



Republic of the Philippines
Supreme Court
 Manila

SECOND DIVISION

**SECURITIES AND
 EXCHANGE COMMISSION**

Petitioner,

G.R. No. 188639

Present:

- versus -

CARPIO, J., *Chairperson*,
 BRION,
 DEL CASTILLO,
 MENDOZA, and
 LEONEN, JJ.

HON. REYNALDO M. LAIGO,
 in his capacity as Presiding Judge
 of the Regional Trial Court,
 National Capital Judicial Region,
 Makati City, Branch 56,
GLICERIA AYAD, SAHLEE
DELOS REYES and ANTONIO
P. HUETE, JR.,

Respondents.

Promulgated:

02 SEP 2015

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DECISION

MENDOZA, J.:

In this petition for *certiorari*¹ under Rule 65 of the Rules of Court, petitioner Securities and Exchange Commission (*SEC*), through the Office of the Solicitor General (*OSG*), assails the June 26, 2009 Order² (*June 26, 2009 Order*) issued by respondent Judge Reynaldo M. Laigo (*Judge Laigo*) of the Regional Trial Court, Branch 56, Makati City (*RTC*), in Sp. Proc. No. M-6758,³ a petition for involuntary insolvency of Legacy Consolidated Plans, Incorporated (*Legacy*), ordering the inclusion of the trust fund in its corporate assets to the prejudice of the planholders.

¹ *Rollo*, pp. 2-40.

² *Id.* at 49-50. Penned by Judge Reynaldo M. Laigo.

³ Entitled "*Petition for Involuntary Insolvency of Legacy Consolidated Plans, Incorporated, Gliceria Ayad, Sahlee delos Reyes, and Antonio P. Huerte, Jr., Petitioners.*"

Factual Antecedents

Republic Act (R.A.) No. 8799, otherwise known as the Securities Regulation Code (SRC), specifically Section 16 thereof, mandated the Securities and Exchange Commission (SEC) to prescribe rules and regulations governing the pre-need industry. Pursuant thereto, the SEC issued the corresponding **New Rules on the Registration and Sale of Pre-Need Plans** (*New Rules*)⁴ to govern the pre-need industry prior to the enactment of R.A. No. 9829, otherwise known as the **Pre-need Code of the Philippines** (*Pre-Need Code*). It required from the pre-need providers the creation of trust funds as a requirement for registration.

As defined in Rule 1.9 of the New Rules, “ ‘Trust Fund’ means a fund set up from planholders’ payments, separate and distinct from the paid-up capital of a registered pre-need company, established with a trustee under a trust agreement approved by the SEC, to pay for the benefits as provided in the pre-need plan.”

Legacy, being a pre-need provider, complied with the trust fund requirement and entered into a trust agreement with the Land Bank of the Philippines (*LBP*).

In mid-2000, the industry collapsed for a range of reasons. Legacy, like the others, was unable to pay its obligations to the planholders.

This resulted in Legacy being the subject of a petition for involuntary insolvency filed on February 18, 2009 by private respondents in their capacity as planholders. Through its manifestation filed in the RTC, Legacy did not object to the proceedings. Accordingly, it was declared insolvent by the RTC in its Order,⁵ dated April 27, 2009. The trial court also ordered Legacy to submit an inventory of its assets and liabilities pursuant to

⁴ Issued by the Securities and Exchange Commission pursuant to Section 16 of the Securities Regulation Code. *Pre-Need Plans*. - No person shall sell or offer for sale to the public any pre-need plan except in accordance with rules and regulations which the Commission shall prescribe. Such rules shall regulate the sale of pre-need plans by, among other things, requiring the registration of pre-need plans, licensing persons involved in the sale of pre-need plans, requiring disclosures to prospective plan holders, prescribing advertising guidelines, providing for uniform accounting system, reports and record keeping with respect to such plans, imposing capital, bonding and other financial responsibility, and establishing trust funds for the payment of benefits under such plans. (Emphasis ours)

⁵ *Rollo*, pp. 63-64.

Sections 15 and 16 of Act No. 1956,⁶ otherwise known as the Insolvency Law, the applicable bankruptcy law at that time.

On May 15, 2009, the RTC ordered the SEC, being the pre-need industry's regulator, to submit the documents pertaining to Legacy's assets and liabilities.

In its Manifestation with Evaluation, dated June 10, 2009, the SEC opposed the inclusion of the trust fund in the inventory of corporate assets on the ground that to do so would contravene the New Rules which treated trust funds as principally established for the exclusive purpose of guaranteeing the delivery of benefits due to the planholders. It was of the position that the inclusion of the trust fund in the insolvent's estate and its being opened to claims by non-planholders would contravene the purpose for its establishment.

On June 26, 2009, despite the opposition of the SEC, Judge Laigo ordered the insolvency Assignee, Gener T. Mendoza (*Assignee*) to take possession of the trust fund. Judge Laigo viewed the trust fund as Legacy's corporate assets and, for said reason, included it in the insolvent's estate. Thus:

WHEREFORE, the Court rules as follows:

1. Directing the afore-named banks to report to Assignee, Gener T. Mendoza, whose address is at c/o GNCA Holdings, Inc., Unit 322, 3/F, LRI design Center, 210 Nicanor Garcia St., Makati City, the total funds as of today deposited to the insolvent debtor's respective Trust Funds, within five (5) days from receipt of this Order.

⁶ Sec. 15. Statement of debts and liabilities. — Said schedule must contain a full and true statement of all his debts and liabilities, together with a list of all those to whom, to the best of his knowledge and belief, said debts or liabilities are due, the place of residence of his creditors and the sum due each the nature of the indebtedness or liability and whether founded on written security, obligation, contract or otherwise, the true cause and consideration thereof, the time and place when and where such indebtedness or liability accrued, a declaration of any existing pledge, lien, mortgage, judgment, or other security for the payment of the debt or liability, and an outline of the facts giving rise or which might give rise to a cause of action against such insolvent debtor.

