

**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...**

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

Ponente: PERALTA, J.

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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].

x x x x

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[rd] day of September, 1997.

x x x x

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 UPSUMCO'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 UPSUMCO'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 prove that particular allegation in its complaint. Was petitioner able to establish that among the conditions of the "friendly foreclosure" was that "all its accounts are condoned"? It did not, as it is now agreed by all that only the take-off loans were condoned.

This point is material, since the 2007 Resolution negated the findings that only the take-off loans were condoned by faulting respondents for failing to establish that there remained outstanding operational loans on which APT could apply payments from UPSUMCO's bank accounts. By the very language of the Deed of Assignment, it was evident that UPSUMCO's allegation in its complaint that all of its accounts were condoned was not proven. Even if neither PNB nor APT had filed an answer, there would have been no basis in fact for the trial court to conclude that all of UPSUMCO's loans were condoned (as the RTC in this case did), or issue reliefs as if all the loans were condoned (as the 2007 Resolution did).

As noted earlier, APT had the right to apply payments from UPSUMCO's bank accounts, by virtue of the terms of the operational loan agreements. Considering that UPSUMCO was spectacularly unable to repay the take-off loans it had earlier transacted, it simply beggars belief to assume that it had fully paid its operational loans. Moreover, APT had the right to obtain payment of the operational loans by simply applying payments from UPSUMCO's bank accounts, without need of filing an action for collection with the courts. The bank accounts were established precisely to afford PNB (and later APT) extrajudicial and legal means to obtain repayment of UPSUMCO's outstanding loans without hassle.

B.

There is no question that the Deed of Assignment condoned the outstanding take-off loans of UPSUMCO due then to APT. The Deed of Assignment was executed on 3 September 1987 as was the UPSUMCO Board Resolution authorizing its President to sign the Deed of Assignment. However, despite the absence of any terms to that effect in the Deed of Assignment, it is UPSUMCO's position that the condonation actually had retroacted to 27 August 1987. The previous rulings of the Court unfortunately upheld that position.

It is easy to see why UPSUMCO would pose such an argument. It appears that between 27 August 1987 and 3 September 1987, APT applied payments from UPSOMCO's bank accounts in the amount of around 80 Million Pesos. UPSUMCO obviously desires the return of the said amount. But again, under the terms of the loan arguments, APT as successor-in-interest of PNB, had the right to seize any amounts deposited in UPSUMCO'S bank accounts as long as UPSUMCO remained indebted under the loan agreements. Since UPSUMCO was released from its take-off loans only on 3 September 1987, as indicated in the Deed of Assignment, then APT's application of payments is perfectly legal.

The earlier rulings of the Court were predicated on a finding that there was a "friendly foreclosure" agreement between APT and UPSUMCO, whereby APT agreed to condone all of UPSUMCO's outstanding obligations in exchange for UPSUMCO's waiver of its right to redeem the foreclosed property. However, no such agreement to the effect was ever committed to writing or presented in evidence. The written agreement actually set forth was not as contended by UPSUMCO. For one, not all of the outstanding loans were condoned by APT since the take-off loans were left extant. For another, the agreement itself did not indicate any date of effectivity other than the date of the execution of the agreement, namely 3 September 1987.

It is argued that the use of the word "any" in "any deficiency amount" sufficiently establishes the retroactive nature of the condonation. The argument hardly convinces. The phrase "any deficiency amount" could refer not only to the remaining deficiency amount after the 27 August foreclosure sale, but also the remaining deficiency amount as of 3 September 1987, when the Deed of Assignment was executed and after APT had exercised its

right as creditor to apply payments from petitioner's PNB accounts. The Deed of Assignment was not cast in intractably precise terms, and both interpretations can certainly be accommodated.

It is in that context that the question of parol evidence comes into play. The parol evidence rule states that generally, when the terms of an agreement have been reduced into writing, it is considered as containing all the terms agreed upon and there can be no evidence of such terms other than the contents of the written agreement. Assuming that the Deed of Assignment failed to accurately reflect an intent of the parties to retroact the effect of condonation to the date of the foreclosure sale, none of the parties, particularly UPSUMCO, availed of its right to seek the reformation of the instrument to the end that such true intention may be expressed. As there is nothing in the text of Deed of Assignment that clearly gives retroactive effect to the condonation, the parol evidence rule generally bars any other evidence of such terms other than the contents of the written agreement, such as evidence that the said Deed had retroactive effect.

