

SECOND DIVISION

[G.R. No. 212024, October 12, 2020]

**BANCO DE ORO UNIBANK, INC. (NOW BDO UNIBANK, INC.),
PETITIONER, VS. EDGARDO C. YPIL, SR., CEBU SUREWAY
TRADING CORPORATION, AND LEOPOLDO KHO, RESPONDENTS.**

D E C I S I O N

HERNANDO, J.:

This is a Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court challenging the January 15, 2014 Decision^[2] and the March 26, 2014 Resolution^[3] of the Court of Appeals (CA) in CA-G.R. SP No. 06217, affirming the August 11, 2008^[4] and May 20, 2011^[5] Orders of the Regional Trial Court (RTC) of Cebu City, Branch 16, in Civil Case No. CEB-29462 which directed the petitioner, BDO Unibank, Inc. (Bank), to guarantee the availability of the garnished amount of P300,000.00 from the account of respondent Cebu Sureway Trading Corporation (CSTC), represented by its Executive Vice-President, respondent Leopoldo Kho (Kho).

The Antecedents

On August 20, 2002, Kho, representing CSTC, offered a proposal to respondent Edgardo C. Ypil, Sr. (Ypil) to invest in the Prudentialife Plan - Millionaires in Business scheme. Ypil acquiesced and Kho was able to solicit the total amount of P300,000.00 from him. Eventually, though, Ypil opted to get a refund of the amounts he paid and manifested such intent through a letter dated February 11, 2003. However, CSTC or Kho did not answer. Ypil likewise made several oral demands but to no avail. Subsequently, Ypil 's lawyer sent a demand letter dated May 19, 2003 to Kho but it was never answered.^[6]

Ypil thus filed a Complaint^[7] for Specific Performance with Attachment, Damages and Attorney's fees against CSTC and Kho before the RTC of Cebu City which was docketed as Civil Case No. CEB-29462.^[8] Ypil asked for the sum of P300,000.00 as principal payment plus interest of two percent (2%) per month and two percent (2%) collection fee compounded monthly, as well as damages and attorney's fees.^[9]

In an Order^[10] dated October 15, 2003, the RTC granted Ypil's prayer for the *ex-parte* issuance of an attachment order. Afterwards, the trial court issued a Writ of Preliminary Attachment^[11] on October 29, 2003.

Relevantly, on February 4, 2004, Pascual M. Guaren, Sheriff IV (Sheriff Guaren) of the RTC of Cebu City, Branch 7, issued a Notice of Garnishment^[12] of the amount of P300,000.00 plus lawful expenses from the accounts of CSTC and/or Kho addressed to the Manager and/or Cashier of the Bank's North Mandaue Branch. The Bank

received the said notice on the same day. Yet, on February 10, 2004, the Bank, through its North Mandaue Branch Head Cyrus M. Polloso (Polloso), sent its Reply^[13] to Sheriff Guaren informing him that CSTC and/or Kho have no available garnishable funds.

On March 5, 2004, Kho filed his Answer^[14] to Ypil's Complaint.

During the scheduled pre-trial conference, the trial court noted that Polloso failed to appear. Consequently, the pre-trial conference was deferred to October 24, 2007. Additionally, in an Order^[15] dated September 19, 2007, the RTC directed the issuance of subpoenas *duces tecum* and *ad testificandum* for Polloso to appear in court and to bring the documents related to the bank accounts of CSTC and Kho.

Nonetheless, Polloso still failed to appear on October 24, 2007. Hence, the trial court issued another Order^[16] dated October 24, 2007 directing Polloso to show cause why he should not be cited for contempt. The trial court again directed the issuance of the subpoenas to Polloso for him to testify on November 28, 2007 and to bring the pertinent documents. On February 1, 2008, Polloso was finally called to testify.
^[17]

Notably, the RTC discovered that the Bank already debited from CSTC's savings and current accounts some amounts to offset its (CSTC's) outstanding obligation with the Bank under a loan agreement. In view of this, the trial court issued an Order^[18] dated May 9, 2008 directing the Bank, through Polloso, to show cause why it should not be held guilty of indirect contempt for debiting the money from the accounts of CSTC and Kho which was under *custodia legis*.

The Bank filed its Compliance/Explanation^[19] on June 16, 2008 as a forced intervenor to the trial court's May 9, 2008 Order. Essentially, it averred that since CSTC defaulted in its obligations to the Bank as embodied in a Credit Agreement^[20] and Promissory Note No. 3660195103^[21] dated October 13, 2003, its entire obligation immediately became due and demandable without need of demand or notice. In other words, it asserted that since the Bank and CSTC were creditors and debtors of each other, legal compensation already took effect.

