

Meanwhile, on January 22, 2002, respondent obtained a ₱1,500,000.00 loan from PNB which was secured by a Real Estate Mortgage constituted over the leased property.⁶ In addition, respondent executed a Deed of Assignment⁷ over the rental payments in favor of PNB.

The amount of the respondent's loan was subsequently increased to ₱7,500,000.00. Consequently, PNB and the respondent executed an "Amendment to the Real Estate Mortgage by Substitution of Collateral" on March 31, 2004, where the mortgage over the leased property was released and substituted by a mortgage over a parcel of land located in Paco, Manila, covered by TCT No. 209631.⁸

On August 26, 2005, respondent filed a Complaint for Unlawful Detainer before the Metropolitan Trial Court (MeTC), Branch 7, Manila against PNB, alleging that the latter failed to pay its monthly rentals from October 2004 until August 2005.⁹

In its defense, PNB claimed that it applied the rental proceeds from October 2004 to January 15, 2005 as payment for respondent's outstanding loan which became due and demandable in October 2004.¹⁰ As for the monthly rentals from January 16, 2005 to February 2006, PNB explained that it received a demand letter¹¹ from a certain Lamberto Chua (Chua) who claimed to be the new owner of the leased property and requested that the rentals be paid directly to him, reckoned from January 15, 2005 until PNB decides to vacate the premises or a new lease contract with Chua is executed. PNB thus deposited the rentals in a separate non-drawing savings account for the benefit of the rightful party.¹²

The MeTC held a hearing on April 25, 2006 where the parties agreed to apply the rental proceeds from October 2004 to January 15, 2005 to the respondent's outstanding loan.¹³ PNB, too, consigned the amount of ₱1,348,643.92, representing the rentals due from January 16, 2005 to February 2006, with the court on May 31, 2006.¹⁴



⁶ Id. at 112-117.

⁷ Id. at 122-125.

⁸ Id. at 108-110.

⁹ Id. at 147-149.

¹⁰ Id. at 182-184.

¹¹ Id. at 126.

¹² Id. at 185-187.

¹³ Id. at 208.

¹⁴ Id. at 37 and 172.

Ruling of the Metropolitan Trial Court

In its August 9, 2006 Decision,¹⁵ the MeTC ordered PNB to pay respondent accrued rentals in the amount of ₱1,348,643.92,¹⁶ with interest at 6% per annum from January 16, 2005 up to March 23, 2006, when PNB finally vacated the leased property.¹⁷ The MeTC likewise directed PNB to pay attorney's fees in the amount of ₱20,000.00 and the cost of suit.

PNB appealed the August 9, 2006 MeTC Decision to the Regional Trial Court (RTC), Branch 14, Manila, insisting that respondent is not entitled to the disputed rental proceeds amounting to ₱1,348,643.92. According to PNB, the money should be applied to offset respondent's outstanding loan pursuant to the Deed of Assignment the latter executed in its favor. PNB also argued that it is not liable to pay any interest on the lease rentals since it did not incur any delay in the payment of rent.¹⁸

While the appeal was pending before the RTC, PNB initiated foreclosure proceedings on the mortgaged property covered by TCT No. 209631.¹⁹ The property was sold on October 31, 2006 for ₱15,311,000.00 to PNB as the highest bidder. Notably, the Certificate of Sale provides that respondent's indebtedness amounted to ₱11,211,283.53 as of May 15, 2005, "exclusive of penalties, expenses, charges and the ten (10) percent attorney's fees, plus sheriff fees and other lawful expenses of foreclosure and sale."²⁰

In light of this development, respondent filed a Memorandum²¹ before the RTC, claiming that PNB had no right to retain the ₱1,348,643.92 consigned with the court. She insisted that her loan was fully paid when PNB bought the mortgaged property at ₱15,311,000.00.²²

PNB filed a Rejoinder²³ and argued that respondent's outstanding obligation as of October 31, 2006 was ₱18,016,300.71 while the bid price was only ₱15,311,000.00. Thus, PNB claimed that it is entitled to a deficiency claim amounting to ₱2,705,300.71 to which the rental proceeds of ₱1,348,643.92 can be applied.²⁴



¹⁵ Id. at 206-209; penned by Presiding Judge Roslyn M. Rabara-Tria.

¹⁶ Id. at 209.

¹⁷ Id.

¹⁸ Id. at 210-225.

