

## FIRST DIVISION

[ G.R. No. 206037, March 13, 2017 ]

**PHILIPPINE NATIONAL BANK, PETITIONER, VS. LILIBETH S. CHAN, RESPONDENT.**

### DECISION

**DEL CASTILLO, J.:**

We resolve the Petition for Review on Certiorari under Rule 45 of the Rules of Court, assailing the May 28, 2012 Decision<sup>[1]</sup> and the February 21, 2013 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 98112.

#### ***The Antecedent Facts***

Respondent Lilibeth S. Chan owns a three-story commercial building located along A. Linao Street, Paco, Manila: covered by Transfer Certificate of Title (TCT) No. 208782<sup>[3]</sup> On May 10, 2000, she leased said commercial building to petitioner Philippine National Bank (PNB) for a period of five years from December 15, 1999 to December 14, 2004, with a monthly rental of P76,160.00.<sup>[4]</sup> When the lease expired, PNB continued to occupy the property on a month-to month basis with a monthly rental of P116,788.44. PNB vacated the premises on March 23, 2006.<sup>[5]</sup>

Meanwhile, on January 22, 2002, respondent obtained a P1,500,000.00 loan from PNB which was secured by a Real Estate Mortgage constituted over the leased property.<sup>[6]</sup> In addition, respondent executed a Deed of Assignment<sup>[7]</sup> over the rental payments in favor of PNB.

The amount of the respondent's loan was subsequently increased to P7,500,000.00. Consequently, PNB and the respondent executed an "Amendment to the Real Estate Mortgage by Substitution of Collateral" on March 31, 2004, where the mortgage over the leased property was released and substituted by a mortgage over a parcel of land located in Paco, Manila, covered by TCT No. 209631.<sup>[8]</sup>

On August 26, 2005, respondent filed a Complaint for Unlawful Detainer before the Metropolitan Trial Court (MeTC), Branch 7, Manila against PNB, alleging that the latter failed to pay its monthly rentals from October 2004 until August 2005.<sup>[9]</sup>

In its defense, PNB claimed that it applied the rental proceeds from October 2004 to January 15, 2005 as payment for respondent's outstanding loan which became due and demandable in October 2004. <sup>[10]</sup> As for the monthly rentals from January 16, 2005 to February 2006, PNB explained that it received a demand letter<sup>[11]</sup> from a certain Lamberto Chua (Chua) who claimed to be the new owner of the leased property and requested that the rentals be paid directly to him, reckoned from January 15, 2005 until PNB decides to vacate the premises or a new lease contract

with Chua is executed. PNB thus deposited the rentals in a separate non drawing savings account for the benefit of the rightful party.<sup>[12]</sup>

The MeTC held a hearing on April 25, 2006 where the parties agreed to apply the rental proceeds from October 2004 to January 15, 2005 to the respondent's outstanding loan".<sup>[13]</sup> PNB, too, consigned the amount of P1,348,643.92, representing the rentals due from January 16, 2005 to February 2006, with the court on May 31, 2006.<sup>[14]</sup>

### ***Ruling of the Metropolitan Trial Court***

In its August 9, 2006 Decision,<sup>[15]</sup> the MeTC ordered PNB to pay respondent accrued rentals in the amount of P1,348,643.92<sup>[16]</sup> with interest at 6% per annum from January 16, 2005 up to March 23, 2006, when PNB finally vacated the leased property.<sup>[17]</sup> The MeTC likewise directed PNB to pay attorney's fees in the amount of P20,000.00 and the cost of suit.

PNB appealed the August 9, 2006 MeTC Decision to the Regional Trial Court (RTC), Branch 14, Manila, insisting that respondent is not entitled to the disputed rental proceeds amounting to P1,348,643.92. According to PNB, the money should be applied to offset respondent's outstanding loan pursuant to the Deed of Assignment the latter executed in its favor. PNB also argued that it is not liable to pay any interest on the lease rentals since it did not incur any delay in the payment of rent.<sup>[18]</sup>

While the appeal was pending before the RTC, PNB initiated foreclosure proceedings on the mortgaged property covered by TCT No. 209631.<sup>[19]</sup> The property was sold on October 31, 2006 for P15,311,000.00 to PNB as the highest bidder. Notably, the Certificate of Sale provides that respondent's indebtedness amounted to P11,211,283.53 as of May 15, 2005, "exclusive of penalties, expenses, charges and the ten (10) percent attorney's fees, plus sheriff fees and other lawful expenses of foreclosure and sale."<sup>[20]</sup>

In light of this development, respondent tiled a Memorandum<sup>[21]</sup> before the RTC, claiming that PNB had no right to retain the P1,348,643.92 consigned with the court. She insisted that her loan was fully paid when PNB bought the mortgaged property at P15,311,000.00<sup>[22]</sup>

PNB filed a Rejoinder<sup>[23]</sup> and argued that respondent's outstanding obligation as of October 31, 2006 was P18,016,300.71 while the bid price was only P15,311,000.00. Thus, PNB claimed that it is entitled to a deficiency claim amounting to 2,705,300.71 to which the rental proceeds of P1,348,643.92 can be applied.<sup>[24]</sup>

