

## **FIRST DIVISION**

**[ G.R. No. 119712, January 29, 1999 ]**

**DEVELOPMENT BANK OF THE PHILIPPINES AND ASSET  
PRIVATIZATION TRUST, PETITIONERS, VS. COURT OF APPEALS  
AND CONTINENTAL CEMENT CORPORATION, RESPONDENTS.**

### **D E C I S I O N**

**AUSTRIA-MARTINEZ, J.:**

This petition for review on certiorari assails the decision<sup>[1]</sup> rendered by the Court of Appeals dated March 28, 1995 in CA-G.R. CV No. 42596 affirming the decision of the Regional Trial Court-Branch 9 of Malolos, Bulacan dated October 9, 1992 and adopting in toto the orders rendered by the same trial court dated August 25 and December 14, 1992.

On November 18, 1985, the Development Bank of the Philippines (DBP), a government owned and controlled corporation, filed with the Office of the Sheriff of Malolos an application for extra-judicial foreclosure of real and personal properties situated at San Jose del Monte and Norzagaray, Bulacan involving several real and/or chattel mortgages executed by Continental Cement Corporation (CCC), a corporation organized and existing under Philippine laws, engaged mainly in the manufacture of cement, in favor of DBP on August 20, 1968; September 4, 1968; May 7, 1969; September 19, 1969; October 24, 1969 and November 13, 1969.

On December 11, 1985, Continental Cement filed a complaint with the Regional Trial Court of Malolos, Bulacan. The suit principally sought to enjoin the then defendants DBP and the Sheriff of Malolos, Bulacan from commencing the foreclosure proceedings on CCC's mortgages which were executed in favor of DBP to secure various loans obtained by CCC. In addition, CCC also prayed that a new term for its loan obligation be established, and that the court declare the interest escalation clause contained in DBP's promissory notes as null and void.

A temporary restraining order (TRO) was issued and subsequently a Writ of Preliminary Injunction was likewise issued on January 17, 1986, despite opposition thereto by DBP.

Sometime in December 1986, Proclamation No. 50<sup>[2]</sup> was promulgated by then President Corazon C. Aquino pursuant to Administrative Order No. 14. The proclamation established the privatization program of the National Government and created the Committee on Privatization and herein petitioner ASSET PRIVATIZATION TRUST (APT) as the privatization arm for the government.

Several non-performing assets of the government financial institutions, including DBP, were transferred to the National Government. The transfer was implemented through a Deed of Transfer executed on February 27, 1987 between DBP and the

National Government, which in turn, designated petitioner APT to act as its trustee over the assets. Among the non-performing assets identified and transferred to the APT was the account of CCC. A Trust Agreement was thereafter executed between the National Government and APT, wherein the latter was to take title to and possession of liabilities and non-performing assets.

On September 18, 1987, DBP filed a motion to dismiss contending (1) that the case has become moot and academic because CCC could no longer secure reliefs from DBP as a result of the transfer of DBP's claim against CCC to APT; and (2) that the court lost jurisdiction over the subject matter considering that Section 31 of Proc. No. 50 prohibits the issuance of any restraining order or injunction against APT in connection with the acquisition, sale, or disposition of assets transferred to it. However, the motion of DBP was denied by the trial court on January 27, 1988, and APT was eventually allowed to join the defendant DBP pursuant to Proclamation No. 50, as amended.

In July 1989, the accounting firm of J. C. Laya<sup>[3]</sup> was designated by the lower court as Commissioner to resolve the main issue in the case, that is, the determination of the actual arrearages of respondent CCC to petitioner APT and DBP arising from loan accommodations obtained by CCC from DBP.

To aid the Commissioner and to expedite his task of determining the actual indebtedness of CCC, both CCC and DBP provided the representatives of the Commissioner with the pertinent data and documents which were within their custody and possession. Among the documents provided was a copy of the Memorandum of Agreement<sup>[4]</sup> executed between CCC and DBP which pegged CCC's total indebtedness to DBP at P133,717,286.95 as of August 31, 1979.

The Commissioner was unable to accomplish his assigned task within the period set by the court. He was initially given an extension of sixty (60) days. This proved to be insufficient thus he was granted another forty-five (45) days from December 18, 1989.