It is argued that under Section 9, Rule 130, a party may present evidence to modify, explain or add to the terms of the written agreement if it is put in issue in the pleading, "[t]he failure of the written agreement to express the true intent and the agreement of the parties thereto."

Petitioner did not exactly state in its Amended Complaint that the condonation effected in the Deed of Assignment had retroacted to the date of the foreclosure sale. What petitioner contented in its amended complaint was that the Deed of Assignment "released and discharged plaintiff from any and all obligations due the defendant PNB and defendant APT," that "after the foreclosure by PNB/APT plaintiff is entitled to all the funds it deposited or being held by PNB in all its branches," and that "among the conditions of the 'friendly foreclosure' are that all the accounts of the plaintiff are condoned." It remains unclear whether petitioner had indeed alleged in its Amended Complaint that the Deed of Assignment executed on 3 September 1987 had retroacted effect as of the foreclosure sale, or on 27 August 1987. If petitioner were truly mindful to invoke the exception to the parol evidence rule and intent on claiming that the condonation had such retroactive effect, it should have employed more precise language to the effect in their original and amended complaints.

x x x x

The right of respondent PNB to set-off payments from UPSUMCO arose from conventional compensation rather than legal compensation, even if all the requisites for legal compensation were present between those two parties. The determinative factor is the mutual agreement between PNB and UPSUMCO to set-off payments. Even without an express agreement stipulating compensation, PNB and UPSUMCO would have been entitled to set-off of payments, as the legal requisites for compensation under Article 1279 were present.

As soon as PNB assigned its credit to APT, the mutual creditor-debtor relation between PNB and UPSUMCO ceased to exist. However, PNB and UPSUMCO had agreed to a conventional compensation, a relationship which does not require the presence of all the requisites under Article 1279. And PNB too had assigned all its rights as creditor to APT, including its rights under conventional compensation. The absence of the mutual creditor-debtor relation between the new creditor APT and UPSUMCO cannot negate the conventional compensation. Accordingly, APT, as the assignee of credit of PNB, had the right to set-off the outstanding obligations of UPSUMCO on the basis of conventional compensation before the condonation took effect on 3 September 1987.

V.

The conclusions are clear. First. Between 27 August to 3 September 1987, APT had the right to apply payments from UPSUMCO's bank accounts maintained with PNB as repayment for the take-off loans and/or the operational loans. Considering that as of 30 June 1987, the total indebtedness of UPSUMCO as to the take-off loans amounted to P2,137,076,433.15, and because the foreclosed properties were sold during the execution sale for only 450 Million Pesos, it is safe to conclude that the total amount of P80,200,806.41 debited from UPSUMCO's bank accounts from 27 August to 3 September 1987 was very well less than the then outstanding indebtedness for the take-off loans. It was only on 3 September 1987 that the take-off loans

were condoned by APT, which lost only on that date too the right to apply payments from UPSUMCO'S bank accounts to pay the take-off loans.

Second. After 3 September 1987, APT retained the right to apply payments from the bank accounts of UPSUMCO with PNB to answer for the outstanding indebtedness under the operational loan agreements. It appears that the amount of P17,773,185.24 was debited from UPSUMCO's bank accounts after 3 September. At the same time, it remains unclear what were the amounts of outstanding indebtedness under the operational loans at the various points after 3 September 1987 when the bank accounts of UPSUMCO were debited.

The Court of Appeals ordered the remand of the case to the trial court, on the premise that it was unclear how much APT was entitled to recover by way of counterclaim. It is clear that the amount claimed by APT by way of counterclaim - over 1.6 Billion Pesos - is over and beyond what it can possibly be entitled to, since it is clear that the take-off loans were actually condoned as of 3 September 1987. At the same time, APT was still entitled to repayment of UPSUMCO's operational loans. It is not clear to what extent, if at all, the amounts debited from UPSUMCO's bank accounts after 3 September 1987 covered UPSUMCO's outstanding indebtedness under the operational loans. Said amounts could be insufficient, just enough, or over and beyond what UPSUMCO actually owed, in which case the petitioner should be entitled to that excess amount debited after 3 September 1987. Because it is not evident from the voluminous records what was the outstanding balance of the operational loans at the various times post-September 3 UPSUMCO's bank accounts were debited, the remand ordered by the Court of Appeal is ultimately the wisest and fairest recourse.[1]

Petitioner insists that the Court should not have taken cognizance of the respondents' second motions for reconsideration with the prayer that the case be referred to the Court en banc as the same appear not to be in accordance with the rules.