Sec. 16. Description of real and personal property. — Said inventory must contain, besides the creditors, an accurate description of all the real and personal property, estate, and effects of the petitioner, including his homestead, if any, together with a statement of the value of each item of said property, estate, and effects and its location, and a statement of the incumbrances thereon. All property exempt by law from execution shall be set out in said inventory with a statement of its valuation, location, and the incumbrances thereon, if any. The inventory shall contain an outline of the facts giving rise, or which might give rise, to a right of action in favor of the insolvent debtor.

2. Subject funds can be withdrawn by the Assignee only upon Order of the Court for distribution among the creditors who have officially filed their valid claims with this Court, and for all the expenses to be incurred by the Assignee in the course of the discharge of his duties and responsibilities as such Assignee.

3. Stopping the Securities and Exchange Commission (SEC) from further validating the claims of planholders (now creditors) pertaining to their pre-need plans.

xxx xxx xxx

SO ORDERED.⁷

The RTC stated that the trust fund could be withdrawn by the Assignee to be used for the expenses he would incur in the discharge of his functions and to be distributed among the creditors who had officially filed their valid claims with the court.

The Present Petition

Intent on protecting the interest of the investing public and securing the trust fund exclusively for the planholders, the SEC filed “this present recourse directly to this Honorable Court in accordance with Section 5 (1), Article VIII of the 1987 Constitution for the reason that the matters involve an issue of *transcendental importance* to numerous hard-working Filipinos who had invested their lifetime savings and hard-earned money in Legacy, hoping that through this pre-need company they will be able to fulfill their dreams of providing a bright future for their children.”⁸

The SEC’s Position

In essence, the SEC contends that Judge Laigo gravely abused his discretion in treating the trust fund as part of the insolvency estate of Legacy. It argues that the trust fund should redound exclusively to the benefit of the planholders, who are the ultimate beneficial owners; that the trust fund is held, managed and administered by the trustee bank to address and answer the claims against the pre-need company by all its planholders and/or beneficiaries; that to consider the said fund as corporate assets is to open the floodgates to creditors of Legacy other than the planholders; and that, in issuing the order, Judge Laigo effectively allowed non-planholders to reach the trust fund in patent violation of the New Rules established to protect the pre-need investors.

⁷ *Rollo*, p. 50.

⁸ Petitioner’s Memorandum, p. 6; *id.* at 544.

In its Memorandum,⁹ the SEC stressed that the setting-up of the trust funds effectively created a demarcation line between the claims of planholders *vis-à-vis* those of the other creditors of Legacy; that Legacy's interest over the trust properties was only by virtue of it being a *trustor* and not the owner; and that the SEC was authorized to validate claims of planholders in the exercise of its power as regulator of pre-need corporations.

Further, the SEC is of the position that Section 52 of the Pre-Need Code¹⁰ should be given retroactive effect for being procedural in character.

Thus, the SEC raises the following

ISSUES

I.

Whether or not the Trust Funds of Legacy form part of its Corporate Assets.

II.

Whether or not respondent Trial Court Judge committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the herein assailed Order dated June 26, 2009.

III.

Whether or not the claims of planholders are to be treated differently from the claims of other creditors of Legacy.

IV.

Whether or not Legacy retains ownership over the trust funds assets despite the execution of trust agreements.

⁹ Id. at 465- 525.

¹⁰ The Pre-need Code, Sec. 52. *Liquidation.* – (a) In cases where the Commission determines that the pre-need company shall be liquidated, it shall have the power to commence insolvency proceedings in the appropriate court which shall have jurisdiction over the assets of the pre-need company, excluding trust fund assets that have been established exclusively for the benefit of planholders.

(b) Proceedings in court shall proceed independently of proceedings in the Commission for the liquidation of claims, and creditors of the pre-need company shall have no personality whatsoever in the Commission proceedings to litigate their claims against the trust funds. xxx xxx xxx.

V.

Whether or not the insolvency court, presided by respondent Trial Court Judge, has the authority to enjoin petitioner SEC from further validating the claims of Legacy's planholders and treating them as if they are ordinary creditors of Legacy.

VI.

Whether or not the provision of the Pre-need Code regarding liquidation is in the nature of a procedural law that can be retroactively applied to the case at bar.¹¹

Private Respondents' position

In their Comment/Opposition,¹² the private respondents, Glicera Ayad, Sahlee Delos Reyes and Antonio P. Huerte, Jr. (*private respondents*), submit that nothing in the New Rules expressly provided that the trust fund is excluded from the inventory of corporate assets which is required to be submitted to the insolvency court; that the SEC's interference in the insolvency proceedings is incongruous to the legal system; and that under the provisions of the Insolvency Law, all claims, including those against the trust funds should be filed in the liquidation proceedings.¹³ Hence, private respondents assert that no grave abuse of discretion was committed by Judge Laigo in issuing the June 26, 2009 Order.

The Assignee's Position

In his separate Comments on Petition¹⁴ and Memorandum,¹⁵ the Assignee contends that the trust fund forms part of Legacy's corporate assets for the following reasons: *first*, the insolvency court has jurisdiction over all the claims against the insolvent and the trust fund forms part of the company's corporate assets. It cited *Abrera v. College Assurance Plan*,¹⁶ where the Court held that claims arising from pre-need contracts should not be treated separately from other claims against a pre-need company. As such, the claims over the trust fund, being claims against Legacy, are necessarily lodged with the insolvency court. *Second*, the setting up of the trust fund is a mere scheme to attain an administrative end, that is, the assurance that the benefits will be delivered under the pre-need contracts.

¹¹ *Rollo*, p. 480.