Despite several extensions given to the Commissioner to complete his report, he failed to do so. This prompted the trial court to issue an Order dated April 23, 1990 directing Atty. Jose Leynes<sup>[5]</sup> to explain why he should not be cited for contempt for his unexplained omission to perform and accomplish his duties as the court appointed Commissioner. This was followed by another Order dated July 2, 1990 citing Atty. Leynes in contempt of court and ordered his imprisonment for his non-compliance with the April 23, 1990 order.

To avoid the consequences of the contempt order, Atty. Leynes submitted a draft report on July 11, 1990 entitled "Summary of Initial Findings." The contempt order was subsequently lifted by the trial court on August 20, 1990.

After several months of work had passed, the Commissioner, this time known as "Laya Manabat Salgado & Co.," submitted to the lower court its report entitled "Commissioner's Report on Loan Proceeds and Payments" dated January 11, 1991. The findings of the Commissioner as cited by the Court of Appeals in its decision were as follows:

**"It bears emphasis that the report is confined to a determination of CCC's indebtedness to DBP in relation only to four (4) straight peso loans, namely, a 12% ten-year loan of P3,867,291 signed on August 20, 1968; a 10% ten-year loan of P7,784,000 signed on September 19, 1969; a 10% ten-year loan signed on October 23, 1969; and a P5.5. Million loan not covered by any promissory note but released to the extent of P1.0 Million in March 1972, and two (2) guaranteed foreign exchange loans consisting of US\$2,000,000 contracted on September 4, 1968 by CCC but guaranteed by DBP in favor of Somex Ltd. and DM11,233,115 (German Deutsche Marks) in favor of consortium of West German Manufacturers headed by Klockner-Humboldt-Deutz, A.G. dated May 9, 1969 (Report, p. 3). The Report excludes the implications of, firstly, an industrial fund loan extended by DBP for CCC's acquisition of coal conversion equipment appearing in DBP's books of accounts as US\$ 2,558,347 and, secondly, DBP's advances for insurance, management fees and miscellaneous charges in the total amount of P4,436,807 (Report, pp. 8-9, pars. 4.8, 4.9). x x x"**<sup>[6]</sup>

As a result of the report, the parties filed their respective comments and objections thereto. During the trial, former Central Bank Governor Jaime C. Laya and a representative of the Commissioner were called upon to testify. The parties also had the opportunity to cross-examine the witnesses on matters touched upon in the report as well as those disregarded by the Commissioner in its report.

After having cross-examined the representative of the Commissioner, the parties were then allowed to submit their respective Position Papers. Contained in their respective position papers was their own computation of the outstanding liabilities of CCC. CCC's computation of its exact indebtedness to DBP as of December 1990, covering the straight peso loans and foreign guarantees stood at P43,601,192.73. The Commissioner reported that the indebtedness amounted to P61,698,849.00 while DBP and APT computed CCC's total indebtedness in the sum of P2,656,573,716.11.<sup>[7]</sup>

On July 23, 1992, a hearing was scheduled for the sole purpose of examining three (3) of CCC's witnesses, namely, Gregorio Lim, Urbano Cruz and Jessica Alonzo. The cross-examination was to be conducted by APT as DBP had previously conducted its own cross-examination. The counsel for CCC failed to appear as he was allegedly ill. On that same date, the court issued an order resetting the cross-examination for CCC's witnesses on August 24, 25 and 26, 1992. Again, the counsel for APT was not able to attend due to an alleged serious illness (Dengue Hemorrhagic Fever). Also absent during the hearing was DBP's counsel and DBP/APT's lone witness, Mr. Jaime V. Cruz.

On August 25, 1992, the trial court issued an order which considered the case submitted for decision. The final paragraph of the order reads as follows:

"In the light of the foregoing developments, and conformably with the agreement entered into much earlier by the contending parties to the effect that after the affiants to the position papers shall have been cross-examined, the parties shall dispense with the presentation of further

evidence, the case at bar is considered henceforth submitted for adjudication on the merits.”<sup>[8]</sup>

It is claimed by petitioner APT that when the above-mentioned order was issued, APT did not yet have the opportunity to cross-examine the affiants of respondent CCC; nor did it have the chance to present any of their affiants to support their allegations as contained in their Joint Position Papers.