Generally, under Section 3 of the Court's Circular No. 2-89, effective March 1, 1989, the referral to the Court en banc of cases assigned to a Division is to be denied on the ground that the Court en banc is not an Appellate Court to which decisions or resolutions of a Division may be appealed. Moreover, a second motion for reconsideration of a judgment or final resolution shall not be entertained for being a prohibited pleading under Section 2, Rule 52, in relation to Section 4, Rule 56 of the Rules of Court, except for extraordinarily persuasive reasons and only after an express leave shall have first been obtained.[2] Accordingly, the Court, in the exercise of its sound discretion, determines the issues which are of transcendental importance, as in the present case, which necessitates it to accept the referral of a Division case before it and the grant of a second motion for reconsideration.

In sum, the Resolution of the Court En Banc reinstating the Decision of the CA categorically ruled that only its takeoff loans, not the operational loans, were condoned by the Deed of Assignment dated September 3, 1987. The Deed of Assignment expressly stipulated the particular loan agreements which were covered therein. As such, respondent APT was entitled to have the funds from petitioner's savings accounts with respondent PNB transferred to its own account, to the extent of petitioner's remaining obligations under the operational loans, less the amount condoned in the Deed of Assignment and the P450,000,000.00 proceeds of the foreclosure. As the En Banc Resolution explained, respondent APT had a right to go after the bank deposits of petitioner, in its capacity as the creditor of the latter. Likewise, respondent PNB had the right to apply the proceeds of the sale of petitioner's sugar and molasses, in satisfaction of petitioner's obligations. Respondent PNB never waived these rights and the same were transferred to respondent APT (now PMO) by virtue of the Deed of Transfer executed between them. Moreover, there was no conventional subrogation since such requires the consent of the original parties and of the third persons and there was no evidence that the consent of petitioner (as debtor) was secured when respondent PNB assigned its rights to respondent APT, and that the assignment by respondent PNB to respondent APT arose by mandate of law and not by the volition of the parties. Accordingly, the remand of the case to the RTC for computation of the parties' remaining outstanding balances was proper.

The doctrine of stare decisis et no quieta movere[3] or principle of adherence to precedents does not apply to the present case so as to bar the Court en banc from taking cognizance over the case which rectified the disposition of the case and reversed and set aside the Decision rendered by a Division thereof.

WHEREFORE, the Motion for Reconsideration filed by petitioner United Planters Sugar Milling Company, Inc. (UPSUMCO) is DENIED WITH FINALITY for lack of merit.

SO ORDERED.

Corona, Velasco, Jr., Leonardo-De Castro, Brion, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, and Mendoza, JJ., concur.

Puno, C.J., join the dissent of J. Carpio.

Carpio, J., see dissenting opinion.

Carpio Morales, J., maintain my vote in the original decision, hence, I vote to grant the present motion.

Nachura, J., no part. signed pleading as Sol Gen.

[1] Rollo, pp. 1272-1273, 1284, 1286-1291, and 1300-1302.

[2] See Ortigas and Company Limited Partnership vs. Velasco , G.R. Nos. 109645 and 112564, March 4, 1996, 254 SCRA 234.

[3] Tala Realty Services Corp. v. Banco Filipino Savings and Mortgage Bank, G.R. No. 132051, June 25, 2001, 359 SCRA 469.

DISSENTING OPINION

CARPIO, J.:

I maintain my dissent that the remand of this case for the accounting of petitioner United Planters Sugar Milling Company, Inc.'s (UPSUMCO) supposed outstanding loans to respondent Asset Privatization Trust (APT)[1] is baseless in fact and in law.