¹² *Id.* at 142-150.

¹³ *Id.* at 142.

¹⁴ *Id.* at 159-185.

¹⁵ *Id.* at 410-437.

¹⁶ 615 Phil. 595 (2009).

Considering that Legacy is the debtor as regards such benefits, it is only through it, or through the insolvency court, that the assets including the trust fund can be distributed to satisfy valid claims. Third, though the trustee banks hold legal title over the funds, the real parties-in-interest are the pre-need companies as the terms of the trust agreement between Legacy and LBP (as trustee) show this intent.

The Assignee also submits that no law authorized the SEC to interfere in the insolvency proceedings because its authority under the SRC is only to regulate the sale of pre-need plans and not to regulate the management of trust funds.

In sum, the Assignee interprets the June 26, 2009 Order in this wise: that the creditors, planholders or not, should first line up and file valid claims with the insolvency court and not get entangled in the validation process of the SEC; and that once the planholders have qualified, they will be given preference in the distribution of the trust assets. Moreover, he proposes that if the trust fund assets will not be enough to satisfy all claims, the planholders can still join other claimants and participate in the distribution of the other assets of the pre-need company.¹⁷

From the foregoing, the Court is called to determine whether Judge Laigo gravely abused his discretion in:

1. Including the trust properties in the insolvent's estate; and
2. Prohibiting the SEC from validating the claims filed by the planholders against the trust fund.

The Court's Ruling

The overarching consideration in the legislative mandate to establish trust funds is the protection of the interest of the planholders in the investment plans. The SRC provides in no uncertain terms the intent to make such interests paramount above all else. Thus, it directed the SEC to come up with rules and regulations to govern not only trust funds but the industry as a whole. Pursuant to its mandate and delegated authority, the SEC came out with the New Rules, which the Congress later on toughened through the enactment of the Pre-Need Code, carrying similar protection but far more detailed in scope.

¹⁷ *Rollo*, pp. 182-183.

It is in this context that this Court rules to grant the petition filed by the SEC. The Court finds that Judge Laigo gravely abused his discretion in treating the trust fund as assets that form part of Legacy's insolvency estate and in enjoining the SEC's validation of the planholders' claims against the trust properties.

The Trust Fund is for the sole benefit of the planholders and cannot be used to satisfy the claims of other creditors of Legacy

Section 30 of the Pre-Need Code clearly provides that the proceeds of trust funds shall redound solely to the planholders. Section 30 reads:

Trust Fund

SECTION 30. Trust Fund. — To ensure the delivery of the guaranteed benefits and services provided under a pre-need plan contract, a trust fund per pre-need plan category shall be established. A portion of the installment payment collected shall be deposited by the pre-need company in the trust fund, the amount of which will be as determined by the actuary based on the viability study of the pre-need plan approved by the Commission. Assets in the trust fund shall at all times remain for the sole benefit of the planholders. At no time shall any part of the trust fund be used for or diverted to any purpose other than for the exclusive benefit of the planholders. In no case shall the trust fund assets be used to satisfy claims of other creditors of the pre-need company. The provision of any law to the contrary notwithstanding, in case of insolvency of the pre-need company, the general creditors shall not be entitled to the trust fund.

Except for the payment of the cost of benefits or services, the termination values payable to the planholders, the insurance premium payments for insurance-funded benefits of memorial life plans and other costs necessary to ensure the delivery of benefits or services to planholders, no withdrawal shall be made from the trust fund unless approved by the Commission. The benefits received by the planholders shall be exempt from all taxes and the trust fund shall not be held liable for attachment, garnishment, levy or seizure by or under any legal or equitable processes except to pay for the debt of the planholder to the benefit plan or that arising from criminal liability imposed in a criminal action.

[Emphases Supplied]

The Assignee argues that Legacy has retained a beneficial interest in the trust fund despite the execution of the trust agreement and that the properties can be the subject of insolvency proceedings. In this regard, the

Assignee calls the Court's attention to the trust agreement provisions which supposedly refer to the interest of Legacy in the trust properties, to wit:

The TRUSTEE hereby undertakes to perform the functions and duties of a TRUSTEE provided for in this Agreement with the utmost good faith, care and prudence required by a fiduciary relation, being understood, however, that the *COMPANY shall be solely and exclusive (sic) responsible for (1) fulfilling the services referred to in the recital clauses, (ii) the settlement/payment of claims of any person or firm availing of such services, (iii) compliance with all laws and governmental regulations on pre-need plans, and (iv) submission of other data or information as may be prescribed by the Commission.*

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*xxx the Trustee shall from time to time on the written directions of the Company make payments out of the Trust Fund to the Company. To the extent permitted by law, the Trustee shall be under no liability for any payment made pursuant to the direction of the Company. Any written direction of the Company shall constitute a certification that the distribution of payment so directed is one which the Company is authorized to direct. From time to time and when directed in writing by the Company, the Trustee shall pay monies from the Trust Fund in amounts equal to the outstanding amount of the Trust Fund at any given time to defray the Company's obligations to the Planholders under its pre-need plan contract and provided further that the company shall be reimbursed by the Trustee from the Trust Fund for whatever amounts it has advanced to its beneficiaries.*¹⁸ [Italics supplied]

To the Assignee, these "control" mechanisms are indicative of the interest of Legacy in the enforcement of the trust fund because the agreement gives it the power to dictate on LBP the fulfilment of the trust, such as the delivery of monies to it to facilitate the payment to the planholders.

The Court, however, sees it differently.

In the course of delving into the complex relationships created by the agreement and the existing regulatory framework, this Court finds that Legacy's claimed interest in the enforcement of the trust and in the trust properties is mere apparent than real. Legacy is not a beneficiary.

¹⁸ Id. at 105.

