

**VICTORIA YAU CHU, ASSISTED BY HER HUSBAND MICHAEL CHU,
PETITIONERS, VS. HON. COURT OF APPEALS, FAMILY SAVINGS BANK
AND/OR CAMS TRADING ENTERPRISES, INC., RESPONDENTS.**

G.R. No. 78519. September 26, 1989

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

This is a petition for review on certiorari to annul and set aside the Court of Appeals' decision dated October 28, 1986 in CA-G.R. CV No. 03269 which affirmed the decision of the trial court in favor of the private respondents in an action to recover the petitioners' time deposits in the respondent Family Savings Bank.

Since 1980, the petitioner, Victoria Yau Chu, had been purchasing cement on credit from CAMS Trading Enterprises, Inc. (hereafter "Cams Trading" for brevity). To guaranty payment for her cement withdrawals, she executed in favor of Cams Trading deeds of assignment of her time deposits in the total sum of P320,000 in the Family Savings Bank (hereafter the Bank). Except for the serial numbers and the dates of the time deposit certificates, the deeds of assignment, which were prepared by her own lawyer, uniformly provided -

“x x x. That this assignment serves as a collateral or guarantee for the payment of my obligation with the said CAMS TRADING ENTERPRISES, INC. on account of my cement withdrawal from said company, per separate contract executed between us.”

On July 24, 1980, Cams Trading notified the Bank that Mrs. Chu had an unpaid account with it in the sum of P314,639.75. It asked that it be allowed to encash the time deposit certificates which had been assigned to it by Mrs. Chu. It submitted to the Bank a letter dated July 18, 1980 of Mrs. Chu admitting that her outstanding account with Cams Trading was P404,500. After verbally advising Mrs. Chu of the assignee's request to encash her time deposit certificates and obtaining her verbal conformity thereto, the Bank agreed to encash the certificates. It delivered to Cams Trading the sum of P283,737.75 only, as one time deposit certificate (No. 0048120954) lacked the proper signatures. Upon being informed of the encashment, Mrs. Chu demanded from the Bank and Cams Trading that her time deposit be restored. When neither complied, she filed a complaint to recover the sum of P283,737.75 from them. The case was docketed in the Regional Trial Court of Makati, Metro Manila (then CFI of Rizal, Pasig Branch XIX), as Civil Case No. 38861.

In a decision dated December 12, 1983, the trial court dismissed the complaint for lack of merit.

Chu appealed to the Court of Appeals (CA-G.R. CV No. 03269) which affirmed the dismissal of her complaint.

In this petition for review, she alleges that the Court of Appeals erred:

1. In not annulling the encashment of her time deposit certificates as a pactum commissorium; and
2. In not finding that the obligations secured by her time deposits had already been paid.

We find no merit in the petition for review.

The Court of Appeals found that the deeds of assignment were contracts of pledge, but, as the collateral was also money or an exchange of "peso for peso," the provision in Article 2112 of the Civil Code for the sale of the thing pledged at public auction to convert it into money to satisfy the pledgor's obligation, did not have to be followed. All that had to be done to convert the pledgor's time deposit certificates into cash was to present them to the bank for encashment after due notice to the debtor.

The encashment of the deposit certificates was not a pacto commissorio which is prohibited under Art. 2088 of the Civil Code. A pacto commissorio is a provision for the automatic appropriation of the pledged or mortgaged property by the creditor in payment of the loan upon its maturity. The prohibition against pacto commissorio is intended to protect the obligor, pledgor, or mortgagor against being overreached by his creditor who holds a pledge or mortgage over property whose value is much more than the debt. Where, as in this case, the security for the debt is also money deposited in a bank, the amount of which is even less than the debt, it was not illegal for the creditor to encash the time deposit certificates to pay the debtors' overdue obligation, with the latter's consent.

Whether the debt had already been paid as now alleged by the debtor, is a factual question which the Court of Appeals found not to have been proven for the evidence which the debtor sought to present on appeal, were receipts for payments made prior to July 18, 1980. Since the petitioner signed on July 18, 1980 a letter admitting her indebtedness to be in the sum of P404,500, and there is no proof of payment made by her thereafter to reduce or extinguish her debt, the application of her time deposits, which she had assigned to the creditor to secure the payment of her debt, was proper. The Court of Appeals did not commit a reversible error in holding that it was so.

WHEREFORE, the petition for review is denied. Costs against the appellant.

SO ORDERED.

Narvasa, (Chairman), Cruz, and Medialdea, JJ., concur.

Gancayco, J., I inhibit.

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