

## THIRD DIVISION

[ G.R. NO. 126890, November 28, 2006 ]

**UNITED PLANTERS SUGAR MILLING COMPANY, 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.**

### DECISION

**CARPIO, J.:**

#### The Case

This is a petition for review<sup>[1]</sup> of the Decision<sup>[2]</sup> dated 29 February 1996 and the Resolution dated 29 October 1996 of the Court of Appeals remanding to the Regional Trial Court of Bais City, Negros Oriental a suit for collection of sum of money and damages for further proceedings.

#### The Facts

Petitioner United Planters Sugar Milling Company, Inc. ("UPSUMCO") is a domestic sugar miller based in Manjuyod, Negros Oriental. To finance the construction of its milling plant, UPSUMCO obtained loans from respondent Philippine National Bank ("PNB"), evidenced by, among others, a Credit Agreement dated 5 November 1974, subsequently restructured on 24 June 1982, 10 December 1982, and 9 May 1984 ("take-off loans"). These loans were secured by a real estate mortgage over two parcels of land<sup>[3]</sup> where UPSUMCO's milling plant stands and by chattel mortgages over machineries and equipment on the parcels of land. The loan agreements also required UPSUMCO to open bank accounts with PNB the funds of which PNB could apply to pay any due obligations of UPSUMCO. As of 1987, UPSUMCO maintained five savings accounts<sup>[4]</sup> and one current account<sup>[5]</sup> with PNB's Dumaguete City Branch ("PNB Dumaguete") and an account<sup>[6]</sup> at PNB's Escolta, Manila Branch ("PNB Escolta"). UPSUMCO also maintained bank accounts with the Bank of the Philippine Islands, Republic Planters Bank, and the Rural Banks of Bais City and Manjuyod, Negros Oriental, the latter two being PNB affiliates at that time.

To monitor UPSUMCO's finances, PNB subsequently assigned a comptroller to UPSUMCO, Dante Santos ("Santos"), who was made signatory to all checks UPSUMCO drew against its current account with PNB Dumaguete. PNB also placed five representatives in UPSUMCO's Board of Directors. Lastly, PNB required UPSUMCO's Directors to bind themselves solidarily liable with UPSUMCO on the loans.

To finance its operations, UPSUMCO also obtained loans from PNB evidenced by, among others, the Deed of Assignment by Way of Payment, notarized on 16

November 1984 and the Credit Agreements dated 19 February 1987 and 29 April 1987 ("operational loans"). The Credit Agreements, which also carried set-off clauses,<sup>[7]</sup> were secured by Pledge contracts dated 19 February 1987 and 30 March 1987. By these contracts, UPSUMCO undertook to assign to PNB all its sugar produce for PNB to sell and apply the proceeds to satisfy UPSUMCO's unpaid obligation under the operational loans. The promissory notes<sup>[8]</sup> for the funds released under the operational loans also carried set-off clauses. In the Deed of Assignment by Way of Payment, UPSUMCO undertook to assign to PNB its milled sugar and molasses beginning the crop year 1984-1985. To keep track of UPSUMCO's sugar assignments and the payments to UPSUMCO's loans, PNB maintained "sugar accounts payable" under UPSUMCO's name.<sup>[9]</sup>

In the early 1980s, UPSUMCO and other sugar millers, hard hit by a slump in the international sugar market, started to default on their loan payments. To bail out these corporations, then President Ferdinand E. Marcos created<sup>[10]</sup> the Philippine Sugar Corporation (PHILSUCOR), which was authorized to issue and sell "sugar bonds" to various commercial banks holding non-performing loans of ailing sugar millers. Accordingly, PHILSUCOR issued and sold to PNB P3 billion worth of "sugar bonds" on 14 February 1984. PNB partly paid the bonds by assigning to PHILSUCOR 30% of its credit with UPSUMCO, computed as of 14 February 1984.<sup>[11]</sup> This made PHILSUCOR UPSUMCO's creditor to that extent. To secure PHILSUCOR's interest in UPSUMCO, PHILSUCOR agreed that PNB will continue to hold UPSUMCO's collateral for the take-off loans, for itself and PHILSUCOR, to the extent of their pro-rata interest in the event of a foreclosure.

On 8 December 1986, then President Corazon C. Aquino issued Proclamation No. 50<sup>[12]</sup> creating respondent Asset Privatization Trust ("APT"),<sup>[13]</sup> to among others, "[circumscribe] the areas of economic activities within which government corporations may operate x x x [by disposing and liquidating the] non-relevant and non-performing assets of retained corporations" like PNB. On 27 February 1987, PNB assigned to the Government its "rights, titles, and interests in" several corporations and entities, including UPSUMCO.<sup>[14]</sup> The Government then transferred these financial assets to APT under a Trust Agreement.