CSTC and Kho then filed their Comment^[22] stating that the provisions of the Promissory Note should not affect third parties and court processes such as garnishment. They alleged that the Bank resorted to legal compensation to frustrate the order of garnishment. Moreover, they averred that legal compensation cannot take effect because CSTC's loan was not yet due and demandable.^[23] Subsequently, Ypil filed his Memorandum^[24] insisting that the trial court acquired jurisdiction over the Bank which in turn became a forced intervenor upon receipt of the Notice of Garnishment. Withal, he posited that the subject deposit was brought into *custodia legis* which the Bank cannot debit in its favor.^[25]

Ruling of the Regional Trial Court:

The RTC issued an Order^[26] dated August 11, 2008 absolving Polloso from the charge of indirect contempt but ordering the Bank's North Mandaue Branch to make

available the garnished deposits of CSTC and Kho pursuant to the Notice of Garnishment. It ruled that "[t]he bank, cannot, however, unilaterally debit the defendants' [CSTC and Kho] accounts which are already in *custodia legis*, even assuming for argument[']s sake that legal compensation ensued *ipso jure*. If the bank has any claims against the defendants [CSTC and Kho], it must file the proper pleading for intervention to protect whatever it claims to be its rights to include the right of legal compensation."^[27] The dispositive portion of the said Order reads:

WHEREFORE, in view of the foregoing, this court absolves, as he is hereby absolved, Mr. Polloso from the charge of indirect contempt against this Court, but orders, as it is hereby ordered, Banco de Oro, North Mandaue Branch to make available the garnished amount in Exhibit "N" to be held by it for the court by virtue of the writ of garnishment to secure whatever amounts that this Court may award against herein defendants [CSTC and Kho].

xxxx

SO ORDERED.^[28]

The Bank filed a Partial Motion for Reconsideration^[29] insisting that legal compensation took place *ipso jure* and retroacted to the date when all the requisites were fulfilled. Kho also filed a Comment.^[30] However, the trial court denied the Bank's motion for consideration in its Order^[31] dated May 20, 2011. Thus, the Bank filed a Petition for *Certiorari*^[32] with application for issuance of Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction before the CA.

Meanwhile, the RTC rendered a Judgment Based on Compromise Agreement^[33] dated November 23, 2012. Apparently, Ypil and Kho submitted a Compromise Agreement^[34] wherein Kho, in behalf of CSTC, agreed to pay the garnished amount of P300,000.00 as full and final settlement of CSTC's obligation, given that the said amount is more or less the same amount it owes Ypil. Moreover, Ypil and Kho agreed to waive any other claims and counterclaims in the specific performance case. Withal, the trial court, after finding that the Compromise Agreement did not appear to be contrary to any law, morals, good customs, public policy or public order, ordered the Bank to tender the garnished amount of P300,000.00 to Ypil.

Aggrieved, the Bank filed a Manifestation^[35] dated January 30, 2013 before the RTC stating that the garnished amount is the subject of its pending *certiorari* petition with the CA. As such, it requested the trial court to suspend any attempt to implement the Judgment Based on Compromise Agreement insofar as the garnished amount is concerned, at least until the CA resolves its *certiorari* petition.

Nevertheless, considering that the CA did not issue any injunctive order, the RTC issued an Order^[36] dated March 12, 2013 denying the Bank's prayer for the suspension of the execution of the assailed Order dated August 11, 2008 which directed the Bank to make available the garnished amount of P300,000.00.

Subsequently, in a Resolution^[37] dated May 6, 2013, the CA denied the Bank's application for a writ of injunction.

In its *certiorari* petition, the Bank contended that when the Notice of Garnishment was served upon it on February 4, 2004, CSTC had existing obligations with the Bank amounting to P3,823,000.00 which was in excess of its (CSTC's) deposit balance in the amount of P294,436.68. It argued that since CSTC's obligation with the Bank became due and demandable even before the Notice of Garnishment was served upon it, there could not have been any amount which could be garnished from CSTC's accounts.^[38] This is because legal compensation took place by operation of law in accordance with Article 1279 of the Civil Code as apparently, CSTC defaulted in its monthly amortizations. As a consequence, CSTC's entire obligation with the Bank immediately became due and demandable even without demand pursuant to the stipulations in the Promissory Note.^[39] Withal, the Bank claimed that the RTC committed grave abuse of discretion because it failed to affirm that the Bank correctly applied legal compensation.^[40]