Today's ruling reiterates the conclusions of the Resolution dated 2 April 2009[2] that:

(1) UPSUMCO remains indebted to APT (for an undetermined amount) because APT, as assignee of respondent Philippine National bank (PNB), condoned only some but not all of UPSUMCO's loans, because (a) by its terms, the contract of condonation (Deed of Assignment dated 3 September 1987) mentioned only the "take-off" loans, leaving out the "operating loans"; and (b) the admission of parole evidence modifying the terms of the Deed of Assignment to cover UPSUMCO's "operating loans" owing to APT is improper and, at any rate, UPSUMCO introduced no parole evidence; and

(2) PNB's post-foreclosure diversion of UPSUMCO's bank deposits to APT without UPSUMCO's knowledge or consent was a valid act of "conventional compensation."

Neither the facts of the case nor the law on compensation bears out these conclusions.

First. UPSUMCO's "operating loans" (so-called because the proceeds were used to finance its operations) have nothing to do with this case. This case concerns UPSUMCO's post-foreclosure deficiency obligation to APT and the mortgage over the foreclosed properties secured UPSUMCO's "take-off loans" only (so-called because the proceeds were used to build UPSUMCO's milling plant). As summed up in the Resolution of 11 July 2007:

[P]NB assigned to APT its "take-off loans" to UPSUMCO x x x, including the mortgages on these take-off loans. PNB did not assign to APT any "operating loans" of UPSUMCO. x x x x On 27 August 1987, APT foreclosed the mortgages on the take-off loans. The foreclosure price was P450,000,000, leaving a deficiency of P1,687,076,433. On 3 September 1987, in consideration of UPSUMCO's assignment to APT of UPSUMCO's right to redeem the foreclosed assets, APT condoned "any deficiency amount" of UPSUMCO after the foreclosure.[3] (Emphasis supplied)

Indeed, the "operating loans" remained with PNB and contained their own security mechanisms in the form of pledge agreements obliging UPSUMCO to assign all its produce to PNB which UPSUMCO simultaneously authorized to sell and apply the proceeds to satisfy UPSUMCO's unpaid operating loans.[4] Thus, the issue on UPSUMCO's supposed unpaid "operating loans owing to APT" is not only factually inaccurate but also alien to this litigation on UPSUMCO's post-foreclosure deficiency obligation to APT arising from the "take-off" loans.

The 2 April 2009 Resolution hoists the decision of the Court of Appeals as doctrinal prop for its finding that (1) UPSUMCO owes APT unpaid "operating loans" and (2) this is an issue here. Even a cursory glance at the appealed ruling proves this reliance unfounded. All that the appellate court did to arrive at its ruling (to remand this case for accounting of UPSUMCO's supposed outstanding obligations) was look at the Deed of Assignment, subtract from the mass of UPSUMCO loans the contracts listed in the Deed of Assignment, and hold UPSUMCO liable (for an undetermined amount) for the remaining loans (without specifying whether these were "take-off" or "operating" loans).[5] The maxim *expressio unius est exclusio alterius*, not a considered analysis of which loans were secured by the foreclosed properties, won the day for respondents.

Indeed, the Court of Appeals could not have passed upon respondents' newfangled theory on UPSUMCO's "undetermined liability" for unpaid "operating loans owing to APT," because respondents presented this concoction only with this Court, in their motion for reconsideration of our Decision in 2006 granting UPSUMCO's petition, 18 years after they filed their Answer to UPSUMCO's complaint in the Regional Trial Court of Bais City.[6] This late-game, last ditch contrivance, made part of Philippine jurisprudence courtesy of the 2 April 2009 Resolution, now provides legal cover for PNB's diversion of tens of millions of pesos of UPSUMCO deposits as alleged payments for UPSUMCO's non-existent "operating loans owing to APT." [7]

Second. Both the text and context of the Deed of Assignment compel the conclusion that UPSUMCO, as debtor-mortgagor, and APT, as creditor-mortgagee, in executing the Deed of Assignment, intended to cancel UPSUMCO's post-foreclosure deficiency obligation in exchange for UPSUMCO's waiver of its redemption right, allowing APT to dispose of the foreclosed assets without waiting for the expiry of the one-year redemption period.[8] Indeed, the Deed of Assignment must not be divorced from the negotiated foreclosure which the government pursued following its policy of quickly disposing acquired assets.[9]

The 2 April 2009 Resolution doubts the reality of this negotiated foreclosure (as it should, because the only way to sustain its finding is to treat the Deed of Assignment as an isolated transaction, devoid of contextual meaning). However, the statements in the 2 April 2009 Resolution that -

