

EN BANC

[G.R. No. 126890, April 02, 2009]

**UNITED PLANTERS SUGAR MILLING CO., INC., (UPSUMCO),
PETITIONERS, VS. THE HONORABLE COURT OF OF APPEALS,
PHILIPPINE NATIONAL BANK (PNB) AND ASSET
PRIVATIZATION TRUST (APT), AS TRUSTEE OF THE REPUBLIC
OF THE PHILIPPINES, RESPONDENTS.**

RESOLUTION

TINGA, J.:

In 1987, the Republic of the Philippines lost around 1.5 Billion Pesos after it had waived its right to collect on an outstanding indebtedness from petitioner, by virtue of a so-called "friendly foreclosure agreement" that ultimately was friendly only to petitioner. The efficacy of such waiver is now beyond dispute, but the Court has the opportunity to regretfully mitigate the losses sustained by the government through means no more exotic than insisting upon the interpretation of contracts according to the plain terms expressed therein.

I.

The following statement of facts are drawn from the Decision of the Court of Appeals Tenth Division dated 29 February 1996, as well as from the Separate Opinion to the Resolution of this Court dated 11 July 2007.

Petitioner United Planters Sugar Milling Co. (UPSUMCO) was engaged in the business of milling sugar. In 1974, as UPSUMCO commenced operations, it obtained a set of loans from respondent Philippine National Bank (PNB). These loans, referred herein as the "takeoff loans," were intended to finance the construction of a sugar milling plant. The takeoff loans were embodied in a Credit Agreement dated November 5, 1974, which was thrice restructured through Restructuring Agreements dated 24 June and 10 December 1982, and 9 May 1984.^[1] The takeoff loans were secured a real estate mortgage over two parcels of land^[2] where the milling plant stood and chattel

mortgages over the machineries and equipment. As another condition to the takeoff loans, UPSUMCO agreed to "open and/or maintain a deposit account with the [PNB] and the bank is authorized at its option to apply to the payment of any unpaid obligations of the client any/and all monies, securities which may be in its hands on deposit."^[3]

Between 1984 to 1987, UPSUMCO contracted another set of loans from PNB, these ones oriented towards financing the operations of the Company. The second set of loans, referred hereinafter as "operational loans," also contained setoff clauses relative to the application of payments from UPSUMCO's bank accounts. They were

likewise secured by pledge contracts whereby UPSUMCO assigned to PNB all its sugar produce for PNB to sell and apply the proceeds to satisfy the indebtedness arising from the operational loans.

The rulings of the lower courts, as well as the petition itself, are not clear as to the amount extended by way of takeoff loans by PNB to UPSUMCO. However, the Court of Appeals did enumerate the following transactions consisting of the operational loans, to wit:

- (1) Trust Receipts dated August 26, 1987; February 5, 1987; and July 10, 1987;
- (2) Deed of Assignment By Way of Payment dated November 16, 1984 (Exh. 3 [PNB]; Exh. 12 [APT]; Record, p. 545);
- (3) Two (2) documents of Pledge both dated February 19, 1987;
- (4) Sugar Quedans (Exh. 13 to 16; Record, pp. 548 to 551);
- (5) Credit Agreements dated February 19, 1987 (Exhs. "2" [PNB] & "4" [APT]; Record, pp. 541-544) and April 29, 1987 (Exh. "11" [APT]; Record, pp. 314-317).
- (6) Promissory Notes dated February 20, 1987 (Exh. "17"; Record, p. 573); March 2, 1987 (Exh. "18"; Record, p. 574); March 3, 1987 (Exh. "19"; Record, p. 575); March 27, 1987; (Exh. "20"; Record, p. 576); March 30, 1987 (Exh. "21"; Record, p. 577); April 7, 1987 (Exh. "22"; Record, p. 578); May 22, 1987 (Exh. "23"; Record, p. 579); and July 30, 1987 (Exh. "24"; record p. 580).^[4]

On 27 February 1987, through a Deed of Transfer,^[5] PNB assigned to the Government its "rights, titles and interests" over UPSUMCO, among several other assets.^[6] The Deed of Transfer acknowledged that said assignment was being undertaken "in compliance with Presidential Proclamation No. 50."^[7] The Government subsequently transferred these "rights, titles and interests" over UPSUMCO to the respondent Asset and Privatization Trust (APT).^[8]

Thereafter, it is alleged that APT and UPSUMCO entered into talks concerning the disposal of UPSUMCO's mortgaged assets. The Decision stated that the parties then agreed to an "uncontested or 'friendly foreclosure' of these mortgaged assets, in exchange for UPSUMCO's waiver of its right of redemption."^[9] Soon, a Petition for Extrajudicial Foreclosure Sale dated 28 July 1987 was filed with the Ex-Officio Regional Sheriff of Dumaguete City, with PNB identified therein as "Mortgagee" and APT as "Assignee and Transferee of PNB's rights, titles and interests."^[10] PNB and APT manifested in the petition their intent to foreclose on the real estate and chattel mortgages which notably were executed to secure the take-off loans. The foreclosure sale was conducted on 27 August 1987, whereby APT purchased the auctioned properties for P450 Million.