¹⁹ CA *rollo*, pp. 259-262.

²⁰ *Rollo*, pp. 140-141.

²¹ Id. at 227-238.

²² Id. at 234.

²³ CA *rollo*, pp. 263-267.

²⁴ Id. at 264.

Ruling of the Regional Trial Court

The RTC affirmed the MeTC ruling in its December 7, 2006 Decision.²⁵ It found that respondent's obligation to PNB "has already been paid, notwithstanding the belated claim of [the latter] that there remains a deficiency."²⁶ The RTC noted that the ₱11,211,283.53 amount of indebtedness stated in the Notice of Extra-Judicial Sale²⁷ dated August 9, 2006 as of May 15, 2006 plus penalties, expenses, charges, attorney's fees and expenses could have been easily covered by the ₱15,311,000.00 bid price.²⁸

In addition, the RTC held that PNB incurred delay "when despite demand, it refused to pay and vacate the premises."²⁹ As such, the RTC ruled that the respondent is entitled to legal interest at 6% per annum and attorney's fees for having been compelled to litigate to protect her interests.³⁰

The respondent then moved for the issuance of a Writ of Execution which was granted by the RTC in its December 18, 2006 Order.³¹ According to the Sheriff's Report of Execution³² dated January 2, 2007, the amount of ₱1,348,643.92, representing the monthly rentals from January 16, 2005 up to March 23, 2006, was turned over to the respondent on December 20, 2006.³³

PNB filed a motion for reconsideration of the December 7, 2006 Decision and for the quashal of the Writ of Execution, but the RTC denied the motion in its Order dated February 6, 2007.³⁴ Following the denial, PNB filed a Petition for Review under Rule 42 of the Rules of Court before the CA, challenging the RTC's December 7, 2006 Decision and February 6, 2007 Order.

Ruling of the Court of Appeals

The CA pointed out that PNB's entitlement to the rental proceeds in the amount of ₱1,348,643.92 is dependent on whether there is a deficiency in payment after the foreclosure sale.³⁵ It, however, found no sufficient evidence on record that the amount of respondent's liability as of October 31, 2006 is indeed ₱18,016,300.71, as PNB claims.³⁶ Consequently, the CA remanded the case to

²⁵ *Rollo*, pp. 239-242; penned by Presiding Judge Cesar M. Solis.

²⁶ *Id.* at 241.

²⁷ *CA rollo*, pp. 302-303.

²⁸ *Rollo*, pp. 240-241.

²⁹ *Id.* at 242.

³⁰ *Id.* at 241-242.

³¹ *Id.* at 243-244.

³² *Id.* at 249. The Writ of Execution was implemented by Conrado L. Bejar, Sheriff IV.

³³ *Id.* at 250.

³⁴ *Id.* at 251.

³⁵ *Id.* at 19.

³⁶ *Id.*

the MeTC for the proper reception of evidence and determination, if any, of the deficiency on the foreclosure sale with the following guidelines:³⁷

- (1) From October 2004 to January 15, 2005: Principal + Interest + Penalties – Monthly Rentals (from October 2004 to January 15, 2005 by virtue of the Deed of Assignment) = New Principal
- (2) From January 16, 2005 to October 31, 2006: New Principal + Interest + Penalties – Interest Earned by PNB from the Savings Account = Outstanding Obligation as of October 31, 2006
- (3) Outstanding Obligation as of October 31, 2006 - ₱15,311,000.00 = Deficiency³⁸

As regards the payment of legal interest, the CA noted that PNB merely opened a non-drawing savings account wherein it deposited the monthly rentals from January 16, 2005 to February 2006. Such deposit of the rentals in a savings account, however, is not the consignation contemplated by law. Thus, the CA found PNB liable to pay the 6% legal interest rate prescribed under Article 2209 of the Civil Code for having defaulted in the payment of its monthly rentals to the respondent.³⁹

Finally, the CA deleted the award of attorney's fees, pursuant to the general rule that attorney's fees cannot be recovered as part of damages because of the public policy that no premium should be placed on the right to litigate.⁴⁰

PNB filed a partial Motion for Reconsideration, but the CA denied the motion in its Resolution dated February 21, 2013. As a consequence, PNB filed the present Petition for Review on *Certiorari* before the Court, assailing the CA's May 28, 2012 Decision and February 21, 2013 Resolution.