The earlier rulings of the Court were predicated on a finding that there was a "friendly foreclosure" agreement between APT and UPSUMCO, whereby APT agreed to condone all of UPSUMCO's outstanding obligations in exchange for UPSUMCO's waiver of its right to redeem the foreclosed property. However, no such agreement to that effect was ever committed to writing or presented in evidence. The written agreement actually set forth was not as contended by UPSUMCO.[10] (Emphasis supplied)

would have carried weight if not for the ruling in *United Planters and Sugar Milling Corporation, Inc. v. Philippine Sugar Corporation*[11] that: (1) APT and PNB (representing APT's co-creditor and co-mortgagee PHILSUCOR) conducted a "friendly foreclosure" of UPSUMCO's mortgaged assets; (2) APT condoned

UPSUMCO's entire post-foreclosure deficiency obligation under the Deed of Assignment in exchange for UPSUMCO's relinquishment of its redemption right; and (3) because of this full condonation, UPSUMCO is discharged from all claims of its supposed deficiency obligation, including PHILSUCOR's suit.[12] There's no escaping the import of the following findings (quoted in the Decision of 26 November 2006):

Defendant [PHILSUCOR] ha[d] notice of the friendly foreclosure conducted by APT and PNB. x x x x [UPSUMCO], due to the conduct of the defendant [PHILSUCOR], and the other parties, PNB and APT[,] was made to believe that when it assigned its right of redemption, it was in consideration of the condonation of deficiency claims against it including that which pertains to the defendant [PHILSUCOR].

x x x x

The doctrine of estoppel x x x, precludes [a party] from repudiating an obligation voluntarily assumed after its having accepted benefits therefrom. x x x x

Under the aforesaid principle of estoppel, defendant [PHILSUCOR] in the case at bar, after having made [UPSUMCO] believed [sic] in good faith that the foreclosure proceedings, including[] a part of it, i.e. condonation of deficiency claims against plaintiff, and after having benefited from such conduct, [cannot] undertake an inconsistent claim subsequently and proceed with its concealed intention to collect deficiency claim against [UPSUMCO].

In fact, according to Atty. Buñag, defendant [PHILSUCOR] did not make any reservation to claim for deficiency after having received its share of the auction sale in the amount of P58 million from APT. x x x However, defendant [PHILSUCOR] left the matter of deficiency balance to APT. x x x But, what happened was that APT condoned said deficiency claim against [UPSUMCO]. x x x x

WHEREFORE, premises considered, this Court renders the following judgment:

On Civil Case No. 63-B

1. [UPSUMCO] is hereby ordered released and discharged from any and all claims that the defendant [PHILSUCOR] may have against the former[.] (Emphasis supplied).[13]

The Court of Appeals[14] and this Court[15] affirmed United Planters and Sugar Milling Corporation, Inc. v. Philippine Sugar Corporation on successive appeals.

Third. The only way for PNB to justify its unilateral diversion of huge sums of depositor's money (UPSUMCO) is to claim compensation (otherwise, it would expose itself to, at best, suits to recover the illegally applied funds, as here). Unfortunately for PNB, the law on compensation, as a short-cut to the tedious collection process, is stacked with safety features indispensable to a creditor's exercise of this option. Regardless of the type of compensation exercised (that is, whether legal or conventional), the irreducible minimum requirement is that the parties must be creditor and debtor of each other.[16] Otherwise, the remedy for the creditor to satisfy its credit is to initiate collection proceedings.

The trouble for PNB is that when it diverted UPSUMCO's deposits starting 27 August 1987 as supposed compensation, PNB was no longer a creditor of UPSUMCO's "take-off loans," having assigned its credit under these loans to APT six months earlier on 27 February 1987. Hence, at the time of the supposed application of payments, PNB had already reverted to its default role as UPSUMCO's debtor, in its capacity as holder of UPSUMCO's bank deposits.[17]

Further, PNB did not use UPSUMCO funds to apply payments for itself but for APT. Thus, what controls is not the law on compensation but the rules on payment by third parties.[18] As we noted in the Resolution of 11 July 2007:

