Justice

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55 Id. at 95-97.
56 G.R. No. 164401, June 25, 2008, 555 SCRA 275.
57 Id. at 288.

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

(On leave)
ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ROBERTO A. ABAD
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.

MARIA LOURDES P. A. SERENO
Chief Justice