On September 18, 1992, APT filed a “Motion for Reconsideration.” In an order dated October 13, 1992, the trial court declared that such motion became moot and academic by reason of the decision rendered on October 5, 1992.

On that earlier date, the lower court rendered the assailed decision, the dispositive portion of which is as follows:

“WHEREFORE, premises considered, judgment is hereby rendered:

1. fixing the total indebtedness of plaintiff Continental Cement Corporation in favor of defendant Development Bank of the Philippines on the straight peso loans and foreign guarantees at P61,498,849.00 as of December 31, 1990;
2. fixing the indebtedness of plaintiff Continental Cement Corporation in favor of defendant Development Bank of the Philippines on the coal conversion loan at US\$977,000.00, or P7,347,890.00 which is its equivalent in pesos at the official rate of exchange prevailing in August 1979;
3. ordering the plaintiff to pay unto either of the defendants DBP or APT, within six (6) months from the finality of this judgment, the aforementioned amount of P61,498,849.00 with interest thereon at 10% per annum from January 1, 1991 until the same shall have been fully paid and the aforementioned amount of US\$997,000.00/P7,347,890.00 without interest thereon;
4. declaring premature and without legal basis the application for extrajudicial foreclosure (Annex A of the Complaint) filed on November 18, 1985 by defendant Development Bank of the Philippines with the office of the defendant Sheriff of Malolos, Bulacan;
5. making permanent the writ of preliminary injunction issued by this Court on January 17, 1986 in the case at bar enjoining proceedings on the aforementioned application for extrajudicial foreclosure, without prejudice to such rights (including the institution of eventual foreclosure proceedings) as the defendants may opt to pursue against the plaintiff in the event that the directive specified in the preceding paragraph hereof shall not have been complied with; and
6. dismissing the plaintiff’s claim for unspecified attorney’s fees and expenses of litigation.

No pronouncement as to costs.

SO ORDERED.”<sup>[9]</sup>

After having learned of the decision of the trial court, APT and DBP filed their respective Omnibus Motions. APT, in its Omnibus Motion dated October 27, 1992, prayed for the issuance of the following orders by the trial court:

- 1) vacating and nullifying its Decision dated October 5, 1992;
- 2) granting APT an opportunity to cross-examine plaintiff’s witness;
- 3) allowing DBP and APT to present their witnesses and evidence;
- 4) after trial, requiring the parties to submit their respective Memoranda.<sup>[10]</sup>

The trial court, on December 14, 1992, issued an Order denying the separate Omnibus Motions of APT and DBP. Both APT and DBP appealed the trial court’s decision dated October 5, 1992 and orders dated August 25, 1992 and December 14, 1992.

On June 7, 1993, APT and DBP filed with the Court of Appeals a petition for certiorari and prohibition with prayer for an ex-parte issuance of a restraining order and a writ of preliminary injunction docketed as CA-G.R. SP No. 32853. However, on January 31, 1994, the Court of Appeals dismissed the petition for lack of merit.

Thus, on March 28, 1995, the Court of Appeals, in CA-G.R. CV No. 42596 rendered the assailed decision, the dispositive portion of which reads as follows:

“WHEREFORE, premises considered, judgment is hereby rendered AFFIRMING the Decision dated October 5, 1992 and the orders dated August 25 and December 14, 1992 in toto. The order dated January 22, 1993 is hereby annulled and set aside insofar as it directs the partial release of collaterals by defendants-appellants DBP and APT.”<sup>[11]</sup>

In the instant Petition for Review, APT assigns the following errors committed by the appellate court:

“I

THE COURT OF APPEALS IN AFFIRMING THE LOWER COURT’S DECISION, DISREGARDED THE PRINCIPLES EMBODIED IN THE DUE PROCESS CLAUSE OF THE CONSTITUTION, THUS:

A

THE COURT OF APPEALS ERRED IN FINDING THAT PETITIONER HAS WAIVED ITS RIGHT TO CROSS-EXAMINE RESPONDENT’S WITNESS

II

THE COURT OF APPEALS ERRED WHEN IT AFFIRMED THE