[PNB, in setting-off, acted as a third person using its own funds to pay the debt of UPSUMCO to its creditor APT. PNB can recover from UPSUMCO to the extent that the payment benefited UPSUMCO.[19] (Emphasis supplied)

However, PNB is precluded from invoking this rule because by the time it made the alleged payments to APT (starting 27 August 1987), APT had agreed (in the Deed of Assignment) to wipe-out UPSUMCO's post-foreclosure deficiency obligation (in exchange for UPSUMCO's waiver of its redemption right, allowing APT to immediately sell the foreclosed assets to Universal Robina Sugar Milling Corporation even during the one-year redemption period which UPSUMCO agreed to waive).[20] As there were no more debts to pay, none of the alleged payments PNB made to APT benefited UPSUMCO. Thus, UPSUMCO has every right to recover its wrongfully diverted funds.

Lastly, PNB's doom is sealed by its retention of UPSUMCO's operating loans, the final factual tug which pulls PNB's theoretical rug from under its feet. Not having assigned these loans to APT (and were thus excluded from the foreclosure proceedings), PNB's belated submission of applying UPSUMCO deposits as payments for UPSUMCO's "operating loans owing to APT" crumbles under the weight of its own inconsistency. The 2 April 2009 Resolution's grounding of "conventional compensation" would have been plausible if PNB had claimed to have applied payments under the "operating loans" for itself. Of course, this argumentative avenue is closed to PNB because every cent of UPSUMCO money that PNB held PNB transferred to APT.

Fourth. The 2 April 2009 Resolution spun a tale of a helpless creditor government victimized by a cunning, bullying debtor sugar miller, exacting terms of foreclosure settlement "friendly" to no one but itself, thus justifying the Court's timely succor. This script would have been perfect if it did not mock common sense (government is never bullied), ignore business practice (the creditor always dictates terms of settlement) and discard a fact (UPSUMCO was bankrupt). In truth, APT insisted on the deal with UPSUMCO and achieved its goal of immediately selling the foreclosed property.[21] APT was satisfied with what it got and treated the matter closed until it was made to answer UPSUMCO's suit which, in the first place, UPSUMCO's former owners would not have filed had they not discovered UPSUMCO's nearly depleted bank deposits with PNB.

By subscribing to PNB and APT's hastily crafted, incoherent theory of "conventional compensation without mutuality of credits" of undetermined "operating loans owing to APT," the 2 April 2009 Resolution sets a dangerous precedent of babying government (and incidentally its assignor bank), achieved through convoluted analysis of facts and untenable application of the law at the expense of a duly substantiated suit, filed decades ago, to recover wrongfully diverted property. That the 2 April 2009 Resolution did so after the Court had rendered judgment for UPSUMCO and denied APT and PNB's plea for reconsideration makes its disposition all the more unprecedented.

Accordingly, I vote to GRANT the motion for reconsideration of petitioner United Planters Sugar Milling Company, Inc., SET ASIDE the Resolution dated 2 April 2009, and REINSTATE the Decision dated 28 November 2006 as modified by the Resolution dated 11 July 2007.

[1] Per Resolution dated 2 April 2009.

[2] Granting respondent APT and Philippine National Bank's second motion for reconsideration of the Decision dated 28 November 2006 and Resolution dated 11 July 2007.

[3] United Planters Sugar Milling Co., Inc.(UPSUMCO) v. Court of Appeals (Resolution), G.R. No. 126890, 11 July 2007, 527 SCRA 336, 341 [2007]).

[4] We held in the Decision of 28 November 2006:

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 ("operating loans"). The Credit Agreements, which also carried set-off clauses, 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 operating loans. The promissory notes for the funds released under the operating 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. (*United Planters Sugar Milling Co., Inc. (UPSUMCO) v. Court of Appeals (Decision)*, G.R. No. 126890, 28 November 2006, 508 SCRA 310, 314-315; emphasis supplied, internal citations omitted).

