



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated 16 March 2022 which reads as follows:

“G.R. No. 247888 (Philippine Veterans Bank, Petitioner, v. Keppel Monte Bank now BDO UNIBANK, INC., Respondent). – This Petition¹ under Rule 45 seeks to reverse and set aside the Decision² dated 11 December 2018 and Resolution³ dated 13 June 2019 of the Court of Appeals (CA) in CA-G.R. CV No. 107723 that affirmed the Decision⁴ dated 28 November 2012 of Branch 56, Regional Trial Court, Makati (RTC) dismissing petitioner Philippine Veterans Bank’s (PVB’s) complaint for rescission with damages against respondent Keppel Monte Bank (Keppel).

Antecedents

This case stems from a complaint for rescission with damages filed by PVB against Keppel (Complaint) before the RTC. PVB prayed for the rescission of the Letter Agreement dated 14 January 1997 (Letter Agreement) and demanded the return of Php75,000,000.00 from Keppel.⁵

Manuel A. Cantos Development Corporation (MACDC) borrowed money from Keppel (formerly Monte De Piedad and Savings Bank), pursuant to the Deed of Assignment dated 28 March 1996.⁶ Keppel and MACDC, which previously entered into a Joint Venture Agreement with two (2) other entities, agreed to a partial take-out of MACDC’s loan to Keppel, to be undertaken by PVB based on the Letter Agreement.⁷

¹ *Rollo*, pp. 10–83.

² *Id.* at 40–50. Penned by Associate Justice Marie Christine Azcarraga-Jacob and concurred in by Associate Justices Remedios A. Salazar-Fernando and Amy C. Lazaro-Javier (now a Member of this Court) of the Second Division, Court of Appeals, Manila.

³ *Id.* at 51–52. Penned by Associate Justice Marie Christine Azcarraga-Jacob and concurred in by Associate Justices Remedios A. Salazar-Fernando and Ramon A. Cruz of the Special Second Division, Court of Appeals, Manila.

⁴ *Id.* at 74–80. Penned by Judge Bonifacio S. Pascua.

⁵ *Id.* at 42–43.

⁶ *Id.* at 41.

⁷ *Id.*

Thus, pursuant to the Letter Agreement, PVB released Php75,000,000.00 to Keppel subject to Keppel's delivery to PVB of: (1) promissory notes evidencing MACDC's loan to Keppel; (2) Deeds of Assignment on the Keppel Center and Kang-Irag projects; and (3) Deed of Release cancelling and annulling the assignment executed by MACDC in favor of Keppel concerning MACDC's interest, rights, and participation in the proceeds of the sale of the Keppel Center and Kang-Irag projects. The Letter Agreement was signed by Sunday Lavin, PVB's President, and conformed to by Manuel A. Cantos (Manuel) for MACDC and Teresa Lim, President of Keppel.⁸

The parties entered into subsequent agreements including the deed of Assignment dated 06 February 1997 and two (2) Deeds of Assignment both dated 12 February 1997 (collectively, Deeds of Assignment). In the deed of assignment dated 06 February 1997, MACDC assigned to Keppel its rights, title, and interest in the Keppel Center as security for its loan, which amounted to Php35,000,000.00, including but not limited to interest, penalties, and other charges that may accrue.⁹

In the first deed of assignment dated 12 February 1997, MACDC assigned to PVB all its rights, title, and interests in the proceeds arising from the sale of condominium units in the Keppel Center. Pursuant to said deed, Keppel was obligated to remit to PVB MACDC's share after the Php35,000,000.00 owed by MACDC to Keppel was paid and only after revenues are generated and collected from the sale of the Keppel Center condominium units.¹⁰

In the second deed of assignment dated 12 February 1997, Manuel A. Cantos assigned to PVB his rights, title, and interests in the share due him from the proceeds of the sale of residential lots and/or shares in the residential and golf course development in the Kang-Irag project to ensure payment of his obligations under PVB's credit facilities. The two (2) deeds of assignment both dated 12 February 1997 were entered into by PVB and MACDC, with Keppel's conformity.¹¹

PVB thrice demanded from Keppel the release of the proceeds of the sale of the Keppel Center and Kang-Irag projects. On 29 August 2001, Keppel delivered two (2) condominium units in Keppel Center to PVB pursuant to the first deed of assignment dated 12 February 1997. The Kang-Irag project did not push through because of opposition from the

⁸ *Id.*

⁹ *Id.* at 41, 82.