First, it must be stressed that a person is considered as a beneficiary of a trust if there is a manifest intention to give such a person the beneficial interest over the trust properties.¹⁹ This is the considered opinion expressed in the Restatement of the Law of Trust (*Restatement*)²⁰ which Justice Vicente Abad Santos has described in his contribution to the Philippine Law Journal as containing the more salient principles, doctrines and rules on the subject.²¹ Here, the terms of the trust agreement plainly confer the status of beneficiary to the planholders, not to Legacy. In the recital clauses of the said agreement, Legacy bound itself to provide for the sound, prudent and efficient management and administration of such portion of the collection **“for the benefit and account of the planholders,”**²² through LBP (as the trustee).

This categorical declaration doubtless indicates that the intention of the trustor is to make the planholders the beneficiaries of the trust properties, and not Legacy. It is clear that because the beneficial ownership is vested in the planholders and the legal ownership in the trustee, LBP, Legacy, as trustor, is left without any iota of interest in the trust fund. This is consistent with the nature of a trust arrangement, whereby there is a separation of interests in the subject matter of the trust, the beneficiary having an equitable interest, and the trustee having an interest which is normally legal interest.²³

Second, considering the fact that a mandated pre-need trust is one imbued with public interest, the issue on who the beneficiary is must be determined on the basis of the entire regulatory framework. Under the New Rules, it is unmistakable that the beneficial interest over the trust properties is with the planholders. Rule 16.3 of the New Rules provides that : *[n]o withdrawal shall be made from the trust fund except for paying the benefits such as monetary consideration, the cost of services rendered or property delivered, trust fees, bank charges and investment expenses in the operation of the trust fund, termination values payable to the planholders, annuities, contributions of cancelled plans to the fund and taxes on trust funds.*

Rule 17.1 also states that to ensure the liquidity of the trust fund to guarantee the delivery of the benefits provided for under the plan contract and to obtain sufficient capital growth to meet the growing actuarial reserve liabilities, all investments of the trust fund shall be limited to Fixed Income

¹⁹ Restatement (Second) of Trusts, § 127 (1959).

²⁰ The Restatement of the Law of Trusts (Second) was adopted and promulgated by the American Law Institute on May 23, 1957.

²¹ Associate Justice Vicente Abad Santos, Trusts: A Fertile Field for Philippine Jurisprudence, 25 PHIL L.J. 519, 526 (1950), describing the Restatement as having won, though by no means universal acceptance in the United States and on which reliance can be made.

²² *Rollo*, p. 104.

²³ Restatement (Second) of Trusts, Introductory Note (1959).

Instruments, Mutual Funds, Equities, and Real Estate, subject to certain limitations.

Further, Rule 20.1 directs the trustee to exercise due diligence for the protection of the planholders guided by sound investment principles in the exclusive management and control over the funds and its right, at any time, to sell, convert, invest, change, transfer, or otherwise change or dispose of the assets comprising the funds. All these certainly underscore the importance of the planholders being recognized as the ultimate beneficiaries of the SEC-mandated trust.

This consistently runs in accord with the legislative intent laid down in Chapter IV of R.A. No. 8799, or the SRC, which provides for the **establishment of trust funds for the payment of benefits under such plans**. Section 16 of the SRC provides:

SEC. 16. Pre-Need Plans. - No person shall sell or offer for sale to the public any pre-need plan except in accordance with rules and regulations which the Commission shall prescribe. Such rules shall regulate the sale of pre-need plans by, among other things, requiring the registration of pre-need plans, licensing persons involved in the sale of pre-need plans, requiring disclosures to prospective plan holders, prescribing advertising guidelines, providing for uniform accounting system, reports and record keeping with respect to such plans, imposing capital, bonding and other financial responsibility, and establishing trust funds for the payment of benefits under such plans. [Emphasis supplied]

It is clear from Section 16 that the underlying congressional intent is to make the planholders the exclusive beneficiaries. It has been said that what is within the spirit is within the law even if it is not within the letter of the law because the spirit prevails over the letter.²⁴

This will by the legislature was fortified with the enactment of R.A. No. 9829 or the Pre-Need Code in 2009.²⁵ The Congress, because of the chaos confounding the industry at the time, considered it necessary to provide a stronger legal framework so that no entity could claim that the mandate and delegated authority of the SEC under the SRC was nebulous. The Pre-Need Code cemented the regulatory framework governing the pre-need industry with precise specifics to ensure that the rights of the pre-need planholders would be categorically defined and protected. Similar provisions in the Pre-Need Code are the following:

²⁴ *Dumaguete Cathedral Credit Cooperative v. Commissioner of Internal Revenue*, 624 Phil.650, 665 (2010), citing *Taada and Macapagal v. Cuenco, et al.*, 103 Phil. 1051, 1086 (1957).

²⁵ The Pre-need Code became effective in 2010.

SECTION 32. Terms and Conditions of a Trust Fund. — *A trust fund must be established separately for each type of pre-need plan with the trust department of a trust company, bank or investment house doing business in the Philippines.* No trust fund shall be established by a pre-need company with an affiliate trust entity subject to Section 38 hereof.

The trust agreement shall be submitted to the Commission for approval before execution and shall contain the following salient provisions, among others:

- (a) The manner in which the trust fund is to be operated;
- (b) Investment powers of the trustee with respect to trust deposits, including the character and kind of investment;
- (c) Auditing and settlement of accounts of the trustee with respect to the trust fund;
- (d) Basis upon which the trust fund may be terminated;
- (e) Provisions for withdrawals from the trust fund;
- (f) That the trustee shall submit to the power of the Commission to examine and verify the trust fund;
- (g) An undertaking by the trustee that it shall abide by the rules and regulations of the Commission with respect to the trust fund; and
- (h) An undertaking by the trustee that it shall submit such other data or information as may be prescribed by the Commission.

