

## EN BANC

[ G.R. No. 126890, March 09, 2010 ]

**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.**

### R E S O L U T I O N

**PERALTA, J.:**

For consideration is the Motion for Reconsideration of petitioner United Planters Sugar Milling Company, Inc. (UPSUMCO) seeking to reverse and set aside the Resolution of the Court dated April 2, 2009 which granted both Second Motions for Reconsideration filed by respondents Privatization and Management Office (PMO), formerly Asset Privatization Trust (APT), and Philippine National Bank (PNB), and reinstated the Decision of the Court of Appeals dated February 29, 1996 which, in turn, reversed and set aside the Decision of the Regional Trial Court, Branch 45, Bais, Negros Oriental. The dispositive portion of the CA Decision reads:

WHEREFORE, the appealed decision is hereby set aside and judgment is herein rendered declaring that the subject Deed of Assignment has not condoned all of UPSUMCO's obligations to APT as assignee of PNB.

To determine how much APT is entitled to recover on its counterclaim, it is required to render an accounting before the Regional Trial Court on the total payments made by UPSUMCO on its obligations including the following amounts:

(1) The sum seized from it by APT whether in cash or in kind (from UPSUMCO's bank deposits as well as sugar and molasses proceeds):

(2) The total obligations covered by the following documents:

(a) Credit agreement dated November 05, 1974 (Exh. "1," Record p. 528); and

(b)

(c) The Restructuring Agreements dated (i) June 24, 1982, (ii) December 10, 1982, and (3) May 9, 1984 and

(3) The P450,000,000.00 proceeds of the foreclosure

Should there be any deficiency due APT after deducting the foregoing amounts from UPSUMCO's total obligation in the amount of (P2,137,076,433.15), the latter is hereby ordered to pay the same.

However, if after such deduction there should be any excess payment, the same should be turned over to UPSUMCO.

The Regional Trial Court is hereby directed to receive APT's accounting and thereafter, to render the proper disposal of this case in accordance with the foregoing findings and disposition.

Costs against appellees.

SO ORDERED.

Petitioner prefaces its arguments that it is the aggrieved party, not the government as represented by respondent APT (now the PMO), as its deposits with respondent PNB were taken without its prior knowledge and that it was reluctant to give assent to the desire of the government to forego redemption of its assets by reason of uncontested foreclosure.

Facts showed that in 1974, petitioner, engaged in the business of milling sugar, obtained **"takeoff loans"** from respondent PNB to finance the construction of a sugar milling plant which were covered by a Credit Agreement dated November 5, 1974. The said loans were thrice restructured through Restructuring Agreements dated June 24, 1982, December 10, 1982, and May 9, 1984. The takeoff loans were secured by a real estate mortgage over two parcels of land where the milling plant stood and chattel mortgages over certain machineries and equipment. Also included in the condition for the takeoff loans, petitioner agreed to "open and/or maintain a deposit account with [respondent PNB] and the bank is authorized at its option to apply to the payment of any unpaid obligations of the client any/all monies, securities which may be in its hands on deposit."

From 1984 to 1987, petitioner contracted another set of loans from respondent PNB, denominated as **"operational loans,"** for the purpose of financing its operations, which also contained setoff clauses relative to the application of payments from petitioner's bank accounts. They were likewise secured by pledge contracts whereby petitioner assigned to respondent PNB all its sugar produce for the latter to sell and apply the proceeds to satisfy the indebtedness arising from the operational loans.

Later, respondent APT and petitioner agreed to an "uncontested" or "friendly foreclosure" of the mortgaged assets, in exchange for petitioner's waiver of its right of redemption. On July 28, 1987, respondent PNB (as mortgagee) and respondent APT (as assignee and transferee of PNB's rights, titles and interests) filed a Petition for Extrajudicial Foreclosure Sale with the Ex-Officio Regional Sheriff of Dumaguete City, seeking to foreclose on the real estate and chattel mortgages which were executed to secure the takeoff loans. The foreclosure sale was conducted on August 27, 1987 whereby respondent APT purchased the auctioned properties for P450,000,000.00.

Seven (7) days after the foreclosure sale, or on September 3, 1987, petitioner executed a Deed of Assignment assigned to respondent APT its right to redeem the foreclosed properties, in exchange for or in consideration of respondent APT "condoning any deficiency amount it may be entitled to recover from the Petitioner 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 the same day, the Board of Directors of petitioner approved the Board Resolution authorizing Joaquin Montenegro, its President, to enter into said Deed of Assignment.