¹⁰ *Id.*

¹¹ *Id.* at 41-42.

government.¹²

In its Complaint, PVB claimed that despite the release of Php75,000,000.00, Keppel, even after repeated demands, refused to deliver and turn over the original copies of the promissory notes and deeds of assignment on the Keppel Center and Kang-Irag projects, as well as to execute the Deed of Release pursuant to the Letter Agreement dated 14 January 1997.¹³

On the other hand, Keppel argued that on 12 February 1997, it signified its conformity to two (2) deeds of assignment. In relation to the first Deed of Assignment, Keppel already delivered to PVB two (2) condominium units in Keppel Center to PVB representing MACDC's net interest in the development of the Keppel Center after deducting the latter's Php35,000,000.00 outstanding loan with Keppel. As regards the second Deed of Assignment, there were no proceeds for Keppel to deliver to PVB because no sale of lots and/or shares in the Kang-Irag residential and golf course development was had to date.¹⁴

Ruling of the RTC

The RTC, in its Decision dated 28 November 2012, dismissed the complaint. It held that the two (2) deeds of assignment dated 12 February 1997 effectively novated Keppel's original obligation under the Letter Agreement dated 14 January 1997.¹⁵

It also held that Keppel complied with its new obligation by delivering the two (2) condominium units which constitute MACDC's share in the Keppel Center. With regard to the Kang-Irag project, the RTC noted that the Keppel was not able to deliver the proceeds on this project because of the opposition from the government. Because the sale of the Kang-Irag property was a suspensive condition which was not fulfilled, Keppel's obligation to turn over the proceeds of its sale to PVB did not arise.¹⁶

PVB filed a motion for reconsideration but this was denied by the RTC in its Order dated 20 May 2013.¹⁷ Aggrieved, PVB filed an appeal before the CA.

¹² *Id.* at 42.

¹³ *Id.* at 42-43.

¹⁴ *Id.* at 44.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 81.

Ruling of the CA

The CA, in its Decision dated 11 December 2018, denied PVB's appeal for lack of merit. According to the CA, the RTC correctly found that there was incompatibility between the two (2) sets of obligations provided in the Deeds of Assignment both dated 12 February 1997 and the Letter Agreement dated 14 January 1997. Thus, there is novation, specifically a relative extinguishment, wherein a new obligation is created in lieu of the old obligation. For insufficiency of PVB's evidence to establish its claimed cause of action, the CA pronounced that PVB's Complaint should be dismissed.¹⁸

PVB filed a motion for reconsideration but this was denied by the CA in its Resolution¹⁹ dated 13 June 2019 for lack of merit. Thus, PVB filed the present Petition.

Issue

The only issue here for the resolution of this Court is whether or not the CA correctly affirmed the RTC's ruling that the Letter Agreement dated 14 January 1997 was novated by the deed of assignment dated 06 February 1997, and the two (2) deeds of assignment both dated 12 February 1997.

Ruling of the Court

The Petition is partly granted.

At the outset, the Petition raises a question of fact which is beyond the coverage of a petition for review on certiorari. We emphasize that "[o]nly questions of law may be raised in a petition for review on certiorari. [...]."²⁰ Section 1, Rule 45 categorically states that a petition for review on certiorari shall raise only questions of law, which must be distinctly set forth. A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the

¹⁸ *Id.* at 47-48.

¹⁹ *Id.* at 51-52

²⁰ Rules of Court, Rule 45, Section 6; *Pascual v. Burgos*, 776 Phil. 167 (2016).

question posed is one of fact.”²¹

Although jurisprudence has provided several exceptions to this rule, exceptions must be alleged, substantiated, and proved by the parties so this Court may evaluate and review the facts of the case. In any event, even in such cases, this Court retains full discretion on whether to review the factual findings of the CA.²²

Here, the issue of whether or not there is novation involves a question of fact, as it necessarily requires a factual determination on the existence of the following requisites of novation: (1) there must be a previous valid obligation; (2) the parties concerned must agree to a new contract; (3) the old contract must be extinguished; and (4) there must be a valid new contract.²³ However, in this case, We find that the RTC and CA erred in appreciating the facts in determining whether or not there is extinctive novation that requires this Court to revisit its findings.²⁴

Novation is defined “[a]s the extinguishment of an obligation by the substitution or change of the obligation by a subsequent one which terminates the first, either by changing the object or principal conditions, or by substituting the person of the debtor, or subrogating a third person in the rights of the creditor.”²⁵ In this regard, Article 1292 of the Civil Code provides:

Article 1292. In order that an obligation may be extinguished by another which substitute the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other.