SECTION 33. Responsibilities of the Trustee. — The trustee shall:

- (a) Administer and manage the trust fund with utmost good faith, care and prudence required by a fiduciary relationship;
- (b) The trustee shall have the exclusive management and control over the funds and the right at any time to sell, convert, invest, change, transfer or otherwise change or dispose of the assets comprising the funds within the parameters prescribed by the pre-need company and provided these parameters are compliant with the Commission's regulations; and
- (c) Not use the trust fund to invest in or extend any loan or credit accommodation to the pre-need company, its directors, officers, stockholders, and related interests as well as to persons or enterprises controlling, owned or controlled by, or under common control with said company, its directors, officers, stockholders and related interests except for entities which are direct providers of pre-need companies.

SECTION 34. Investment of the Trust Fund. — To ensure the liquidity of the trust fund to guarantee the delivery of the benefits provided for under the plan contract and likewise obtain sufficient capital growth to meet the growing actuarial reserve liabilities, all investments of the trust fund/s of a pre-need company shall be limited to the following and subject to limitations, to wit:

(a) Fixed income instruments. — These may be classified into short-term and long-term instruments. The instrument is short-term if the maturity period is three hundred sixty-five (365) days or less. This category includes:

- (1) Government securities which shall not be less than ten percent (10%) of the trust fund amount;
- (2) Savings/time deposits and unit investment trust funds maintained with and managed by a duly authorized bank with satisfactory examination rating as of the last examination by the BSP;
- (3) Commercial papers duly registered with the SEC with a credit rating of "1" for short-term and "AAA" for long-term based on the rating scale of an accredited Philippine Rating Agency or its equivalent at the time of investment.

The maximum exposure to long-term commercial papers shall not exceed fifteen percent (15%) of the total trust fund amount while the exposure to each commercial paper issuer shall not exceed ten percent (10%) of the allocated amount; and

- (4) Direct loans to corporations which are financially stable, profitable for the last three (3) years and have a good track record of paying their previous loans.

These loans shall be fully secured by a real estate mortgage up to the extent of sixty percent (60%) of the zonal valuation of the property at the time the loan was granted.

The property shall be covered by a transfer certificate of title registered in the name of the mortgagor and free from liens and encumbrances.

The maximum amount to be allocated for direct loans shall not exceed five percent (5%) of the total trust fund amount while the amount to be granted to each corporate borrower shall not exceed ten percent (10%) of the amount allocated.

The maximum term of the loan should be no longer than four (4) years.

Direct loans to planholders are exempt from the limitations set forth under this section: Provided, That such loans to planholders shall not exceed ten percent (10%) of the total trust fund amount.

(b) Equities. — Investments in equities shall be limited to stocks listed on the main board of a local stock exchange.

Investments in duly registered collective investment instruments such as mutual funds are allowed hereunder: Provided, That such funds are invested only in fixed income instruments and blue chips securities, subject to the limitations prescribed by laws, rules and regulations.

These investments shall include stocks issued by companies that are financially stable, actively traded, possess good track record of growth and have declared dividends for the past three (3) years. Notwithstanding the prohibition against transactions with directors, officers, stockholders and related interests, the trustee may invest in equities of companies related to the trustee provided these companies comply with the foregoing criteria provided in this paragraph for equity investments.

The amount to be allocated for this purpose shall not exceed thirty percent (30%) of the total trust fund while the investment in any particular issue shall not exceed ten percent (10%) of the allocated amount. The investment shall be recorded at the aggregate of the lower of cost or market.

Existing investments which are not in accordance herewith shall be disposed of within three (3) years from the effectivity of this Act.

(c) Real Estate. — These shall include real estate properties located in strategic areas of cities and first class municipalities. The transfer certificate of title (TCT) shall be in the name of the seller, free from liens and encumbrances and shall be transferred in the name of the trustee in trust for the planholders unless the seller/transferor is the pre-need company wherein an annotation to the TCT relative to the sale/transfer may be allowed. It shall be recorded at acquisition cost.

However, the real estate shall be appraised every three (3) years by a licensed real estate appraiser, accredited by the Philippine Association of Real Estate Appraisers, to reflect the increase or decrease in the value of the property. In case the appraisal would result in an increase in the value, only sixty percent (60%) of the appraisal increase is allowed to be recorded in the books of the trust fund but in case of decline in value, the entire decline shall be recorded. Appraisal increment should not be used to cover up the required monthly contribution to the trust fund.

The total recorded value of the real estate investment shall not exceed ten percent (10%) of the total trust fund amount of the pre-need company. In the event that the existing real estate investment exceeds the aforesaid limit, the same shall be leveled off to the prescribed limit within three (3) years from the effectivity of this Code.

Investment of the trust fund, which is not in accordance with the preceding paragraphs, shall not be allowed unless the prior written approval of the Commission had been secured: Provided, further, That no deposit or investment in any single entity shall

exceed fifteen percent (15%) of the total value of the trust fund: Provided, finally, That the Commission is authorized to adjust the percentage allocation per category set forth herein not in excess of two percentage (2%) points upward or downward and no oftener than once every five (5) years. The first adjustment hereunder may be made no earlier than five (5) years from the effectivity of this Act. The pre-need company shall not use the trust fund to extend any loan to or to invest in its directors, stockholders, officers or its affiliates.

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SECTION 36. Trust Fund Deficiencies. — Upon approval by the Commission of the pre-need reserve computation submitted in the preceding section, any deficiency in the trust fund, when compared to the reserve liabilities as reported in the pre-need reserve valuation report, shall be funded by the pre-need company within sixty (60) days from such approval. Failure to cover the deficiency in an appropriate manner within the time required shall subject the pre-need company to the payment of a penalty, in addition to other remedies exercisable by the Commission, as provided for in this Code. Any excess of the trust fund over the actuarial reserve liabilities may be credited to future deposit requirements.

