



SUPREME COURT OF THE PHILIPPINES  
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Republic of the Philippines  
**Supreme Court**  
Manila

**FIRST DIVISION**

**EAST WEST BANKING  
CORPORATION,**

Petitioner,

**G.R. No. 225181**

**Present:**

PERALTA, C.J., *Chairperson*,  
CAGUIOA, *Working Chairperson*  
REYES, J. JR.,  
LAZARO-JAVIER, and  
INTING,\* *JJ.*

- versus -

**VICTORIAS MILLING  
COMPANY, INC,**

Respondent.

**Promulgated:**

**DEC 05 2019**

*mtubulo*

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**DECISION**

**REYES, J. JR., J.:**

This is a Petition for Review on *Certiorari*<sup>1</sup> under Rule 45, seeking to annul and set aside the Decision<sup>2</sup> dated January 19, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 141969, which affirmed the Decision<sup>3</sup> dated August 11, 2015 of the Securities and Exchange Commission (SEC) *En Banc* in SEC *En Banc* Case No. 04-15-368. The CA's Resolution<sup>4</sup> dated May 16, 2016, which denied petitioner East West Banking Corporation's (East West Bank) motion for reconsideration is likewise impugned herein.

**Factual Antecedents**

On July 4, 1997, respondent Victorias Milling Company, Inc. (VMC) filed with the SEC, a Petition for Declaration of Suspension of Payments;

\* Additional Member per Special Order No. 2726.

<sup>1</sup> *Rollo*, pp. 3-54.

<sup>2</sup> Penned by Associate Justice Franchito N. Diamante, with Associate Justices Rodil V. Zalameda (now a Member of the Court) and Carmelita Salandanan Manahan, concurring; *id.* at 61-83.

<sup>3</sup> *Id.* at 127-146.

<sup>4</sup> *Id.* at 84-85.

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the Approval of a Rehabilitation Plan; and the Appointment of a Management Committee, docketed as SEC Case No. 07-97-5693.<sup>5</sup>

Acting upon the said petition, SEC's Securities Investigation and Clearing Department (SICD), issued an Order dated July 8, 1997, that suspended all actions or claims against VMC pending before any court, tribunal, office, board, and /or the SEC.<sup>6</sup>

The appointed Management Committee of VMC submitted a Rehabilitation Plan, which was approved by the SICD in its Order dated June 2, 1999. On August 17, 1999, said Rehabilitation Plan was amended and further modified on August 19, 1999. Finally, on November 29, 2000, the SICD approved the Alternative Rehabilitation Plan<sup>7</sup> (ARP) proposed by the VMC Management Committee.<sup>8</sup>

To restructure VMC's outstanding loan obligation pursuant to the ARP, VMC and its creditors, which include East West Bank, executed a Debt Restructuring Agreement<sup>9</sup> (DRA) dated April 29, 2002. Therein, it was agreed that as a debt restructuring measure, VMC will issue long-term commercial papers or debt securities in the form of Convertible Notes (CN) in favor of VMC's creditors. These CNs may either be converted to common shares of VMC or paid/redeemed by VMC from the holders thereof in accordance with the terms and conditions set forth in the parties' agreement.

Accordingly, on September 1, 2003, VMC issued a CN<sup>10</sup> in favor of East West Bank with reference PN No. 898303000211, whereby VMC unconditionally promised to pay East West Bank in immediately available funds, the principal amount of ₱200,396,734.00.

On May 31, 2013, VMC was able to settle all its restructured loans. Hence, VMC started to pay/redeem the CNs from the respective holders thereof pursuant to the ARP and DRA. All creditors accepted VMC's payment/redemption except for East West Bank.<sup>11</sup>

From February 24, 2014 to April 2, 2014, VMC repeatedly sent written notices to East West Bank as regards its payment/redemption of the CN. East West Bank, however, refused to accept such payment/redemption and insisted on its right to convert the CN to VMC common shares.<sup>12</sup>

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<sup>5</sup> Id. at 62.

<sup>6</sup> Id.

<sup>7</sup> Id. at 151-154.

<sup>8</sup> Id. at 62-63.

<sup>9</sup> Id. at 155-208.

<sup>10</sup> Id. at 209-211.

<sup>11</sup> Id. at 69.

<sup>12</sup> Id. at 69-71.