It is well settled that “[t]he cancellation of the old obligation by the new one is a necessary element of novation which may be effected either expressly or impliedly. While there is really no hard and fast rule to determine what might constitute sufficient change resulting in novation, the touchstone, however, is irreconcilable incompatibility between the old and the new obligations.”²⁶ Notably, “[i]n the absence of an express provision to this effect, a contract may still be considered as novated if it passes the test of incompatibility, that is, whether the contracts can stand together, each one

²¹ *Magdiwang Realty Corp. v. Manila Banking Corp.*, 694 Phil. 392 (2012).

²² *Pascual v. Burgos*, *supra* note 20.

²³ *Magdiwang Realty Corp. v. Manila Banking Corp.*, *supra* note 21.

²⁴ *See Sacay v. Sandiganbayan*, 226 Phil. 496 (1986).

²⁵ *Valdes v. La Colina Development Corp.*, G.R. No. 208140, 12 July 2021 [Per J. Hernando], citing *CCC Insurance Corp. v. Kawasaki Steel Corp.*, 761 Phil. 1 (2015).

²⁶ *Id.*

having an independent existence.”²⁷ Further, novation, in its broad concept, may either be extinctive or modificatory. It is extinctive when an old obligation is terminated by the creation of a new obligation that takes the place of the former; it is merely modificatory when the old obligation subsists to the extent it remains compatible with the amendatory agreement. In either case, however, novation is never presumed, and the *animus novandi*, whether totally or partially, must appear by express agreement of the parties, or by their acts that are too clear and unequivocal to be mistaken.²⁸

As aptly pointed out by Senior Associate Justice Estela M. Perlas-Bernabe during the deliberations,²⁹ there was no substitution or change of the obligation by a subsequent one which terminates the first by changing the principal conditions. Based on the Letter Agreement, PVB will release Php75,000,000.00 to Keppel for the partial take-out if MACDC’s obligation to the latter, and Keppel’s obligation is to: (1) give its written conformity to the Deeds of Assignment executed by Manuel and MACDC in PVB’s favor; (2) deliver to PVB the the promissory notes evidencing MACDC’s loan to Keppel; (3) deliver to PVB the Deeds of Assignment on the Keppel Center and Kang-Irag projects; and (4) deliver to PVB the Deed of Release cancelling and annulling the assignment executed by MACDC in favor of Keppel concerning MACDC’s interest, rights, and participation in the proceeds of the sale of the Keppel Center and Kang-Irag projects.³⁰

According to the RTC and CA, if Keppel delivers the evidence of loan, it voluntarily renounces the loan of MACDC. If there is no loan, then Keppel loses the security which is MACDC’s share in the Keppel Center and Kang-Irag projects. Without the security, the lower courts said that Keppel is released from the obligation to remit to PVB MACDC’s share in the projects, which is the new obligation covered by the subsequent contracts. Thus, the provisions of the Deeds of Assignment are incompatible with the letter-agreement, thus extinguishing the latter.³¹

However, contrary to the RTC and CA’s findings, there was no incompatibility between the Letter Agreement and the subsequent Deeds of Assignment that will result to extinctive novation. On the contrary, a close reading of the contracts will show that the Deeds of Assignment were entered into to further implement the letter-agreement.

²⁷ *Id.*

²⁸ *See Ace Foods, Inc. v. Micro Pacific Technologies Co., Ltd.*, 723 Phil. 742 (2013).

²⁹ *See* Senior Associate Justice Estela M. Perlas-Bernabe’s Letter dated 12 March 2022.

³⁰ *Rollo*, p. 41.

³¹ *Id.* at 47-48.

First, the Deed of Assignment dated 06 February 1997 between Keppel and MACDC explicitly referred to the Letter Agreement and made an integral part thereof, recognizing that PVB would partially payout MACDC's loan to Keppel. It also recognized that MACDC has executed a promissory note to Keppel for the remaining balance of Php35,000,000.00 in favor of the latter and a deed of assignment partially conveying its interest, rights, and participation in Keppel Center as security for said amount.³² Thus, it acknowledges that MACDC still has an obligation to Keppel.

Second, the Letter Agreement also provided that PVB will only release the Php75,000,000.00 to Keppel, provided that the written conformity to the deeds of assignment by Manuel and MACDC have been obtained. Consequently, the two (2) Deeds of Assignment dated 12 February 1997 are exactly the deeds of assignment executed pursuant to the terms of the Letter Agreement. Notably, these deeds of assignment contain Keppel's conformity and thus recognizes the continued existence of the Letter Agreement.³³

While there is no extinctive novation, there is merely modificatory novation to the Letter Agreement by the Deed of Assignment dated 6 February 1997 and the first Deed of Assignment dated 12 February 1997 by recognizing that Keppel will deduct Php35,000,000.00, or the remaining balance owing to it, from the proceeds of the sale before remitting the same to PVB, who partially took out MACDC's obligation to Keppel by releasing to the latter the Php75,000,000.00.³⁴ This is merely incidental to and does not supplant the main obligations under the Letter Agreement.