[5] As held in the Resolution of 11 July 2007:

[T]he Court of Appeals never distinguished UPSUMCO's obligation to APT or PNB in terms of UPSUMCO's operating or take-off loans. Instead, the Court of Appeals relied on a rule of statutory construction [of *expressio unius est exclusio alterius*] in examining the Deed of Assignment. Thus, the appellate court held that since that document only mentioned the Credit Agreement dated 5 November 1974 and the Restructuring Agreements dated 24 June 1982, 10 December 1982, and 9 May 1984, it could not have covered the loans and other security instruments not mentioned in the contract. Accordingly, the Court of Appeals did not determine what loans PNB assigned to APT on 27 February 1987 which is determinative of the extent of APT's interest in the foreclosure proceedings of UPSUMCO's assets and consequently of what APT condoned under the Deed of Assignment of 3 September 1987. (*United Planters Sugar Milling Co., Inc. (UPSUMCO) v. Court of Appeals (Resolution)*, G.R. No. 126890, 11 July 2007, 527 SCRA 336, 346 [2007]; emphasis supplied, internal citations omitted).

This hypertextual interpretation of the Deed of Assignment, divorcing it from the foreclosure proceedings and the government's policy of expediting asset disposition does violence to the intent of the parties.

[6] We observed in the Resolution of 11 July 2007:

Until it filed its motion for reconsideration, PNB made no mention of any outstanding obligation of UPSUMCO under the operational loans. In the Answer it filed with the trial court, PNB counterclaimed not for UPSUMCO's alleged unpaid obligation under the operational loans but for moral damages and attorney's fees. Indeed, at no time during the pendency of this case in the trial court, the Court of Appeals, or this Court did PNB hint of any proof of such alleged debt. (*United Planters Sugar Milling Co., Inc. (UPSUMCO) v. Court of Appeals (Resolution)*, G.R. No. 126890, 11 July 2007, 527 SCRA 336, 348 [2007]; internal citations omitted).

The 2 April 2009 Resolution finesses away the devastating implication of respondents' failure to immediately raise the defense of compensation for outstanding operating loans thus:

[I]t was evident UPSUMCO's allegation in its complaint that all of its account were condoned was not proven. Even if neither PNB nor APT had filed an answer, there would have been no basis in fact for the trial court to conclude that all of UPSUMCO's loans were condoned x x x. (*United Planters Sugar Milling Co., Inc. (UPSUMCO) v. Court of Appeals (Resolution)*, G.R. No. 126890, 2 April 2009, p. 19; emphasis supplied).

Evidently, the 2 April 2009 Resolution confused proof of condonation with proof of payment because as found by the trial court and the Decision of 28 November 2006, UPSUMCO's evidence sufficed to prove the cancellation of its deficiency obligation. Tellingly, the 2 April 2009 Resolution kept clear of the import of APT's inaction to collect on UPSUMCO's supposed unpaid operating loans for more than 20 years.

[7] Within a span of seven days from foreclosure (covering the period 27 August 1987 to 3 September 1987), PNB adjusted its books to transfer P80,200,806.41 to APT without UPSUMCO's knowledge much less consent. After 3 September 1987, PNB continued to funnel UPSUMCO's deposits to APT totaling P17,773,185.24.

[8] For the textual basis, we observed in the Resolution of 11 July 2007:

[T]he Deed of Assignment itself speaks of condonation of "any deficiency amount," an amount that is determined right after the foreclosure. None of the respondents have presented good cause to undermine the reasons for our ruling, namely: (1) the condonation of UPSUMCO's deficiency obligation was, as found by the trial court in the PHILSUCOR case, part of the bundle of incentives APT offered UPSUMCO for the latter to agree to the "friendly foreclosure" of its mortgaged assets and (2) the Deed of Assignment itself stated that APT condoned "any deficiency amount" of UPSUMCO from the take-off loans after the foreclosure on 27 August 1987. (United Planters Sugar Milling Co., Inc. (UPSUMCO) v. Court of Appeals (Resolution), G.R. No. 126890, 11 July 2007, 527 SCRA 336, 352 [2007]; emphasis supplied, internal citations omitted).

