

## SECOND DIVISION

[ G.R. No. 191555, January 20, 2014 ]

**UNION BANK OF THE PHILIPPINES, PETITIONER, VS.  
DEVELOPMENT BANK OF THE PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on *certiorari*<sup>[1]</sup> are the Decision<sup>[2]</sup> dated November 3, 2009 and Resolution<sup>[3]</sup> dated February 26, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 93833 which affirmed the Orders<sup>[4]</sup> dated November 9, 2005 and January 30, 2006 of the Regional Trial Court of Makati, Branch 58<sup>[5]</sup> (RTC) in Civil Case No. 7648 denying the motion to affirm legal compensation<sup>[6]</sup> filed by petitioner Union Bank of the Philippines (Union Bank) against respondent Development Bank of the Philippines (DBP).

#### The Facts

Foodmasters, Inc. (FI) had outstanding loan obligations to both Union Bank's predecessor-in-interest, Bancom Development Corporation (Bancom), and to DBP.

On May 21, 1979, FI and DBP, among others, entered into a Deed of Cession of Property In Payment of Debt<sup>[7]</sup> (*dacion en pago*) whereby the former ceded in favor of the latter certain properties (including a processing plant in Marilao, Bulacan [processing plant]) in consideration of the following: **(a)** the full and complete satisfaction of FI's loan obligations to DBP; and **(b) the direct assumption by DBP of FI's obligations to Bancom** in the amount of P17,000,000.00 (assumed obligations).<sup>[8]</sup>

On the same day, DBP, as the new owner of the processing plant, leased back<sup>[9]</sup> for 20 years the said property to FI (Lease Agreement) which was, in turn, obliged to pay **monthly rentals to be shared by DBP and Bancom.**

DBP also entered into a separate agreement<sup>[10]</sup> with Bancom (Assumption Agreement) whereby the former: **(a)** confirmed its assumption of FI's obligations to Bancom; and **(b) undertook to remit up to 30% of any and all rentals due from FI to Bancom (subject rentals) which would serve as payment of the assumed obligations, to be paid in monthly installments.** The pertinent portions of the Assumption Agreement reads as follows:

WHEREAS, DBP has agreed and firmly committed in favor of Bancom that **the above obligations to Bancom which DBP has assumed shall be settled, paid and/or liquidated by DBP out of a portion of the**

**lease rentals or part of the proceeds of sale** of those properties of the Assignors conveyed to DBP pursuant to the [Deed of Cession of Property in Payment of Debt dated May 21, 1979] and which are the subject of [the Lease Agreement] made and executed by and between DBP and [FI], the last hereafter referred to as the "Lessee" to be effective as of July 31, 1978.

x x x x

**4. DBP hereby covenants and undertakes that the amount up to 30% of any and all rentals due from the Lessee pursuant to the Lease Agreement shall be remitted by DBP to Bancom** at the latter's offices at Pasay Road, Makati, Metro Manila **within five (5) days from due dates thereof, and applied in payment of the Assumed Obligations.** Likewise, the amount up to 30% of the proceeds from any sale of the Leased Properties shall within the same period above, be remitted by DBP to Bancom and applied in payment or prepayment of the Assumed Obligations. x x x. **Any balance of the Assumed Obligations after application of the entire rentals and or the entire sales proceeds actually received by Bancom on the Leased Properties shall be paid by DBP to Bancom not later than December 29, 1998.** (Emphases supplied)

Meanwhile, on May 23, 1979, FI assigned its leasehold rights under the Lease Agreement to Foodmasters Worldwide, Inc. (FW);<sup>[11]</sup> while on May 9, 1984, Bancom conveyed all its receivables, including, among others, DBP's assumed obligations, to Union Bank.<sup>[12]</sup>

Claiming that the subject rentals have not been duly remitted despite its repeated demands, Union Bank filed, on June 20, 1984, a collection case against DBP before the RTC, docketed as Civil Case No. 7648.<sup>[13]</sup> In opposition, DBP countered, among others, that the obligations it assumed were payable only out of the rental payments made by FI. Thus, since FI had yet to pay the same, DBP's obligation to Union Bank had not arisen.<sup>[14]</sup> In addition, DBP sought to implead FW as third party-defendant in its capacity as FI's assignee and, thus, should be held liable to Union Bank.<sup>[15]</sup>

In the interim, or on May 6, 1988, DBP filed a motion to dismiss on the ground that it had ceased to be a real-party-in-interest due to the supervening transfer of its rights, title and interests over the subject matter to the Asset Privatization Trust (APT). Said motion was, however, denied by the RTC in an Order dated May 27, 1988.<sup>[16]</sup>

### **The RTC Ruling in Civil Case No. 7648**

Finding the complaint to be meritorious, the RTC, in a Decision<sup>[17]</sup> dated May 8, 1990, ordered: (a) DBP to pay Union Bank the sum of P4,019,033.59, representing the amount of the subject rentals (which, again, constitutes 30% of FI's [now FW's] total rental debt), including interest until fully paid; and (b) FW, as third-party defendant, to indemnify DBP, as third-party plaintiff, for its payments of the subject rentals to Union Bank. It ruled that there lies no evidence which would show that

DBP's receipt of the rental payments from FW is a condition precedent to the former's obligation to remit the subject rentals under the Lease Agreement. Thus, when DBP failed to remit the subject rentals to Union Bank, it defaulted on its assumed obligations.<sup>[18]</sup> DBP then elevated the case on appeal before the CA, docketed as CA-G.R. CV No. 35866.