To be clear, reading the contracts together, Keppel was obligated to remit to PVB MACDC's share after the Php35,000,000.00 owed by MACDC to Keppel was paid and only after revenues are generated and collected from the sale of the Keppel Center condominium units, therefore recognizing that there still exists an obligation by MACDC to Keppel. In other words, there is no voluntary renunciation yet of MACDC's obligation to Keppel and Keppel will only remit to PVB MACDC's share subject now to the condition that the Php35,000,000.00 owed by MACDC to Keppel was paid and only after revenues are generated and collected from the sale of the Keppel Center condominium units.³⁵

Nevertheless, PVB is not entitled to rescission of the Letter Agreement. The right of rescission under Article 1191 is predicated on a breach of faith

³² *Id.* at 82-83.

³³ *Id.* at 60, 63.

³⁴ *Id.* at 61-68.

³⁵ *Id.* at 41.

that violates the reciprocity between the parties to the contract. This retaliatory remedy is given to the contracting party who suffers the injurious breach on the premise that it is unjust that a party be held bound to fulfill his promises when the other violates his. Rescission of a contract will not be permitted for a slight or casual breach, but only for such substantial and fundamental violations as would defeat the very object of the parties in making the agreement.³⁶

Notably, the RTC and the CA found that Keppel already complied with its new obligation by delivering to PVB two (2) condominium units in Keppel Center to PVB representing MACDC's net interest in the development of the Keppel Center after deducting the latter's Php35,000,000.00 outstanding loan with Keppel. As regards the second Deed of Assignment, it is observed that the provisions thereof explicitly state that Ayala Land, Inc. – and not Keppel – is responsible for remitting Manuel's share to PVB. As such, Keppel has no obligation to remit to PVB any amount that accrues to Manuel pursuant to the sale of the Kang-Irag residential and golf course development.³⁷ These facts militate against a finding that Keppel committed substantial breach that would entitle PVB to rescission of the contract and for the return of the Php75,000,000.00. Nevertheless, considering that PVB prayed for other just and equitable relief, based on the allegations and the proof, We find PVB entitled to Keppel's compliance with the remaining obligations under the Letter Agreement not inconsistent with the Deeds of Assignment, *i.e.*, to deliver the originals of the promissory note/s evidencing MACDC's loan to Keppel and the corresponding Deeds of Assignment of the Keppel Center and Kang-Irag project that served as security for said loan, and to sign, execute, and deliver to PVB a Deed of Release cancelling and annulling the assignment executed by MACDC in Keppel's favor covering MACDC's rights, interest, and participation in the sale of residential lots and golf course in the Kang-Irag project and the condominium units in Keppel Center.³⁸

WHEREFORE, premises considered, Philippine Veterans Bank's Petition for Review on Certiorari dated 15 August 2019 is **PARTIALLY GRANTED** in that the parties must comply with the remaining obligations under the Letter Agreement dated 14 January 1997 not inconsistent with the deed of assignment dated 06 February 1997 and two (2) deeds of assignment both dated 12 February 1997 as stated in this Resolution.

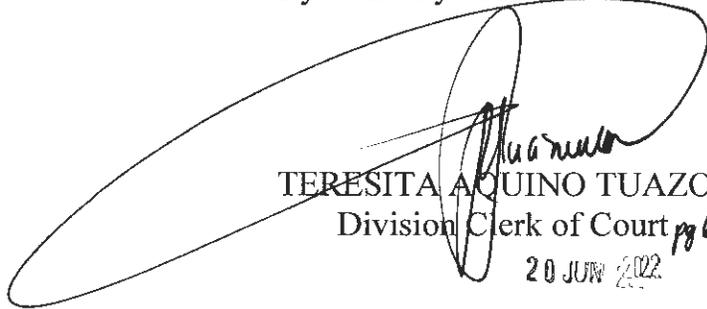
SO ORDERED.”

³⁶ *Nolasco v. Cuerpo*, 775 Phil. 410 (2015).

³⁷ *Rollo*, p. 62.

³⁸ *Id.* at 33; *See Primelink Properties & Development Corp. v. Lazatin-Magat*, 526 Phil. 394 (2006).

By authority of the Court:



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20 JUN 2022

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