### ***Ruling of the Regional Trial Court***

The RTC affirmed the MeTC ruling in its December 7, 2006 Decision.<sup>[25]</sup> It found that respondent's obligation to PNB "has already been paid, notwithstanding the belated claim of [the latter] that there remains a deficiency."<sup>[26]</sup> The RTC noted that the P11,211,283.53 amount of indebtedness stated in the Notice of Extra-

Judicial Sale<sup>[27]</sup> dated August 9, 2006 as of May 15, 2006 plus penalties, expenses, charges, attorney's fees and expenses could have been easily covered by the P15,311,000.00 bid price.<sup>[28]</sup>

In addition, the RTC held that PNB incurred delay "when despite demand, it refused to pay and vacate the premises."<sup>[29]</sup> As such, the RTC ruled that the respondent is entitled to legal interest at 6% per annum and attorney's fees for having been compelled to litigate to protect her interests.<sup>[30]</sup>

The respondent then moved for the issuance of a Writ of Execution which was granted by the RTC in its December 18, 2006 Order.<sup>[31]</sup> According to the Sheriff's Report of Execution<sup>[32]</sup> dated January 2, 2007, the amount of P1,348,643.92, representing the monthly rentals from January 16, 2005 up to March 23, 2006 was turned over to the respondent on December 20, 2006.<sup>[33]</sup>

PNB filed a motion for reconsideration of the December 7, 2006 Decision and for the quashal of the Writ of Execution, but the RTC denied the motion in its Order dated February 6, 2007.<sup>[34]</sup> Following the denial, PNB filed a Petition for Review under Rule 42 of the Rules of Court before the CA, challenging the RTC's December 7, 2006 Decision and February 6, 2007 Order.

### ***Ruling of the Court of Appeals***

Title CA pointed out that PNB's entitlement to the rental proceeds in the amount of P1,348,643.92 is dependent on whether there is a deficiency in payment after the foreclosure sale.<sup>[35]</sup> It, however, found no sufficient evidence on record that the amount of respondent's liability as of October 31, 2006 is indeed P18,016,300.71, PNB claims.<sup>[36]</sup> Consequently, the CA remanded the case to the MeTC for the proper reception of evidence and determination, if any, of the deficiency on the foreclosure sale with the following guidelines:<sup>[37]</sup>

(1) From October 2004 to January 15, 2005: Principal+ Interest+ Penalties Monthly Rentals (from October 2004 to January 15, 2005 by virtue of the Deed of Assignment) New Principal

(2) From January 16, 2005 to October 31, 2006: New Principal + Interest + Penalties - Interest Earned by PNB from the Savings Account Outstanding Obligation as of October 31, 2006

(3) Outstanding Obligation as of October 31, 2006 - P15,311,000.00 = Deficiency<sup>[38]</sup>

As regards the payment of legal interest, the CA noted that PNB merely opened a non-drawing savings account wherein it deposited the monthly rentals from January 16, 2005 to February 2006. Such deposit of the rentals in a savings account, however, is not the consignment contemplated by law. Thus, the CA found PNB liable to pay the 6% legal interest rate prescribed under Article 2209 of the Civil Code for having defaulted in the payment of its monthly rentals to the respondent.<sup>[39]</sup>

Finally, the CA deleted the award of attorney's fees, pursuant to the general rule

that attorney's fees cannot be recovered as part of damages because of the public policy that no premium should be placed on the right to litigate.<sup>[40]</sup>

PNB filed a partial Motion for Reconsideration, but the CA denied the motion in its Resolution dated February 21, 2013. As a consequence, PNB filed the present Petition for Review on *Certiorari* before the Court, assailing the CA's May 28, 2012 Decision and February 21, 2013 Resolution.

### **Issues**

In the present Petition, PNB raises the following issues for the Court's resolution: *first*, whether PNB properly consigned the disputed rental payments in the amount of P1,348,643.92 with the Office of the Clerk of Court of the MeTC of Manila;<sup>[41]</sup> *second*, whether PNB incurred delay in the payment of rentals to the respondent, making it liable to pay legal interest to the latter;<sup>[42]</sup> and *third*, whether PNB is entitled to the disputed rental proceeds in order to cover the alleged deficiency in payment of the respondent's liability after the foreclosure proceedings.

### **The Court's Ruling**

We DENY the Petition for Review on *Certiorari* as we find no reversible error committed by the CA in issuing its assailed Decision and Resolution.

"Consignation is the act of depositing the thing due *with the court or judicial authorities* whenever the creditor cannot accept or refuses accept payment. [I]t *generally* requires a prior tender of payment."<sup>[44]</sup>

Under Article 1256 of the Civil Code, consignation alone is sufficient even without a prior tender of payment a) when the creditor is absent or unknown or does not appear at the place of payment; b) when he is incapacitated to receive the payment at the time it is due; c) when, without just cause, he refuses to give a receipt; d) when two or more persons claim the same right to collect; and e) when the title of the obligation has been lost.

For consignation to be valid, the debtor must comply with the following requirements under the law:

- 1) there was a debt due;
- 2) valid prior tender of payment, unless the consignation was made because of some legal cause provided in Article 1256;
- 3) previous notice of the consignation has been given to the persons interested in the performance of the obligation;
- 4) the amount or thing due was placed at the disposal of the court; and,
- 5) after the consignation had been made, the persons interested were notified thereof.<sup>[45]</sup>

"Failure in any of these requirements is enough ground to render a consignation