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

The RTC rendered judgment in favor of the petitioner. On appeal, the CA reversed and set aside the RTC Decision and ruled that only the "takeoff" loans and not the operational loans were condoned by the Deed of Assignment. In a Decision dated November 28, 2006 and Resolution dated July 11, 2007, the Court (Third Division) reversed and set aside the CA Decision. The case was thereafter referred to the Court *en banc* which reversed the ruling of the Third Division.

In its Motion for Reconsideration, petitioner raises the following grounds:

1. The order of the Honorable Court *En Banc* reinstating the decision of the Honorable Court of Appeals would be inconsistent with the facts of the case and the findings of this Honorable Court.
2. There is no valid ground to conclude that APT has still the right to the deposit of UPSUMCO after the August 27, 1987 friendly foreclosure, and the withdrawal of P80,200,806.41 as payment could be applied either as repayment on the Take-off Loans or for the Operational Loans.
3. The findings that the condonation took effect only after the execution of the Deed of Assignment hence upholds the validity of APT's taking of the deposit of P80,200,806.41 in UPSUMCO's PNB account as payment of the deficiency is without basis.
4. The admission of the case by Honorable Court *En Banc* after the denial of the Second Division of the Second Motion for Reconsideration and the referral of the case to the Honorable Court *En Banc* appear not to be in accordance with the Rules of Procedure.
5. The basis for admission of the case to the Honorable Court *En Banc* are belated issues which have no other purpose but to give apparent reasons for the elevation of the case.
6. There is no legal basis for the withdrawals of UPSUMCO's deposit on the ground of conventional compensation.

7. Since the amount of P17,773,185.24 could not be the subject of conventional compensation, it should be returned to petitioner immediately by respondents.

After a careful review of the arguments in the petitioner's motion for reconsideration, the Court finds the same to be mere rehash of the main points already set forth in the Court's *En Banc* Resolution of April 2, 2009 and, hence, denies the same for lack of merit. The pertinent portions of the decision read as follows:

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).

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

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This much is clear. The Deed of Assignment condoned only the take-off loans, and not the operational loans. The Deed of Assignment in its operative part provides, thus:

That United Planter[s] Sugar Milling Co., Inc. (the "Corporation") - pursuant to a resolution passed by its board of Directors on September 3, 1987, and confirmed by the Corporation's stockholders in a stockholders' Meeting held on the same (date), for and in consideration of the Asset

Privatization Trust ("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 Agreement[s] dated June 24, and December 10, 1982, and May 9, 1984, respectively, executed between the Corporation and the Philippine National Bank ("PNB"),** which financial claims have been assigned to APT, through the National Government, by PNB, **hereby irrevocably sells, assigns and transfer to APT its right to redeem the foreclosed real properties** covered by Transfer Certificates of Titles Nos. T-16700 and T-16701.

IN WITNESS WHEREOF, the Corporation has caused this instrument to be executed on its behalf by Mr. Joaquin S. Montenegro, thereunto duly authorized, this 3<sup>rd</sup> day of September, 1997.

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This notwithstanding, the RTC Decision was based on the premise that all of UPSUMCO's loans were condoned in the Deed of Assignment. In contrast, the Court of Appeals acknowledged that only the take-off loans were condoned, and thus ruled that APT was entitled to have the funds from UPSUMCOS's accounts transferred to its own account "to the extent of UPSUMCO's remaining obligation, less the amount condoned in the Deed of Assignment and the 450,000,000.00 proceeds of the foreclosure."

**The challenged acts of respondents all occurred on or after 27 August 1987, the day of the execution sale. UPSUMCO argues that after that date, respondents no longer had the right to collect monies from the PNB bank accounts which UPSUMCO had opened and maintained as collateral for its operational take-off loans. UPSUMCO is wrong. After 27 August 1987, there were at least two causes for the application of payments from UPSUMCO's PNB accounts. The first was for the repayment of the operational loans, which were never condoned. The second was for the repayment of the take-off loans which APT could obtain until 3 September 1987, the day the condonation took effect.**

The error of the Court's earlier rulings, particularly the Resolution dated 11 July 2007, was in assuming that the non-condonation of the operational loans was immaterial to the application of payments made in favor of APT from UPSUMCOS's PNB accounts that occurred after 27 August 1987. For as long as there remained outstanding obligations due to APT (as PNB's successor-in-interest), APT would be entitled to apply payments from the bank accounts of PNB. That right had been granted in favor of PNB, whether on account of the take-off loans or the operational loans.

Petitioner filed with the RTC the complaint which alleged that "among the conditions of the 'friendly foreclosure' are: (A) That all the accounts of [United Planters] are condoned, including the JSS notes at the time of the public bidding." It was incumbent on petitioner, not respondents, to