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On March 27, 2014, the East West Bank Board of Directors approved the sale of the CN. In a letter dated March 31, 2014, East West Bank informed VMC of said approval and that it has commenced the required publication therefor.

Insisting on its right and duty to pay/redeem the CN, in a letter dated March 26, 2014, VMC sent two checks, amounting to a total of ₱185,656,020.47 as partial payment/redemption.

In a letter dated April 2, 2014, East West Bank informed VMC that it will not avail of VMC's partial offer of redemption and as such, it returned the two checks.

On April 3, 2014, East West Bank reiterated to VMC that its Board of Directors had approved the sale of the CN and published on March 30-31, 2014, and April 1-5, 2014, the required notice therefor.

Thereafter, in a letter dated April 3, 2014, which was received by East West Bank on April 4, 2014, VMC transmitted additional checks, amounting to a total of ₱180,469,879.70 representing the final payment/redemption for the CN to complete its full amount, consisting of the principal plus interest.<sup>13</sup>

East West Bank, however, still refused to accept the offer of payment/redemption and returned all the checks to VMC.<sup>14</sup>

Thus, in a letter dated September 25, 2014, VMC consigned two checks to Atty. Luis Ma. G. Uranza, VMC's Rehabilitation Receiver, amounting to a total of ₱366,125,900.17, representing the total payment/redemption value of the CN.<sup>15</sup>

In a letter dated October 14, 2015, East West Bank notified VMC that it was exercising its option to convert 13% of its outstanding unconverted CN in accordance with Section 16(h)(v)<sup>16</sup> of the DRA and paragraph 5<sup>17</sup> of the CN. In response, VMC informed East West Bank that it has no outstanding CN in the records of VMC as the CN issued to it had already been paid/redeemed.<sup>18</sup>

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<sup>13</sup> Id. at 71-72.

<sup>14</sup> Id. at 72.

<sup>15</sup> Id. at 72-73.

<sup>16</sup> "(v) Any or all outstanding unconverted [CNs] which were not converted during the First, Second, Third, and Fourth Conversion Periods may be converted within a period beginning on the thirty first (31st) day after the end of the seventh (7th) year from Issue Date and shall expire sixty (60) days thereafter (the "Fifth Conversion Period")." Id. at 171.

<sup>17</sup> "The Holder has the right and option to convert this Note into common shares of the Issuer during the designated conversion periods x x x. A Final Conversion Period, x x x, shall be allowed for the conversion of any or all Notes which were not converted during the previous conversion periods." Id. at 209-210.

<sup>18</sup> Id. at 73.

This prompted East West Bank to file with the SEC a **Motion to Compel** VMC to convert 13% of its outstanding CN into VMC common shares.<sup>19</sup>

### Proceedings Before the SEC

In an Order<sup>20</sup> dated March 19, 2015, the SEC Special Hearing Panel 1 (Panel) granted the said motion, thus:

**Considering all the foregoing**, [East West Bank's] Motion is hereby **GRANTED** subject to the following condition:

1. Adoption of a Board Resolution authorizing/confirming the refusal to accept the payment/redemption of the Convertible Note by VMC and the exercise of its right to convert the CN into VMC common shares;

Further, VMC is hereby directed to convert 13% of the outstanding unconverted convertible note held by [East West Bank] into VMC common shares within fifteen (15) days from presentation to it of the Board Resolution.

**SO ORDERED.**<sup>21</sup>

The Panel ratiocinated that while it is mandatory for VMC to pay/redeem the CNs under Section 13.2<sup>22</sup> of the DRA and paragraph 5(b)<sup>23</sup> of the ARP, it is not equally mandatory on the part of East West Bank to receive and accept the same.<sup>24</sup>

On appeal, in its August 11, 2015 Decision,<sup>25</sup> the SEC *En Banc* reversed and set aside the Panel's Order. The SEC *En Banc* examined the ARP, DRA, and CN and found that, contrary to the Panel's ruling, there was nothing in the DRA and CN that states that East West Bank is not obligated to accept the payment/redemption made by VMC. In fact, according to the SEC *En Banc*, East West Bank agreed and was bound by the provisions of the DRA on Mandatory Pre-Payment.<sup>26</sup>

<sup>19</sup> Id.

<sup>20</sup> Id. at 267-277.

<sup>21</sup> Id. at 277.

<sup>22</sup> "13.2 In the event that the Restructured Loans are fully settled before the 15[-]year repayment period, VMC Cash Flow in excess of Capital Expenditure requirements shall be used to pay/redeem the [CN] (principal plus accumulated interest)." Id. at 167.

<sup>23</sup> "b. should the [P]3.055 Billion restructured debt be fully settled before the 15-year repayment period, VMC cash flow shall in excess of Capital Expenditure requirements be used to pay/redeem the convertible notes (principal plus accumulated interest)." Id. at 153.

<sup>24</sup> Id. at 273-274.

<sup>25</sup> Supra note 3.

<sup>26</sup> "Section 13 - MANDATORY PRE-PAYMENT

13.1 In the event VMC's Net Cash Flow at the end of a crop year exceeds the Projected Net Cash Flow for that particular crop year as provided for in its [ARP], VMC shall pre-pay in inverse order (last maturities first) the Restructured Loans without penalty equal to Seventy[-]Five Percent (75%) of the

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The SEC *En Banc* also ruled that while it is true that East West Bank's right to convert shall prevail over VMC's right to pay/redeem under the CN, this is true and available only during the conversion periods.<sup>27</sup> The holder's right to convert is not superior at all times because the terms and conditions of the DRA and CN provide otherwise. This holds especially true in this case when the right to convert was exercised by East West Bank outside of the conversion period and after VMC had already asserted its right to pay/redeem.<sup>28</sup>

It disposed, thus:

**WHEREFORE**, premises considered, the instant *Appeal* is hereby **GRANTED**. The Special Hearing Panel 1's *Order* dated 19 March 2015 is hereby **REVERSED AND SET ASIDE**. Thus, [East West Bank's] *Motion to Compel [VMC] to Allow [East West Bank] to Exercise its Option for the Conversion of the [Unconverted] [CN]* filed with the Special Hearing Panel 1 is hereby **DENIED**.

**SO ORDERED.**<sup>29</sup>

Aggrieved, East West Bank filed a petition for review before the CA.

### The CA Ruling

In its January 19, 2016 assailed Decision, the CA affirmed the SEC *En Banc*'s Decision, finding that in redeeming the CN, VMC was merely complying with the "apparent, basic, and direct" language or terms of the ARP, DRA, and CN, which bind the parties. Pursuant to the agreement, the payment or redemption of the CN became final and irrevocable when VMC sent East West Bank a written notice that it was exercising its option or right to redeem the CN. East West Bank's refusal to accept and honor the payment/redemption for it to invoke its right to convert the CN was unfounded as the payment/redemption was done outside the conversion period when East West Bank had no option to convert the CN.<sup>30</sup>

The CA also ruled that the SEC *En Banc*'s Decision was consistent with the very purpose of rehabilitation proceedings, which is to enable the

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incremental Net Cash Flow. The term Net Cash Flow is defined as Net Income After Tax plus Depreciation Charges plus Other Non-Cash Charges.

13.2 In the event that the Restructured Loans are fully settled before the 15[-]year repayment period, VMC Cash Flow in excess of Capital Expenditure requirements shall be used to pay/redeem the [CN] (principal plus accumulated interest)." Id. at 166-167.

<sup>27</sup> "The Issuer may exercise its option to redeem this Note at any time prior to Final Redemption Date by sending written notice thereof to the Holder, which notice, when so sent, shall be deemed final and irrevocable. Notwithstanding the foregoing, the conversion of this Note into common shares of the Issuer at the option of the Holder *during the conversion period* shall prevail over the exercise by the Issuer of its option to redeem this Note." Id. at 210. (Italics supplied)

<sup>28</sup> Id. at 143.

<sup>29</sup> Id. at 146.

<sup>30</sup> Id. at 78-81.

company subject thereof to gain a new lease on life and pay the claims of its creditors from its earnings. According to the CA, if VMC was prevented from paying/redeeming the CNs it issued, it will not be relieved of the weight of its outstanding debts.<sup>31</sup>

The CA, disposed thus:

**WHEREFORE**, in view of the foregoing, the instant Petition is hereby **DENIED** and the Decision dated August 11, 2015 of the Securities and Exchange Commission *En Banc* in SEC EN Banc Case No. 04-15-368 (SEC Case No. 07-97-5693) is **AFFIRMED**.

Consequently, [East West Bank's] application for injunctive relief is likewise **DENIED**.

**SO ORDERED.**<sup>32</sup>

East West Bank's motion for reconsideration was likewise denied in the CA's May 16, 2016 assailed Resolution:

Accordingly, the Motion for Reconsideration is hereby **DENIED**.