Seven (7) days after the foreclosure sale, or on 3 September 1987, UPSUMCO executed a Deed of Assignment^[11] wherein it assigned to APT its right to redeem

the foreclosed properties, in exchange for or in consideration of APT "condoning any deficiency amount it may be entitled to recover from the Corporation under the Credit Agreement dated November 5, 1974, and the Restructuring Agreements[s] dated June 24 and December 10, 1982, and May 9, 1984, respectively, executed between [UPSUMCO] and PNB..." On even date, the Board of Directors of UPSUMCO agreed to to a Board Resolution authorizing Joaquin Montenegro, its President, to enter into the said Deed of Assignment.^[12]

Notwithstanding this Deed of Assignment, UPSUMCO later filed a complaint^[13] dated 10 March 1989 for sum of money and damages against PNB and APT before the Regional Trial Court (RTC) of Bais City. It was alleged therein that PNB and APT had illegally appropriated funds belonging to UPSUMCO, through the following means: (1) withdrawals made from the bank accounts opened by UPSUMCO beginning 27 August 1987 until 12 February 1990; (2) the application of the proceeds from the sale of the sugar of UPSUMCO beginning 27 August 1987 until 4 December 1987; (3) the payment from of the funds of UPSUMCO with PNB for the operating expenses of the sugar mill after 3 September 1987, allegedly upon the instruction of APT with the consent of PNB.

This complaint would be amended one month after it was filed. In the original complaint, it was alleged that "after September 3, 1987, [UPSUMCO] is entitle[d] to all the funds it deposited or being held by PNB in all its branches."^[14] The original complaint also pinpointed 3 September 1987 as the general reckoning date after which the assets of UPSUMCO would be beyond reach of application by APT or PNB. However, petitioners then filed an amended complaint^[15] where all citations of "3 September 1987" as a reference point were deleted,^[16] It was claimed, this time, in the amended complaint that UPSUMCO was released from its rights and obligations due PNB and APT "after the foreclosure by PNB/APT."^[17] Notably, several of the transactions in question had occurred after the foreclosure sale but before the Deed of Assignment, or within the dates 28 August to 3 September 1987.

Both APT and PNB claimed in their respective comments that the extrajudicial foreclosure sale was unconditional and mandatory under Presidential Decree No. 385.^[18] They also specifically denied the allegation regarding the execution of the 3 September 1987 Deed of Assignment due to "lack of knowledge or information sufficient to form a belief as to the truth thereof."^[19] PNB further submitted that the transfer of the deposits in the name of APT was valid, "since PNB has all the prerogatives over the same after foreclosure on August 27, 1987 and a deficiency claim arose."^[20]

APT likewise filed a counterclaim, seeking the recovery of over 1.6 Billion Pesos from UPSUMCO. The amount was apparently determined with the calculation that there was no condonation at all in favor of UPSUMCO, and said sum represented the total amount of indebtedness less the 450 Million Pesos for which the foreclosed properties were sold.

During the course of trial, APT (though not PNB) would eventually admit the existence of the 3 September 1987 Deed of

Assignment.^[21] However, APT argued that such Deed could not

retroact to 27 August 1987,^[22] contrary to the claim of UPSUMCO, citing Section 7, Rule 130 of the Rules of Court.^[23]

The action was eventually decided by the RTC in favor of UPSUMCO. The RTC Decision^[24] is rooted on the following assumptions:

(1) The obligation of UPSUMCO with PNB under the initial creditor-debtor relation was "novated by the subrogation of creditors, *i.e.*, [APT]."^[25]

(2) The bank accounts maintained by UPSUMCO with PNB created a creditor-debtor relation, in addition to the same relation (albeit in reversed identities) between the same parties by reason of the loan agreements. However, whatever right PNB had to set-off the outstanding indebtedness from UPSUMCO'S bank accounts ceased the moment PNB assigned its rights to APT on 27 February 1987. Thus, only APT could be considered as the foreclosing creditor.^[26]