### **The CA Ruling in CA-G.R. CV No. 35866**

In a Decision<sup>[19]</sup> dated May 27, 1994 (May 27, 1994 Decision), the CA set aside the RTC's ruling, and consequently ordered: (a) FW to pay DBP the amount of P32,441,401.85 representing the total rental debt incurred under the Lease Agreement, including P10,000.00 as attorney's fees; and (b) DBP, **after having been paid by FW its unpaid rentals**, to remit 30% thereof (i.e., the subject rentals) to Union Bank. <sup>[20]</sup>

It rejected Union Bank's claim that DBP has the direct obligation to remit the subject rentals not only from FW's rental payments but also out of its own resources since said claim contravened the "plain meaning" of the Assumption Agreement which specifies that **the payment of the assumed obligations shall be made "out of the portion of the lease rentals or part of the proceeds of the sale of those properties of [FI] conveyed to DBP."**<sup>[21]</sup> It also construed the phrase under the Assumption Agreement that DBP is obligated to "pay any balance of the Assumed Obligations after application of the entire rentals and/or the entire sales proceeds actually received by [Union Bank] on the Leased Properties . . . not later than December 29, 1998" to mean that the lease rentals must first be applied to the payment of the assumed obligations in the amount of P17,000,000.00, and **that DBP would have to pay out of its own money only in case the lease rentals were insufficient, having only until December 29, 1998 to do so.** Nevertheless, the monthly installments in satisfaction of the assumed obligations **would still have to be first sourced from said lease rentals as stipulated in the assumption agreement.**<sup>[22]</sup> In view of the foregoing, the CA ruled that DBP did not default in its obligations to remit the subject rentals to Union Bank **precisely because it had yet to receive the rental payments of FW.**<sup>[23]</sup>

Separately, the CA upheld the RTC's denial of DBP's motion to dismiss for the reason that the transfer of its rights, title and interests over the subject matter to the APT occurred *pendente lite*, and, as such, the substitution of parties is largely discretionary on the part of the court.

At odds with the CA's ruling, Union Bank and DBP filed separate petitions for review on *certiorari* before the Court, respectively docketed as G.R. Nos. 115963 and 119112, which were thereafter consolidated.

### **The Court's Ruling in G.R. Nos. 115963 & 119112**

The Court denied both petitions in a Resolution<sup>[24]</sup> dated December 13, 1995. First, it upheld the CA's finding that while DBP directly assumed FI's obligations to Union Bank, DBP was only obliged to remit to the latter 30% of the lease rentals collected from FW, from which any deficiency was to be settled by DBP not later than December 29, 1998.<sup>[25]</sup> Similarly, the Court agreed with the CA that the denial of

DBP's motion to dismiss was proper since substitution of parties, in case of transfers *pendente lite*, is merely discretionary on the part of the court, adding further that the proposed substitution of APT will amount to a novation of debtor which cannot be done without the consent of the creditor.<sup>[26]</sup>

On August 2, 2000, the Court's resolution became final and executory.<sup>[27]</sup>

### **The RTC Execution Proceedings**

On May 16, 2001, Union Bank filed a motion for execution<sup>[28]</sup> before the RTC, praying that DBP be directed to pay the amount of P9,732,420.555 which represents the amount of the subject rentals (*i.e.*, 30% of the FW's total rental debt in the amount of P32,441,401.85). DBP opposed<sup>[29]</sup> Union Bank's motion, contending that it sought to effectively vary the dispositive portion of the CA's May 27, 1994 Decision in CA-G.R. CV No. 35866. Also, on September 12, 2001, DBP filed its own motion for execution against FW, citing the same CA decision as its basis.

In a Consolidated Order<sup>[30]</sup> dated October 15, 2001 (Order of Execution), the RTC granted both motions for execution. Anent Union Bank's motion, the RTC opined that the CA's ruling that DBP's payment to Union Bank shall be demandable only upon payment of FW must be viewed in light of the date when the same was rendered. It noted that the CA decision was promulgated only on May 27, 1994, which was before the December 29, 1998 due date within which DBP had to fully pay its obligation to Union Bank under the Assumption Agreement. Since the latter period had already lapsed, "[i]t would, thus, be too strained to argue that payment by DBP of its assumed obligation[s] shall be dependent on [FW's] ability, if not availability, to pay."<sup>[31]</sup> In similar regard, the RTC granted DBP's motion for execution against FW since its liability to Union Bank and DBP remained undisputed.