Issues

In the present Petition, PNB raises the following issues for the Court's resolution: *first*, whether PNB properly consigned the disputed rental payments in the amount of ₱1,348,643.92 with the Office of the Clerk of Court of the MeTC of Manila;⁴¹ *second*, whether PNB incurred delay in the payment of rentals to the respondent, making it liable to pay legal interest to the latter;⁴² and *third*, whether PNB is entitled to the disputed rental proceeds in order to cover the alleged

³⁷ Id. at 19-20.

³⁸ Id. at 20.

³⁹ Id. at 20-21.

⁴⁰ Id. at 22.

⁴¹ Id. at 41-43.

⁴² Id. at 44-46.

deficiency in payment of the respondent's liability after the foreclosure proceedings.⁴³

The Court's Ruling

We DENY the Petition for Review on *Certiorari* as we find no reversible error committed by the CA in issuing its assailed Decision and Resolution.

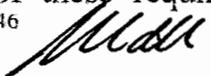
“Consignation is the act of depositing the thing due *with the court or judicial authorities* whenever the creditor cannot accept or refuses to accept payment[. I]t *generally* requires a prior tender of payment.”⁴⁴

Under Article 1256 of the Civil Code, consignation alone is sufficient even without a prior tender of payment: a) when the creditor is absent or unknown or does not appear at the place of payment; b) when he is incapacitated to receive the payment at the time it is due; c) when, without just cause, he refuses to give a receipt; d) when two or more persons claim the same right to collect; and e) when the title of the obligation has been lost.

For consignation to be valid, the debtor must comply with the following requirements under the law:

- 1) there was a debt due;
- 2) valid prior tender of payment, *unless* the consignation was made because of some legal cause provided in Article 1256;
- 3) previous notice of the consignation has been given to the persons interested in the performance of the obligation;
- 4) the amount or thing due was placed at the disposal of the court; and,
- 5) after the consignation had been made, the persons interested were notified thereof.⁴⁵

“Failure in any of these requirements is enough ground to render a consignation *ineffective*.”⁴⁶



⁴³ Id. at 43 and 46.

⁴⁴ *Soco v. Hon. Militante*, 208 Phil. 151, 159 (1983), citing *Limkako v. Teodoro*, 74 Phil. 313 (1943). See also CIVIL CODE, Articles 1256 and 1258.

⁴⁵ See *Allandale Sportsline, Inc. v. The Good Development Corporation*, 595 Phil. 265, 277-278 (2008).

⁴⁶ *Pabugais v. Sahijwani*, 467 Phil. 1111, 1118 (2004), citing *Soco v. Militante*, supra note 44 at 160.

In the present case, the records show that: *first*, PNB had the obligation to pay respondent a monthly rental of ₱116,788.44, amounting to ₱1,348,643.92, from January 16, 2005 to March 23, 2006;⁴⁷ *second*, PNB had the option to pay the monthly rentals to respondent or to apply the same as payment for respondent's loan with the bank, but PNB did neither;⁴⁸ *third*, PNB instead opened a non-drawing savings account at its Paco Branch under Account No. 202-565327-3, where it deposited the subject monthly rentals, due to the claim of Chua of the same right to collect the rent;⁴⁹ and *fourth*, PNB consigned the amount of ₱1,348,643.92 with the Office of the Clerk of Court of the MeTC of Manila on May 31, 2006.⁵⁰

Note that **PNB's deposit of the subject monthly rentals in a non-drawing savings account is not the consignment contemplated by law**, precisely because it does not place the same at the disposal of the court.⁵¹ Consignation is *necessarily judicial*; it is not allowed in venues other than the courts.⁵² Consequently, PNB's obligation to pay rent for the period of January 16, 2005 up to March 23, 2006 remained subsisting, as the deposit of the rentals cannot be considered to have the effect of payment.

It is important to point out that PNB's obligation to pay the subject monthly rentals had already fallen due and demandable *before* PNB consigned the rental proceeds with the MeTC on May 31, 2006. Although it is true that consignment has a retroactive effect, such payment is deemed to have been made only *at the time of the deposit* of the thing in court or when it was placed at the disposal of the judicial authority.⁵³ Based on these premises, PNB's payment of the monthly rentals can only be considered to have been made not earlier than May 31, 2006.