To quickly dispose of UPSUMCO's mortgaged assets, APT negotiated with UPSUMCO for the mortgages' uncontested or "friendly" foreclosure and for UPSUMCO's waiver of its right of redemption. UPSUMCO accommodated APT. Hence, APT and PNB ("respondents"), the latter as PHILSUCOR's representative, scheduled the foreclosure sale on 27 August 1987. In the notices of foreclosure, PNB placed UPSUMCO's total "mortgage indebtedness" at P2,137,076,433.15, as of 30 June 1987. At the foreclosure sale, APT purchased the auctioned properties for P450 million.

On 3 September 1987, UPSUMCO "transferred" to APT its right to redeem the foreclosed properties under a Deed of Assignment<sup>[15]</sup> which reads in full:

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 Title 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, 1987.<sup>[16]</sup>

On 29 September 1987, APT, in a public auction, sold the foreclosed properties to Universal Robina Sugar Milling Corporation ("URSUMCO") for P500 million. APT and URSUMCO signed the Deed of Sale on 29 December 1987.

On 13 March 1989, UPSUMCO sued respondents in the Regional Trial Court of Bais City, Branch 45 ("trial court"), for sum of money and damages. UPSUMCO alleged that respondents illegally appropriated funds belonging to it, namely: (1) funds on deposit in UPSUMCO's bank accounts with PNB, a portion of which APT allegedly used to pay for the salaries of the mill workers; (2) the proceeds of the sale of UPSUMCO sugar PNB sold in September 1987; and (3) a sum of money respondent APT withdrew from UPSUMCO's account in the Rural Bank of Bais City and placed in an escrow account at PNB Dumaguete. UPSUMCO claimed that it is entitled to recover these amounts as APT had condoned its deficiency obligation. UPSUMCO subsequently amended its complaint to pray for the remittance of the proceeds of all UPSUMCO sugar PNB sold after 27 August 1987 and that respondents' liability be made solidary.

Respondents denied UPSUMCO's claims. PNB contended that as foreclosing creditor, it had the prerogative to place UPSUMCO's accounts in PNB Dumaguete in the name of APT. PNB added that this procedure is based on the set-off clauses provided in the "covering instruments" of UPSUMCO's loans. PNB counterclaimed for damages.

For its part, APT contended that UPSUMCO's claims have been "paid, waived, abandoned or otherwise extinguished." As counterclaim, APT sought payment of the deficiency from the foreclosure sale.

Pending trial, the trial court allowed UPSUMCO to examine the records of PNB relating to UPSUMCO's accounts in PNB Dumaguete and PNB Escolta. In the course of such examination, UPSUMCO found out that, as of latest updating, the credit balance in its five savings accounts in PNB Dumaguete was P1,489,656.80.<sup>[17]</sup> For its bank account in PNB Escolta, UPSUMCO learned that as of 26 November 1986, it had a credit balance of P352,869.28 which, however, PNB refused to release. UPSUMCO also discovered the following: (1) on 27 August 1987, PNB transferred to APT's bank account UPSUMCO's deposits from its five savings accounts in PNB Dumaguete amounting to P14,316,593.29; (2) Santos, as APT's comptroller, withdrew the funds in UPSUMCO's bank accounts in the Rural Banks of Bais City and Manjuyod and deposited them to APT's bank account in PNB Dumaguete; (3) from 27 August 1987 to 8 December 1987, PNB credited to APT's bank account, through

credit memoranda, the proceeds from the sale of UPSUMCO's sugar amounting to P74,563,823.80; and (4) on 2 September 1987 and 2 October 1987, PNB paid PHILSUCOR P41,407,444.95. UPSUMCO adopted as part of its evidence the documents showing these transfers and payments.

### **The Ruling of the Trial Court**

In its Decision<sup>[18]</sup> of 27 April 1992, the trial court rendered judgment for UPSUMCO and ordered respondents, singly and solidarily, to pay UPSUMCO, with interest, the following: (1) the credit balance, as of 13 February 1990, in UPSUMCO's five savings accounts in PNB Dumaguete and the deposits from these accounts PNB credited to APT on 27 February 1987; (2) the deposits in UPSUMCO's bank accounts in the Rural Banks of Bais City and Manjuyod Santos transferred to APT; (3) the proceeds of the sale of UPSUMCO sugar PNB transferred to APT from 27 August 1987 to 8 December 1987; (4) the payments PNB made to PHILSUCOR; (5) the credit balance, as of 26 November 1986, in UPSUMCO's bank account in PNB Escolta; (6) the milling plant's maintenance and operating expenses from 3 September 1987 to January 1988 which UPSUMCO paid; and (7) attorney's fees. The trial court also ordered respondents to solidarily pay exemplary damages.<sup>[19]</sup> The trial court held:

Crystal[li]zing in simpler terms the facts, it appears that the [UPSUMCO] was both a debtor and depositor[,], and that defendant PNB was both a creditor and a depository bank. When Proclamation No. 50 was issued by President Aquino on [December 8, 1986] and defendant PNB executed in favor of defendant APT a deed of assignment of its rights and interest on certain corporations, UPSUMCO's debt was included which indebtedness total[le]d as of June 30, 1987 in the amount of P2,137,076,433.15. Defendants PNB and APT jointly executed foreclosure proceedings against the properties of [UPSUMCO] covered by mortgages and pledges. Prior, on and after the foreclosure proceedings, defendant PNB paid Philippine Sugar Corporation out of [UPSUMCO's] funds and deposits. At the foreclosure sale, on August 27, 1987, defendant APT was the winning bid [sic] in the amount of P450,000,000.00. Thus, deducting the amount of the winning bid, there remained a deficiency balance of P1,687,076,433.15. On September 3, 1987, [UPSUMCO] and defendant APT entered into a Deed of Assignment (Exh. "K") and [the] term[s] substantially stated that in consideration of [UPSUMCO's] [sic] waiving its right of redemption, defendant APT condoned any deficiency amount it may be entitled from the [UPSUMCO].

In finest terms, before the assignment by defendant PNB of its rights, interests, [and] collectibles in favor of defendant APT on February 27, 1987 x x x the role of PNB, was both a creditor and a depository bank. [UPSUMCO] was a debtor and a depositor. After the execution of said Deed of Assignment of February 27, 1987, defendant PNB became an assignor and maintained its status as a depository bank. [UPSUMCO] maintained itself as a debtor and a depositor. However, a third party came in, APT, who was subrogated to the rights of defendant PNB as a creditor.

As its legal effect, the obligation of [UPSUMCO] with defendant PNB was novated by the subrogation of creditors, i.e. defendant APT stepping into

the shoes on the creditor's right of defendant PNB. x x x x

[D]efendant PNB's participation in the foreclosure proceedings did not cause retention of the former as a creditor, the same being unnecessary. Legally, as the assignee, and subrogated to the rights of defendant PNB, defendant APT is considered the only foreclosing creditor. Thus, defendant PNB being not a foreclosing creditor, cannot claim to any deficiency claim.

Furthermore, if at all any deficiency claim do exists [sic], regardless as to whether it is in favor of defendant PNB, or defendant APT, the same has been absolutely abandoned or condoned upon the execution of [the] Deed of Assignment between [UPSUMCO] and APT in its initial pleadings may have attempted to beclouded [sic] the existence and validity of said Deed of Assignment, [however] in its Memorandum dated February 18, 1992 (p. 716, Records), [APT] clearly admitted its validity and existence with the qualification that the same should not be given retroactive effects [sic] prior to August 27, 1987. But, even admitting in arguendo that either defendant PNB or defendant APT is entitled to deficiency claim, was the procedure in perfecting [sic] such claim followed[?] As 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 defendant PNB nor defendant APT can[] simply appropriate the things of [UPSUMCO]. (Article 2088, Civil Code of the Philippines). If at all, such deficiency claim did exist and subsist [sic], [the] foreclosing creditor should have initiated proper actions to recover the same, particularly the creditor's interest of [UPSUMCO] in the form of deposits and proceeds of sale with defendant PNB. x x x Defendant PNB did not have any right, as a debtor, to debit the interest of its creditor, [UPSUMCO], by the simple expediency of furnishing [UPSUMCO] of credit memos that the latter's bank deposits have been debited, and credited in favor of defendant APT.<sup>[20]</sup> (Capitalization in the original)

Respondents separately appealed to, but raised similar claims in, the Court of Appeals. Respondents took issue with the trial court's finding that UPSUMCO no longer has any unpaid obligations. Respondents claimed that the Deed of Assignment only covered the loans dated 5 November 1974, 24 June 1982, 10 December 1982, and 9 May 1984. Thus, UPSUMCO remains liable for the other loans not mentioned in the Deed of Assignment.

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

In its Decision of 29 February 1996, the Court of Appeals set aside the trial court's ruling and remanded the case for further proceedings. The Court of Appeals found merit in respondents' claim that the Deed of Assignment condoned only some and not all of UPSUMCO's unpaid obligations. At the same time, the Court of Appeals found that APT failed to show how much UPSUMCO owes it and to account "for all the money which had been transferred to its account," thus the order to remand the case. The Court of Appeals held:

A perusal of the Deed of Assignment plainly shows that what it *expressly condoned* was any deficiency which APT, as assignee of PNB's rights, may