SECTION 37. Liquidity Reserve. — The trustee shall at all times maintain a liquidity reserve which shall be sufficient to cover at least fifteen percent (15%) of the trust fund but in no case less than one hundred twenty-five percent (125%) of the amount of the availing plans for the succeeding year. For this purpose, the pre-need company shall timely submit to the trustee a summary of benefits payable for the succeeding year.

The following shall qualify as investments for the liquidity reserve:

- (a) Loans secured by a hold-out on assignment or pledge deposits maintained either with the trustee or other banks, or of deposit substitute of the trustee itself or mortgage and chattel mortgage bonds issued by the trustee;
- (b) Treasury notes or bills, other government securities or bonds, and such other evidences or indebtedness or obligations the servicing and repayment of which are fully guaranteed by the Republic of the Philippines;
- (c) Repurchase agreements with any of those mentioned in Item "b" above, as underlying instruments thereof; and
- (d) Savings or time deposits with government-owned banks or commercial banks.

SECTION 38. Trustees. — Upon approval of the Commission or when the Commission requires for the protection of planholders, the pre-need company shall entrust the management and administration of the trust fund to any reputable bank's trust department, trust company or any entity authorized to perform trust functions in the Philippines: Provided, That no director

and/or officer of the pre-need company shall at the same time serve as director and/or officer of the affiliate or related trust entity: Provided, further, That no trust fund shall be established by a pre-need company with a subsidiary, affiliate or related trust entity. However, such may be allowed: Provided, That the following conditions are complied with:

- (a) A written approval of the Commission has been previously obtained; and
- (b) Public disclosure of the affiliation with the trust entity be included in all materials in whatever form.

The Commission shall have the authority to prescribe appropriate rules that shall ensure that the yield of the trust fund is maximized, consistent with the requirements of safety and liquidity.

[Italics Supplied]

*“Under the principle of legislative approval of administrative interpretation by re-enactment, the re-enactment of a statute, substantially unchanged (as in this case), is persuasive indication of the adoption by Congress of a prior executive construction.”*²⁶ Accordingly, where a statute is susceptible of the meaning placed upon it by a ruling of the government agency charged with its enforcement and the legislature thereafter reenacts the provisions without substantial change, such action is to some extent confirmatory that the ruling carries out the legislative purpose.²⁷

The Court cannot go against that legislative intent for it is the duty of this institution to read what the law intends. It is a cardinal rule that, in seeking the meaning of the law, the first concern of the judge should be to discover in its provisions the intent of the lawmaker. Unquestionably, the law should never be interpreted in such a way as to cause injustice as this is never within the legislative intent. An indispensable part of that intent, in fact, for we presume the good motives of the legislature, is to render justice.²⁸

To rule that Legacy has retained a beneficial interest in the trust fund is to perpetuate the injustices being committed against the planholders and violate not only the spirit of the trust agreement but, more importantly, the lawmaker’s intent. If indeed Legacy had an interest that could be reached by its creditors even during insolvency, the planholders would be prejudiced as they would be forced to share in the assets that would be distributed *pro rata*

²⁶ *Dumaguete Cathedral Credit Cooperative v. Commissioner of Internal Revenue*, supra note 24, citing *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)*, 500 Phil. 586 (2005).

²⁷ *Gulf Air Company, Philippine Branch v. CIR*, G.R. No. 182045, September 19, 2012, 681 SCRA 377, 387, citing *Howden v. Collector of Internal Revenue*, 121 Phil. 579, 587 (1965).

²⁸ *Dumaguete Cathedral Credit Cooperative v. Commissioner of Internal Revenue*, supra note 24, citing *Alonzo v. Intermediate Appellate Court*, 234 Phil. 267, 272-273 (1987).

to all creditors, whether planholders or not. It would contradict the very purpose for which the trust was mandated by the Congress in the first place.

Third, the perceived interest of Legacy, as touted by the Assignee, has simply no basis. It may appear that Legacy under the agreement has control over the enforcement of the trust because of its provisions stating that Legacy shall “solely and exclusive[ly] [be] responsible for fulfilling the services referred to in the recital clauses and the settlement/payment of claims of any person or firm availing of such services” and that “[a]ny written direction of the Company [to the trustee] shall constitute a certification that the distribution of payment so directed is one which the Company is authorized to direct”²⁹ Such provisions, however, cannot be construed as Legacy having retained a beneficial interest in the trust fund.

To begin with, the aforestated provisions refer solely to the delivery of the proceeds of the trust from LBP to Legacy and then finally to the beneficiaries. **In effect, Legacy merely agreed to facilitate the payment of the benefits from the trust fund to the intended beneficiaries, acting as a conduit or an agent of the trustee in the enforcement of the trust agreement. Under the general principles of trust, a trustee, by the terms of the agreement may be permitted to delegate to agents or to co-trustees or to other persons the administration of the trust or the performance of act which could not otherwise be properly delegated.**³⁰ Thus, by the terms of the trust, as in this case, a trustee may be authorized or permit an agent to do acts such as the delivery of the benefits out of the trust fund.

The Court cannot subscribe either to the Assignee’s position that Legacy is a debtor of the planholders relative to the trust fund. In trust, it is the trustee, and not the trustor, who owes fiduciary duty to the beneficiary. The Restatement is clear on this point. Section 170 thereof provides that the “trustee is under a duty to the beneficiary to administer the trust solely in the interest of the beneficiary.”³¹ Section 182 also states that the duty of a trustee is to pay income to the beneficiary.³² Thus, LBP is tasked with the fiduciary duty to act for the benefit of the planholders as to matters within the scope of the relation.³³ Like a debtor, LBP owes the planholders the amounts due from the trust fund. As to the planholders, as creditors, they can rightfully use equitable remedies against the trustee for the protection of their interest in the trust fund and, in particular, their right to demand the payment of what is due them from the fund. Verily, Legacy is out of the picture and exists only as a representative of the trustee, LBP, with the limited role of

²⁹ *Rollo*, p. 105.