Given its *belated* consignment of the rental proceeds in court, **PNB clearly defaulted in the payment of monthly rentals to the respondent for the period January 16, 2005 up to March 23, 2006, when it finally vacated the leased property**. As such, it is liable to pay interest in accordance with Article 2209 of the Civil Code.

Article 2209 provides that if the debtor incurs delay in the performance of an obligation consisting of the payment of a sum of money, he shall be liable to pay the interest agreed upon, and in the absence of stipulation, the legal interest at 6% per annum. There being no stipulated interest in this case, PNB is liable to pay legal interest at 6% per annum, from January 16, 2005 up to May 30, 2006.

⁴⁷ Rollo, p. 20.

⁴⁸ Id. at 20-21.

⁴⁹ Id. at 42.

⁵⁰ Id.

⁵¹ See *Spouses Ercillo v. Court of Appeals*, 270 Phil. 250, 254-255 (1990).

⁵² *Spouses Cacayorin v. Armed Forces and Police Mutual Benefit Association, Inc.*, 709 Phil. 307, 318 (2013).

⁵³ Tolentino, Arturo M., *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Volume IV, 1991, p. 330.

As for the issue on PNB's entitlement to the subject rental proceeds to cover the deficiency in payment after the foreclosure sale of the mortgaged property, we agree with the CA's finding that there is no sufficient evidence on record to show that such a deficiency exists.⁵⁴ Unfortunately, the Statement of Account⁵⁵ submitted by PNB is not enough to prove this claim, considering that it is unsupported by any corroborating evidence. Besides, the copy of the document in our records, both in the CA *rollo* and the Supreme Court *rollo*,⁵⁶ consists of illegible pages.

We likewise agree with the CA's conclusion that the RTC seriously erred when it categorically stated that the loan was fully paid by virtue of the foreclosure sale *without determining the extent of the respondent's liability as of October 31, 2006*, the date of the foreclosure sale.⁵⁷ Specifically, the RTC held that:

x x x In this regard, the amount of the indebtedness was clearly stated in the Notice of Extra-Judicial Sale dated August 9, 2006 as ₱11,211,283.53, **as of May 15, [2006]**, exclusive of penalties, expenses, charges, attorney's fees and expenses. And since the property was sold to the bank as the winning bidder at ₱15,311,000.00, obviously, **the difference could have easily covered the said penalties, etc.**⁵⁸

This is clearly an error. It is settled that a mortgagee has the right to recover the deficiency resulting from the difference between the amount obtained in the sale at public auction and the outstanding obligation of the mortgagor *at the time of the foreclosure proceedings*.⁵⁹ The RTC failed to consider that the amount of indebtedness indicated in the Notice of Extra-Judicial Sale⁶⁰ dated August 9, 2006 was computed by PNB as of May 15, 2006. Surely, the respondent's liability would have significantly increased by the time the foreclosure sale was held on October 31, 2006.

It also appears that the RTC merely *assumed* that the bid price would cover the deficiency in payment, without actually making a determination of whether such a deficiency exists and how much it really is.

In these lights, we uphold the CA's ruling remanding the case to the MeTC for the proper reception of evidence and computation of respondent's total indebtedness as of October 31, 2006, in order to determine whether there exists a deficiency in payment as PNB insists.



⁵⁴ *Rollo*, p. 19.

⁵⁵ *Id.* at 142-146.

⁵⁶ *Id.* See also CA *rollo*, pp. 55-59.

⁵⁷ *Id.* at 19.

⁵⁸ *Id.* at 241. Emphasis supplied.

⁵⁹ *Sycamore Ventures Corporation v. Metropolitan Bank and Trust Company*, 721 Phil. 290, 298-299 (2013).

⁶⁰ CA *rollo*, pp. 302-303.

WHEREFORE, we **DENY** the Petition for Review on *Certiorari* and **AFFIRM** the Decision dated May 28, 2012 and the Resolution dated February 21, 2013 of the Court of Appeals in CA-G.R. SP No. 98112.

SO ORDERED.

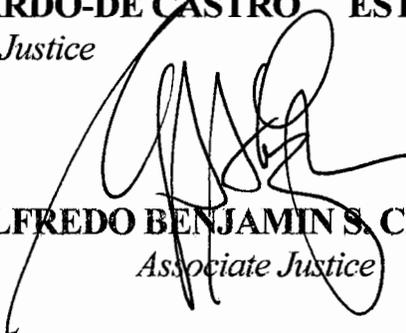

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice