

SECOND DIVISION

[G.R. NO. 126890, July 11, 2007]

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

RESOLUTION

CARPIO, J.:

This resolves the Motions for Reconsideration of respondents Philippine National Bank (PNB) and Asset Privatization Trust (APT)^[1] of the Decision dated 28 November 2006 (Decision). The Decision ordered PNB and APT to pay sums of money to petitioner United Planters Sugar Milling Company, Inc. (UPSUMCO), reversing the Court of Appeals' ruling to remand the case for the presentation of APT's evidence.

For a better understanding of this case, we summarize the essential facts and relevant issues, as follows:

On 27 February 1987, PNB assigned to APT its "take-off loans" to UPSUMCO as of June 30, 1986, including the mortgages on these take-off loans. PNB did not assign to APT any "operating loans" of UPSUMCO. The total indebtedness of UPSUMCO on the take-off loans was P2,137,076,433.15 as of 30 June 1987. On 27 August 1987, APT foreclosed the mortgages on the take-off loans. The foreclosure price was P450,000,000, leaving a deficiency of P1,687,076,433. On 3 September 1987, in consideration of UPSUMCO's assignment to APT of UPSUMCO's right to redeem the foreclosed assets, APT condoned "any deficiency amount" of UPSUMCO after the foreclosure.

1. After the assignment of the take-off loans on 27 February 1987, can PNB, as collecting agent of APT, set-off by way of legal compensation deposits of UPSUMCO with PNB against the take-off loans? No, because PNB, as of 27 February 1987, ceased to be a principal creditor of UPSUMCO on the take-off loans. Legal compensation can apply only between parties who are principal creditors and debtors of each other. This is the case of *Sycip v. Court of Appeals*.^[2]
2. Should PNB and APT return to UPSUMCO any UPSUMCO deposits set-off by PNB after the assignment of the take-off loans on 27 February 1987, and remitted by PNB to APT? It depends. If the set-off was made **after** the effectivity of the condonation, PNB and APT

solidarily must return because they had no legal right or justification to set-off and keep such amounts. However, if the set-off was made **before** the effectivity of the condonation, PNB, in setting-off, acted as a third person using its own funds to pay the debt of UPSUMCO to its creditor APT. PNB can recover from UPSUMCO to the extent that the payment benefited UPSUMCO. Before the condonation, UPSUMCO still owed APT the deficiency of P1,687,076,433, thus any payment by PNB **before** the condonation would benefit UPSUMCO.

3. When did the condonation take effect, right after the foreclosure on 27 August 1987 or seven days later upon the signing of the Deed of Assignment on 3 September 1987? The condonation took effect right after the foreclosure on 27 August 1987. This is the date when UPSUMCO, PNB and APT agreed to implement the "friendly" foreclosure because at this point, the parties agreed on the three incentives offered by APT to UPSUMCO, namely: the 5% fee of UPSUMCO based on the winning bid, the waiver of the solidarily obligations of UPSUMCO directors, and the condonation of any deficiency amount after the foreclosure. **More importantly**, the Deed of Assignment of 3 September 1987 itself states that **"any deficiency amount"** shall be condoned, which could only mean any deficiency immediately after the foreclosure on 27 August 1987. In a foreclosure, the deficiency is determined right after the foreclosure. Clearly, the condonation took effect immediately after the foreclosure on 27 August 1987.

From 27 February 1987 to 26 August 1987, PNB did not set-off any UPSUMCO funds. However, from 27 August 1987 to 3 September 1987, and even thereafter, PNB set-off a total of P97,973,991.65 and remitted this amount to APT to pay what PNB now alleges was APT's **"deficiency claim."** PNB and APT never informed UPSUMCO of these set-offs, and UPSUMCO learned of these set-offs only during the trial of the case. UPSUMCO did not benefit from this payment as APT had already condoned "any deficiency amount" after the foreclosure on 27 August 1987.

PNB and APT solidarily must return to UPSUMCO the P97,973,991.65 that PNB set-off from 27 August 1987 onwards. In addition, PNB must return to UPSUMCO what PNB set-off - P11,843,498.45 on 2 September 1987 and the P29,572,946.50 on 20 October 1987 - against UPSUMCO's deposits and remitted to PHILSUCOR. Lastly, PNB must also return to UPSUMCO P386,897.57 which is the total credit balance in UPSUMCO's bank accounts with PNB which PNB refused to release to UPSUMCO.

4. Can APT collect any deficiency from UPSUMCO on the take-off loans after the foreclosure? No, because under the Deed of Assignment, APT condoned "any deficiency amount" of UPSUMCO after the foreclosure on 27 August 1987.

5. Can PNB collect the operating loans from UPSUMCO? Yes, but not in this case since PNB did not claim here that these operating loans are unpaid while UPSUMCO alleged that they are fully paid. Neither did PNB present here any evidence that these operating loans are unpaid.
6. Can PNB withhold the UPSUMCO deposits PNB set-off against the take-off loans and apply these deposits in legal compensation of the operating loans? No, because in this case PNB has not claimed or shown that the operating loans are due and outstanding. One requirement of legal compensation is that both debts are due and demandable.

In their Motions, PNB and APT (respondents) reiterate their claims that UPSUMCO still owes APT because the Deed of Assignment dated 3 September 1987 only condoned UPSUMCO's obligation partially, thus entitling PNB to set-off UPSUMCO funds against its liability to APT. For its part, PNB claims that what the Deed of Assignment covered was only the deficiency from UPSUMCO's "take-off loans" but not its obligation under the "operational loans" which remained outstanding. PNB also claims that: (1) it set-off UPSUMCO funds in favor of APT from 27 August 1987 onwards in good faith, following pertinent rules and agreement; (2) the Deed of Assignment under which APT condoned UPSUMCO's deficiency obligation became effective on 3 September 1987 and not on the date of the foreclosure of UPSUMCO's assets on 27 August 1987; and (3) PNB did not use UPSUMCO funds for the payments it made to Philippine Sugar Corporation (PHILSUCOR), a former creditor of UPSUMCO, and that PHILSUCOR should have been impleaded as party-defendant.

For the reasons stated below, we resolved to deny with finality the motions for reconsideration.

First. We clarify that under the Deed of Assignment, APT condoned UPSUMCO's deficiency obligation under the "take-off" loans only. However, we affirm our ruling that neither PNB nor APT proved that after the foreclosure on 27 August 1987, UPSUMCO still owed APT on the "take-off" loans to justify PNB's transfer of UPSUMCO funds to APT in the guise of set-offs.

APT's interest in UPSUMCO is based on the Deed of Transfer dated 27 February 1987 under which PNB assigned to the Government/APT its "rights, titles and interest" in UPSUMCO and its "rights, titles and interests under the collateral documents x x x executed as security x x x," thus:

SECTION 1. TRANSFER OF BANK'S ASSETS

1.01 For and in consideration of the GOVERNMENT's assumption of certain liabilities of the BANK, the BANK **hereby assigns, transfers and conveys unto and in favor of the GOVERNMENT all its rights, titles and interests in and to certain assets of the BANK** ("BANK's Assets"), as listed and more particularly described in Annex "A" hereto, consisting of eight (8) pages.

1.02 With respect to the BANK's assets consisting of receivables ("Receivables") from the BANK's borrowers under the terms of the credit

documents ("Credit Documents") executed by the BANK's borrowers in favor of the BANK; the Receivables are hereby assigned to the GOVERNMENT. **It is hereby likewise agreed that the assignment of the Receivables hereunder carries with it the assignment of the BANK's rights, titles and interests under the collateral documents ("Security Documents") executed as security for the payment of the Receivables.**

x x x x

VALUATION AND INVENTORY OF ASSETS AND LIABILITIES

3.01 For accounting purposes, the assets and liabilities transferred hereunder and those liabilities remaining in the books of the BANK but to be funded by the GOVERNMENT pursuant to Section 2.02 hereof shall be value dated as of June 30, 1986, notwithstanding any provision to the contrary.^[3] (Emphasis supplied)

As stated, this assignment covered only UPSUMCO's take-off loans to PNB as shown by PNB's accounting of UPSUMCO's liability to APT as of 30 June 1987 which included none of the operational loans.^[4] Significantly, the Deed of Transfer between PNB and APT provides that "the assets x x x transferred x x x shall be valued as **of 30 June 1986.**"^[5] Thus, PNB could not have transferred to APT the two operational loans on record, namely the Credit Agreements dated 19 February 1987 and 29 April 1987.