³⁰ Restatement (Second) of Trusts, § 171 cmt. j. (1959).

³¹ Restatement (Second) of Trusts, § 170 (1959).

³² Restatement (Second) of Trusts, § 182 (1959).

³³ See Restatement (Second) of Trusts, § 170 (1959).

facilitating the delivery of the benefits of the trust fund to the beneficiaries – the planholders. The trust fund should not revert to Legacy, which has no beneficial interest over it. Not being an asset of Legacy, the trust fund is immune from its reach and cannot be included by the RTC in the insolvency estate.

In the end, the failure of Judge Laigo to consider the provisions of the SRC, the New Rules and the law on trusts, that should have warranted the exclusion of the trust fund from the insolvency estate of Legacy, constituted grave abuse of discretion. In treating the trust fund as forming part of Legacy's insolvency estate, Judge Laigo acted against what was contemplated by law. He turned a blind eye to the will of the Congress as expressed through the SRC and the Pre-Need Code. In the process, he endangered the claims of the planholders by allowing the probability that they would be drastically reduced or dissipated. He should have acted prudently bearing in mind that the establishment of the trust was precisely for the exclusive benefit of the planholders.

Enjoining the SEC from validating the claims against the trust fund is grave abuse of discretion for the insolvency court has no authority to order the reversion of properties that do not form part of Legacy's insolvent estate.

The Assignee cited *Abrera v. College Assurance Plan*³⁴ (*Abrera*), where the Court held that claims covered by rehabilitation proceedings before the RTC should include all claims or demands of whatever nature or character against a debtor or its property. At the heart of the Assignee's argument is that because the authority is with the RTC, the SEC has no right to interfere in the insolvency proceedings.

It is an error for the Assignee to assume that the authority of the RTC extends to the claims against the trust fund. Claims against the trust fund must be distinguished from claims against Legacy. The claims against the trust fund are directed not against Legacy, but against LBP, the trustee, being the debtor relative to the trust properties.

The Pre-Need Code is clear on this. It recognizes the distinction between claims against the pre-need company and those against the trust fund. Section 52 (b) states that liquidation "proceedings in court shall proceed *independently* of proceedings in the Commission for the liquidation of claims, and *creditors of the pre-need company shall have no personality whatsoever in the Commission proceedings to litigate their claims against*

³⁴ 615 Phil. 595 (2009).

the trust funds.” The reason why claims against the trust funds can proceed independently of the proceedings in the courts is the fact that the latter is directed against a different person or entity.

Moreover, the Assignee must be reminded that the issue in *Abrera* is not similar to the question raised here by the SEC. In the case at bench, the SEC questions the propriety of including the trust fund in the inventory of Legacy’s corporate assets.

*Jurisdiction over claims filed against
the trust fund*

From the effectivity of the Pre-Need Code, it is the Insurance Commission (IC) that “shall have the primary and exclusive power to adjudicate any and all claims involving pre-need plans.”³⁵ **The transitory provisions of the Pre-Need Code, however, provide that “[n]otwithstanding any provision to the contrary, all pending claims, complaints and cases (referring to pre-need contract and trust claims) filed with the SEC shall be continued in its full and final conclusion.”**³⁶

The Pre-Need Code recognizes that the jurisdiction over pending claims against the trust funds prior to its effectivity is vested with the SEC. Such authority can be easily discerned even from the provisions of the SRC. Section 4 thereof provides that despite the transfer of jurisdiction³⁷ to the RTC of those matters enumerated under Section 5 of P.D. No. 902-A,³⁸ the

³⁵ Section 55, Republic Act No. 9829.

³⁶ Section 57, Republic Act No. 9829.

³⁷ The Securities Regulation Code. Section 5.2. The Commission’s jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: Provided, that the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed.

³⁸ The Reorganization of the Securities and Exchange Commission with Additional Powers and Placing the Said Agency Under the Administrative Supervision of the Office of the President. Sec. 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving.

(a) Devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partnership, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholder, partners, members of associations or organizations registered with the Commission;

(b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity; and

(c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations.

SEC remains authorized to “exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Commission³⁹ to achieve the objectives and purposes of these laws.”⁴⁰ Relevant thereto is Section 36.5 (b) of the SRC which states that:

The Commission may, having due regard to the public interest or the protection of investors, regulate, supervise, examine, suspend or otherwise discontinue such and other similar funds under such rules and regulations which the Commission may promulgate, and which may include taking custody and management of the fund itself as well as investments in, and disbursements from, the funds under such forms of control and supervision by the Commission as it may from time to time require. The authority granted to the Commission under this subsection shall also apply to all funds established for the protection of investors (which necessarily includes the trust funds), whether established by the Commission or otherwise.⁴¹

Concomitantly, under the New Rules, the SEC “may, at its discretion, demand for the conversion to cash or other near cash assets of the investments made by the Trustee to protect the interest of the Planholders.”⁴²

Therefore, even prior to the transfer to the IC of matters pertaining to pre-need plans and trust funds, the SEC had authority to regulate, manage, and hear all claims involving trust fund assets, if in its discretion, public interest so required. Accordingly, all claims against the trust funds, which have been pending before it, are clearly within the SEC’s authority to rule upon.

Pre-Need Code is curative and remedial in character and, therefore, can be applied retroactively

Finally, it must be stressed that the primary protection accorded by the Pre-Need Code to the planholders is curative and remedial and, therefore,

³⁹ The Securities and Exchange Commission.

⁴⁰ The Securities and Regulation Code. Section 5. xxx xxx xxx

(n) Exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Commission to achieve the objectives and purposes of these laws.