As a result, a writ of execution<sup>[32]</sup> dated October 15, 2001 (October 15, 2001 Writ of Execution) and, thereafter, a notice of garnishment<sup>[33]</sup> against DBP were issued. Records, however, do not show that the same writ was implemented against FW.

DBP filed a motion for reconsideration<sup>[34]</sup> from the Execution Order, averring that the latter issuance varied the import of the CA's May 27, 1994 Decision in CA-G.R. CV No. 35866 in that it prematurely ordered DBP to pay the assumed obligations to Union Bank before FW's payment. The motion was, however, denied on December 5, 2001.<sup>[35]</sup> Thus, DBP's deposits were eventually garnished.<sup>[36]</sup> Aggrieved, DBP filed a petition for *certiorari*<sup>[37]</sup> before the CA, docketed as CA-G.R. SP No. 68300.

### **The CA Ruling in CA-G.R. SP No. 68300**

In a Decision<sup>[38]</sup> dated July 26, 2002, the CA dismissed DBP's petition, finding that the RTC did not abuse its discretion when it issued the October 15, 2001 Writ of Execution. It upheld the RTC's observation that there was "nothing wrong in the manner how [said writ] was implemented," as well as "in the zealously and promptitude exhibited by Union Bank" in moving for the same. DBP appealed the CA's ruling before the Court, which was docketed as G.R. No. 155838.

## **The Court's Ruling in G.R. No. 155838**

In a Decision<sup>[39]</sup> dated January 13, 2004 (January 13, 2004 Decision), the Court granted DBP's appeal, and thereby reversed and set aside the CA's ruling in CA-G.R. SP No. 68300. It found significant points of variance between the CA's May 27, 1994 Decision in CA-G.R. CV No. 35866, and the RTC's Order of Execution/October 15, 2001 Writ of Execution. It ruled that both the body and the dispositive portion of the same decision acknowledged that DBP's obligation to Union Bank for remittance of the lease payments is contingent on FW's prior payment to DBP, and that any deficiency DBP had to pay by December 29, 1998 as per the Assumption Agreement cannot be determined until after the satisfaction of FW's own rental obligations to DBP. Accordingly, the Court: (a) nullified the October 15, 2001 Writ of Execution and all related issuances thereto; and (b) ordered Union Bank to return to DBP the amounts it received pursuant to the said writ.<sup>[40]</sup>

Dissatisfied, Union Bank moved for reconsideration which was, however, denied by the Court in a Resolution dated March 24, 2004 with finality. Thus, the January 13, 2004 Decision attained finality on April 30, 2004.<sup>[41]</sup> Thereafter, DBP moved for the execution of the said decision before the RTC. After numerous efforts on the part of Union Bank proved futile, the RTC issued a writ of execution (September 6, 2005 Writ of Execution), ordering Union Bank to return to DBP all funds it received pursuant to the October 15, 2001 Writ of Execution.<sup>[42]</sup>

### **Union Bank's Motion to Affirm Legal Compensation**

On September 13, 2005, Union Bank filed a Manifestation and Motion to Affirm Legal Compensation,<sup>[43]</sup> praying that the RTC apply legal compensation between itself and DBP in order to offset the return of the funds it previously received from DBP. Union Bank anchored its motion on two grounds which were allegedly not in existence prior to or during trial, namely: (a) on December 29, 1998, DBP's assumed obligations became due and demandable;<sup>[44]</sup> and (b) considering that FWI became non-operational and non-existent, DBP became primarily liable to the balance of its assumed obligation, which as of Union Bank's computation **after its claimed set-off**, amounted to P1,849,391.87.<sup>[45]</sup>

On November 9, 2005, the RTC issued an Order<sup>[46]</sup> denying the above-mentioned motion for lack of merit, holding that Union Bank's stated grounds were already addressed by the Court in the January 13, 2004 Decision in G.R. No. 155838. With Union Bank's motion for reconsideration therefrom having been denied, it filed a petition for *certiorari*<sup>[47]</sup> with the CA, docketed as CA-G.R. SP No. 93833.

Pending resolution, Union Bank issued Manager's Check<sup>[48]</sup> No. 099-0003192363 dated April 21, 2006 amounting to P52,427,250.00 in favor of DBP, in satisfaction of the Writ of Execution dated September 6, 2005 Writ of Execution. DBP, however, averred that Union Bank still has a balance of P756,372.39 representing a portion of the garnished funds of DBP,<sup>[49]</sup> which means that said obligation had not been completely extinguished.

### **The CA Ruling in CA-G.R. SP No. 93833**