(3) Assuming there remained any deficiency claim in favor of PNB or APT, the same was condoned by the Deed of Assignment dated 3 September 1987. The RTC considered APT's argument that the Deed of Assignment could not be deemed to retroact to 27 August 1987. It ruled, however, that "[a]s of the date of the foreclosure on August 27, 1987, [UPSUMCO] was a creditor as to its deposits and proceeds of sugar sale with the defendant PNB. Neither [PNB] nor [APT] cannot [*sic*] simply appropriate the things of plaintiff. If at all, such deficiency claim did exist and subsist, foreclosing creditor should have initiated proper actions to recover the same."^[27]

The RTC ordered thus, as follows:

1. Both defendant Philippine National Bank and Asset Privatization Trust are ordered jointly and severally to pay to plaintiff the following:

a) The sum of FORTY SIX MILLION NINE HUNDRED EIGHTY SEVERN THOUSAND FOUR HUNDRED FIFTY NINE & 49/100 (P46,987,459.49) PESOS, representing amount transferred by defendant PNB to APT in credit memo dated August 27, 1987 (Exh. "QQQ"), plus twelve percent (12%) interest per annum computed from date of filing of the complaint;

b) The sum of FOURTEEN MILLION THREE HUNDRED SIXTEEN THOUSAND FIVE HUNDRED NINETY THREE & 29/100 (P14,316,593.29) PESOS, representing the total swum of money withdrawn from Savings Account Nos. 5176994, 5188305, 5192639, 5197762, and 5208575 of plaintiff and transferred by defendant PNB to defendant APT as shown in debit memo dated August 27, 1987 (Exh. "WWW-1"), plus twelve percent (12%) interest per annum computed from date of filing of the complaint;

c) The sum of EIGHTEEN MILLION EIGHT HUNDRED NINETY SIX THOUSAND SEVEN HUNDRED FIFTY THREE & 63/100

(P18,896,753.63) PESOS, representing the proceeds of the sale of plaintiff's sugar credited by defendant PNB in favor of defendant APT as shown in credit memo dated August 28, 1987 (Exh. "XX"), plus twelve percent (12%) interest per annum computed from date of filing of the complaint;

d) the sum of THREE MILLION THREE HUNDRED TWENTY THREE THOUSAND SIX HUNDRED FORTY SEVEN & 48/100 (P3,323,647.48) PESOS, representing proceeds of sale of plaintiff's sugar which was credited by defendant PNB to the account of defendant APT as shown by a credit memo dated September 4, 1987 (Exh. "YY"), plus twelve percent (12%) interest per annum computed from date of filing of the complaint;

e) the sum of FOUR MILLION NINE THOUSAND FOUR HUNDRED THREE & 37/100 (P4,009,403.37) PESOS, representing the proceeds of sale of plaintiff's sugar credited by defendant PNB in favor of defendant APT as shown by a credit memo dated September 15, 1987 (Exh. "ZZ"), plus twelve percent (12%) interest per annum computed from date of filing of the complaint;

f) the sum of THREE HUNDRED FORTY SIX THOUSAND FIVE HUNDRED FIFTY NINE & 83/100 (P346,559.83) PESOS, representing final differential of the sale of plaintiff's sugar for the year 1985-86 which was credited by defendant PNB in favor of defendant APT as shown in a credit memo dated December 4, 1987 (Exh. "AAA"), plus twelve percent (12%) interest per annum computed from date of filing of the complaint;

g) the sum of ONE MILLION (P1,000,000.00) PESOS, representing partial payments to the 6,399.89 piculs of export "A" sugar credited by defendant PNB in favor of defendant APT as shown by a credit memo dated December 8, 1987, plus interest at twelve (12%) percentum per annum computed from date of filing of the complaint (Exh. "BBB").

2. Defendant Philippine National Bank is ordered to pay singly to plaintiff the following:

a) the sum of ELEVEN MILLION EIGHT HUNDRED THIRTY FOUR THOUSAND FOUR HUNDRED NINETY EIGHT & 45/100 (P11,834,498.45) PESOS, corresponding to the payment made by defendant PNB to the Philippine Sugar Corporation as shown in Official Receipt No. 0160 dated September 2, 1987 (Exh. "LLL"), plus interest at twelve percent (12%) per annum computed from date of filing of the complaint;

b) the sum of TWENTY NINE MILLION FIVE HUNDRED SEVENTY TWO THOUSAND NINE HUNDRED FORTY SIX & 50/100 (P29,572,946.50) PESOS, corresponding to payment made by defendant PNB to Philippine Sugar Corporation as shown in Official Receipt No. 0109 dated October 20, 1987 (Exh. "LLL-1"), plus