⁴¹ The Securities and Regulation Code.

⁴² New Rules on Pre-Need Plans. Rule 21. Commission Power Regarding Trust Fund Assets. The Commission may, at its discretion, demand for the conversion to cash or other near cash assets of the investments made by the Trustee to protect the interest of the Planholders.

can be applied retroactively. The rule is that where the provisions of a statute clarify an existing law and do not contemplate a change in that law, the statute may be given curative, remedial and retroactive effect.⁴³ To review, curative statutes are those enacted to cure defects, abridge superfluities, and curb certain evils.⁴⁴ As stressed by the Court in *Fabian v. Desierto*,⁴⁵

If the rule takes away a vested right, it is not procedural. If the rule creates a right such as the right to appeal, it may be clarified as a substantive matter; but if it operates as a means of implementing an existing right then the rule deals merely with procedure.

[Emphasis Supplied]

A reading of the Pre-Need Code immediately shows that its provisions operate merely in furtherance of the remedy or confirmation of the right of the planholders to exclusively claim against the trust funds as intended by the legislature. No new substantive right was created or bestowed upon the planholders. Section 52 of the Pre-Need Code only echoes and clarifies the SRC's intent to exclude from the insolvency proceeding trust fund assets that have been established "**exclusively for the benefit of planholders.**" It was precisely enacted to foil the tactic of taking undue advantage of any ambiguities in the New Rules.

Any doubt or reservation in this regard has been dispelled by the Pre-Need Code. Section 57 thereof provides that "[a]ny pre-need company who, **at the time of the effectivity of this Code has been registered and licensed to sell pre-need plans and similar contracts, shall be considered registered and licensed under the provision of this Code and its implementing rules and regulations and shall be subject to and governed by the provisions hereof xxx.**" Thus, Legacy and all other existing pre-need companies cannot claim that the provisions of the Pre-Need Code are not applicable to them and to the claims which accrued prior to the enactment of the said law.

⁴³ Jan G. Laitos, Legislative Retroactivity, 52 Wash. U.J. Urb. & Contemp. L. 081 (1997), citing *GTE Sprint Communications Corp. v. State Bd. of Equalization*, 2 Cal. Rptr. 2d 441, 444-45 (Cal. Ct. App. 1991) ("Where a statute or amendment clarifies existing law, such action is not considered a change because it merely restates the law as it was at the time, and retroactivity is not involved."); *Tomlinson v. Clarke*, 825 P.2d 706, 713 (Wash. 1992) (en banc) ("When an amendment clarifies existing law and where that amendment does not contravene previous constructions of the law, the amendment may be deemed curative, remedial and retroactive."). http://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1050&context=law_urbanlaw (Last visited, August 5, 2015.)

⁴⁴ *Fernando v. St. Scholastica's College*, G.R. No. 161107, March 12, 2013, 693 SCRA 141.

⁴⁵ 356 Phil.787 (1998)

“[I]t has been said that *a remedial statute must be so construed as to make it effect the evident purpose for which it was enacted, so that if the reason of the statute extends to past transactions, as well as to those in the future, then it will be so applied although the statute does not in terms so direct.*⁴⁶ With the Pre-Need Code having the attribute of a remedial statute, Legacy and all pre-need providers or their creditors cannot argue that it cannot be retroactively applied.

Conclusion

In sum, improvidently ordering the inclusion of the trust fund in Legacy’s insolvency estate without regard to the avowed state policy of protecting the consumer of pre-need plans, as laid down in the SRC, the New Rules, and the Pre-Need Code, constitutes grave abuse of discretion. The RTC should have known, and ought to know, the overarching consideration the Congress intended in requiring the establishment of trust funds - to uphold first and foremost the interest of the planholders.

The Court upholds its duty to protect the ordinary Filipino workers who are seeking a future for their children through pre-need contracts. Their incredibly long wait is over as this is the moment when their rightful and exclusive right to the trust funds, created primarily for them, is judicially respected and affirmed.

WHEREFORE, the petition is **GRANTED**. The June 26, 2009 Order of the Regional Trial Court, Branch 56, Makati City, is declared **NULL** and **VOID**.

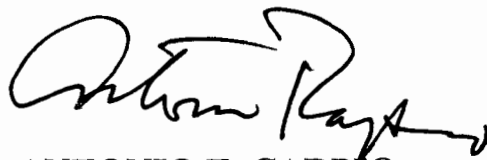
The Securities and Exchange Commission is directed to process the claims of legitimate planholders with dispatch.

SO ORDERED.


JOSE CATAL MENDOZA
Associate Justice

⁴⁶ *Frivaldo v. COMELEC*, 327 Phil. 521, citing 73 Am Jur 2d, Sec. 354, p. 490; italics supplied.

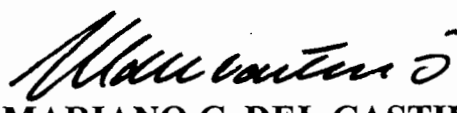
WE CONCUR:



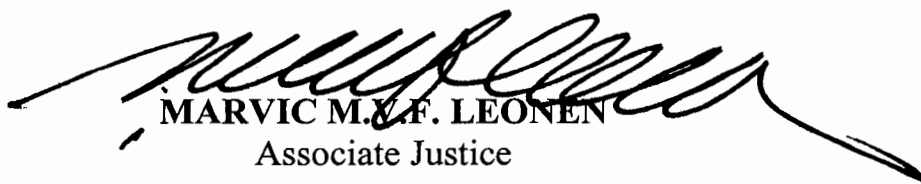
ANTONIO T. CARPIO
Associate Justice
Chairperson



ARTURO D. BRION
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice



MARVIC M.V.F. LEONEN
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.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII 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's Division.



MARIA LOURDES P. A. SERENO
Chief Justice