Conversely, Ypil contended that the RTC did not commit grave abuse of discretion. He maintained that when the Complaint was filed and when the Notice of Garnishment was served, CSTC and Kho had sufficient funds in their existing accounts with the Bank. He posited that the amounts in the savings and checking accounts of CSTC were immediately put under *custodia legis* and that the Bank cannot automatically and unilaterally debit the money in its favor especially after service of the Notice of Garnishment. He opined that according to Section 7(d), Rule 57 of the Rules of Court, the trial court which issued the Notice of Garnishment already acquired jurisdiction over the Bank, which in turn became a forced intervenor immediately upon service and receipt of the said notice.^[41]

The Ruling of the Court of Appeals:

The CA, in its assailed January 15, 2014 Decision,^[42] declared that the RTC did not commit grave abuse of discretion when it issued the assailed Orders as it correctly held that the service of the Notice of Garnishment upon the Bank on February 4, 2004 effectively placed CSTC's deposits under *custodia legis*, notwithstanding the debiting of CSTC's accounts by the Bank on February 10, 2004.^[43]

Moreover, the CA ruled that legal compensation takes place when two persons, in their own right, are debtors and creditors of each other. On one hand, CSTC is a depositor of the Bank in the amount of P301,838.27. On the other hand, CSTC owes the Bank purportedly in the amount of P3,823,000.00. Simply put, CSTC and the Bank are, in their own right, creditors and debtors of each other.^[44] However, the appellate court found that not all the elements of legal compensation pursuant to Article 1279 of the Civil Code are present in this case. This is because notwithstanding CSTC's indebtedness to the Bank, there is no proof as to when the obligation became due, liquidated and demandable. While the Bank relied on the Promissory Note executed by CSTC in its favor, it (Bank) however failed to prove the exact date of the default which supposedly rendered CSTC's obligations due and demandable.^[45] The CA additionally noted the following:

1. That the writ of garnishment was duly served on the petitioner bank on February 4, 2004;

2. That the bank debited the respondent corporation's [CSTC's] account as a legal set-off and compensation against their outstanding obligations with the bank on February 10, 2004;

3. That the petitioner bank, through its branch manager, Cyrus Poloso, sent a reply letter dated February 10, 2003 [2004] to Sheriff Pascual M. Guaren informing the latter that respondent corporation [CSTC] had no garnishable funds with petitioner bank.^[46]

Significantly, the CA found that the Bank debited CSTC's account only on February 10, 2004 or six days after the Notice of Garnishment.^[47] It added that the Bank conveniently failed to mention that there was a stipulation in the Promissory Note giving it the option to offset or not to offset the deposits of CSTC. The fact that CSTC had P301,838.27 in its savings and checking accounts when the Notice of Garnishment was served showed that the Bank had not yet opted to offset CSTC's deposits to pay for its obligations.^[48] The appellate court explained that:

[b]y the time the petitioner [Bank] received the Notice of Garnishment on February 4, 2004, the petitioner bank's belated reliance on the retroactive effect of legal compensation necessarily failed because the service of said Notice of Garnishment had effectively put petitioner [Bank] on notice regarding the existing controversy commenced by respondent Edgardo C. Ypil, Sr., a third person, against the respondent corporation [CSTC]. Consequently, legal compensation could no longer take place since the fifth requisite^[49] under Article 1279 of the Civil Code could no longer be complied with xxx.^[50]

Hence, the CA declared that the Bank became a forced intervenor in Civil Case No. CEB-29462 (the specific performance case) after the service of the Notice of Garnishment upon it on February 4, 2004.^[51] The dispositive portion of the CA's assailed Decision reads:

WHEREFORE, foregoing premises considered, and after finding no grave abuse of discretion amounting to lack or excess of jurisdiction in the issuance of the Orders dated August 11, 2008 and May 20, 2011 in Civil Case No. CEB-29462 pending before the Regional Trial Court of Cebu City Branch 16, the petition is hereby **DISMISSED** for lack of merit. Let the records of this case be removed from the docket of this Court.

SO ORDERED.^[52]

The Bank filed a motion for reconsideration^[53] which the CA denied in a Resolution^[54] dated March 26, 2014. Discontented, the Bank filed a Petition for Review on *Certiorari*^[55] before the Court and raised the following issues:

Issues:

A.

THE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR IN NOT HOLDING THAT THE DISPUTED DEPOSIT IN THIS CASE HAD BEEN THE SUBJECT OF LEGAL COMPENSATION PRIOR