After APT foreclosed the mortgages securing the take-off loans and signed, with UPSUMCO, the Deed of Assignment, APT condoned "any deficiency amount" of UPSUMCO from the take-off loans. As we held in the Decision, this condonation of "any deficiency amount" is absolute, taking into account a document *in pari materia* (UPSUMCO's Board Resolution dated 3 September 1987),^[6] the incentives offered by APT as inducement for the "friendly" foreclosure of UPSUMCO's assets, the conduct of the parties before and after the "friendly" foreclosure and signing of the Deed of Assignment,^[7] and the ruling in *United Planters and Sugar Milling Corporation, Inc. v. Philippine Sugar Corporation* (PHILSUCOR Case) which the Court affirmed with finality in G.R. No. 132731.^[8]

The foregoing, however, does not change our disposition of this case.

In the first place, the Court of Appeals never distinguished UPSUMCO's obligation to APT or PNB in terms of UPSUMCO's operational or take-off loans. Instead, the Court of Appeals relied on a rule of statutory construction^[9] in examining the Deed of Assignment. Thus, the appellate court held that since that document only mentioned the Credit Agreement dated 5 November 1974 and the Restructuring Agreements dated 24 June 1982, 10 December 1982, and 9 May 1984, it could not have covered the loans and other security instruments not mentioned in the contract. Accordingly, the Court of Appeals did not determine what loans PNB assigned to APT on 27 February 1987 which is determinative of the extent of APT's interest in the foreclosure proceedings of UPSUMCO's assets and consequently of what APT condoned under the Deed of Assignment of 3 September 1987. The Court of

Appeals' limited analysis is evident in the discussion of its ruling which we quoted in the Decision.^[10]

Does UPSUMCO then remain indebted to PNB under the operational loans? We reiterate our ruling in the negative.

Until it filed its motion for reconsideration, PNB made no mention of any outstanding obligation of UPSUMCO under the operational loans. In the Answer it filed with the trial court, PNB counterclaimed not for UPSUMCO's alleged unpaid obligation under the operational loans but for moral damages and attorney's fees.^[11] Indeed, at no time during the pendency of this case in the trial court, the Court of Appeals, or this Court did PNB hint of any proof of such alleged debt. As we noted in the Decision, claims of unpaid obligations must be supported by "concrete and uncontested proof" – indicating the amount due, in pesos and cents – and not left to inference, thus:

[F]or us to rule that UPSUMCO still owes respondents, nothing less than concrete and uncontested proof of UPSUMCO's unpaid obligations suffices. Absent such proof, and respondents presented none, we see no reason to remand this case to the trial court to compute UPSUMCO's supposed unpaid obligations, the existence of which is left to inference.

^[12]

What PNB contended in its Answer was that it set-off UPSUMCO funds "under the covering instruments executed by UPSUMCO in favor of PNB' to pay for a **"deficiency claim"**^[13] of APT. **This is an admission by PNB that it effected the set-off right after the foreclosure on 27 August 1987 to satisfy the deficiency.** From 27 August 1987 to 3 September 1987, a period of seven days, PNB set-off P80,200,806.41. After 3 September 1987, PNB set-off P17,773,185.24. PNB and APT never informed UPSUMCO of these set-offs, and UPSUMCO learned of these set-offs only during the trial of the case.^[14] Obviously, APT and PNB hid these set-offs from UPSUMCO at the time of the signing of the Deed of Assignment and even thereafter.

Such set-offs were not proper for the following reasons: (1) APT had condoned UPSUMCO's deficiency claim, thus UPSUMCO had no more obligation to APT for which PNB could set-off UPSUMCO funds; (2) PNB set-off UPSUMCO funds not for itself but as APT's collecting agent. However, it is settled that legal compensation under Article 1279 of the Civil Code cannot take place between an agent of the principal creditor on one hand, and the principal debtor on the other, where the agent holds funds of the principal debtor.^[15] Compensation can take place only if both parties are principal creditors and principal debtors of each other;^[16] and (3) even if PNB did set-off the funds for itself, such would also violate Article 1279 of the Civil Code since PNB failed to prove that UPSUMCO's alleged debt arising from the operational loans is due, liquidated and demandable, as required under Article 1279.

^[17]

If indeed, there remained an unpaid portion of the operational loans which UPSUMCO owed to PNB, PNB, to protect its interest, could have set-off UPSUMCO funds against such obligation, before or immediately after the foreclosure of UPSUMCO's mortgaged assets on 27 August 1987. The operational loans on record