For the contextual grounding, UPSUMCO presented in evidence two Board Resolutions (authorizing its President to sign the Deed of Assignment and seeking APT's assistance to resist a collection case filed by a co-creditor post-foreclosure) uniformly stating its understanding that the Deed of Assignment condoned its post-foreclosure deficiency obligation (see United Planters Sugar Milling Co., Inc. (UPSUMCO) v. Court of Appeals (Decision), G.R. No. 126890, 28 November 2006, 508 SCRA 310, 334-339). These pieces of evidence were properly introduced as an exception to the Parole Evidence Rule (under Rule 130, Section 9, par. [b]) after UPSUMCO raised as an issue the failure of the Deed of Assignment to express the true intent of the parties in so far as it gives the impression that its scope is limited to the loan agreements mentioned in the contract. The Resolution of 2 April 2009 finds that these pieces of evidence should be excluded because UPSUMCO's statement in its amended complaint before the trial court that "the Deed of Assignment x x x released and discharged [UPSUMCO] from any and all obligations due to the defendant PNB and defendant APT" does not suffice to raise as an issue the scope of the Deed of Assignment, adding that UPSUMCO "should have employed more precise language to that effect" (United Planters Sugar Milling Co., Inc. (UPSUMCO) v. Court of Appeals (Resolution), G.R. No. 126890, 2 April 2009, p. 23-24). This conclusion finds no basis in Rule 130, Section 9 which requires only that a party "puts in issue in his pleading x x x the failure of the written agreement to express the true intent and agreement of the parties thereto." That the counsel for UPSUMCO is less of a craftsman than what the 2 April 2009 Resolution expects is no reason to deny his client the benefit of the exception to the Parole Evidence Rule.

[9] Indeed, within two months from foreclosure, APT sold the UPSUMCO foreclosed assets to a third party (Universal Robina Sugar Milling Corporation) for P500M.

[10] United Planters Sugar Milling Co., Inc. (UPSUMCO) v. Court of Appeals (Resolution), G.R. No. 126890, 2 April 2009, pp. 20-21.

[11] The Decision of 28 November 2006 described PHILSUCOR's participation in UPSUMCO's mortgaged assets:

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 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. 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.

x x x x

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. (United Planters Sugar Milling Co., Inc. (UPSUMCO) v. Court of Appeals (Decision), G.R. No. 126890, 28 November 2006, 508 SCRA 310, 315-317; emphasis supplied, internal citations omitted)

[12] In Civil Case No. 63-B, rendered by the Regional Trial Court of Bais City, Branch 45, the same court which rendered the ruling in this case.

[13] United Planters Sugar Milling Co., Inc. (UPSUMCO) v. Court of Appeals (Decision), G.R. No. 126890, 28 November 2006, 508 SCRA 310, 338-339.

[14] In the Decision dated 15 October 1997 in CA-G.R. CV No. 46957.

[15] In the Resolution dated 30 March 1993 in G.R. No. 132731 (dismissing outright PHILSUCOR's petition).

[16] Article 1278 of the Civil Code provides: "Compensation shall take place when two persons, in their own right, are creditors and debtors of each other." (Emphasis supplied)

[17] Following the characterization of the relations between depositor and bank as that of creditor and debtor (Moran v. Court of Appeals, G.R. No. 105836, 7 March 1994, 230 SCRA 799).

The 2 April 2009 Resolution strained to fit within the "conventional compensation" model PNB's diversion of UPSUMCO funds to APT. The implausibility of this occurrence given the absence of mutuality of credits between PNB and APT, on the one hand, and UPSUMCO, on the other, is evident from the 2 April 2009 Resolution's convoluted and contradictory reasoning:

[W]e recognize the concept of conventional compensation, defined as occurring "when the parties agree to compensate their mutual obligations["] x x x [T]he only requisites of conventional compensation are (1) that each of the parties can dispose of the credit he seeks to compensate, and (2) that they agree to the mutual extinguishment of their credits. x x x x

[T]he absence of the mutual creditor-debtor relation between the new creditor APT and UPSUMCO cannot negate the conventional compensation. Accordingly, APT, as the assignee of credit of PNB, had the right to set-off the outstanding obligations of UPSUMCO on the basis of conventional compensation before the condonation took effect on 3 September 1987. (United Planters Sugar Milling Co., Inc. (UPSUMCO) v. Court of Appeals (Resolution), G.R. No. 126890, 2 April 2009, pp. 30-31; emphasis supplied)

[18] Article 1236 of the Civil Code provides: "The creditor is not bound to accept payment or performance by a third person who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary.

Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor." (Emphasis supplied)

[19] United Planters Sugar Milling Co., Inc. (UPSUMCO) v. Court of Appeals (Resolution), G.R. No. 126890, 11 July 2007, 527 SCRA 336, 341 (2007).

[20] See note 9.

[21] Id.

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