**SO ORDERED.**<sup>33</sup>

Hence, this petition.

Ultimately, East West Bank's arguments are anchored upon its claim that its right or option to convert the CN to VMC's common shares is superior than VMC's right or option to pay/redeem the CN. VMC, on the other hand, subscribes to the SEC *En Banc* and the CA's findings and conclusion.

In a Supplemental Comment/Opposition,<sup>34</sup> VMC manifested that on September 23, 2016, the CA has already issued an entry of judgment in this case considering that there was no petition filed before the Supreme Court. Apparently, East West Bank failed to furnish the CA with a copy of the instant petition. Thus, invoking Circular No. 19-91,<sup>35</sup> VMC seeks the outright dismissal of the instant petition.

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<sup>31</sup> Id. at 81-82.

<sup>32</sup> Id. at 83.

<sup>33</sup> Id. at 85.

<sup>34</sup> Id. at 672-676.

<sup>35</sup> SUBJECT: PRESCRIBING STRICT COMPLIANCE WITH SECTIONS 3 AND 5 IN RELATION TO SECTION 10 OF RULE 13 OF THE RULES OF COURT ON SERVICE OR PETITION OR MOTION FOR EXTENSION, Effective August 13, 1991.

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A Motion to Dismiss<sup>36</sup> dated February 3, 2017, was thereafter filed for that purpose, arguing that the assailed CA Decision and Resolution had already become final and executory by virtue of the entry of judgment issued by the CA therefor.

### Issues

- (1) Should the Motion to Dismiss be granted?
- (2) Did the CA err in sustaining the SEC's denial of East West Bank's Motion to Compel VMC to convert its CN to common stocks?

### This Court's Ruling

We first address the procedural issue raised by VMC in its Motion to Dismiss.

Case law teaches us that dismissal of appeals based solely on technicalities, especially when the appellant had substantially complied with the jurisdictional requirements, is frowned upon.<sup>37</sup> We do not see any cogent reason not to apply such principle in this case. Despite failure to furnish the CA with a copy of the instant petition, we cannot disregard the fact that a timely appeal was filed before this Court. Also, records show that the CA was furnished copies of the notices issued by this Court, as well as other pleadings pertaining to the instant petition. The CA was, thus, notified of the existence of the instant petition, which could have prompted it to be more circumspect in issuing the entry of judgment.

For this reason, VMC's Motion to Dismiss is **DENIED**.

Nevertheless, the Petition still fails substantively. We find that the CA committed no reversible error in sustaining the SEC's denial of the Motion to Compel VMC to allow East West Bank to convert the CN into VMC's common shares.

This is a classic case of interpretation of contracts. Both parties took a course of action, both invoking certain provisions of their agreement under the ARP, DRA, and the CN. VMC exercised its option to pay/redeem on one hand, while East West Bank insisted on exercising its option to convert. The controversy arose when East West Bank asserted that its option to convert is superior over VMC's option to pay/redeem.

What is incumbent upon this Court, therefore, is to determine which party exercised its right or option in accordance with the terms of their agreement under the ARP, DRA, and CN to give effect to the basic rule that

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<sup>36</sup> *Rollo*, pp. 782-801.

<sup>37</sup> *Jaro v. Court of Appeals*, 427 Phil. 532, 535-536 (2002).

a contract is the law between the parties, and courts have no choice but to enforce such contract so long as it is not contrary to law, morals, good customs, or public policy.<sup>38</sup>

It is imperative thus, to examine the relevant provisions of the ARP, DRA, and the subject CN.

Paragraph 5(b), Part IV of the ARP provides:

b. should the [P]3.055 Billion restructured debt be fully settled before the 15-year repayment period, **VMC cash flow shall in excess of Capital Expenditure requirements be used to pay/redeem the convertible notes (principal plus accumulated interest).** (Emphasis supplied)<sup>39</sup>

This was reiterated in Section 13 of the DRA, *viz.*:

Section 13  
**MANDATORY PRE-PAYMENT**

13.1 **In the event VMC's Net Cash Flow at the end of a crop year exceeds the Projected Net Cash Flow for that particular crop year as provided for in its [ARP], VMC shall pre-pay in inverse order (last maturities first) the Restructured Loans without penalty equal to Seventy[-]Five Percent (75%) of the incremental Net Cash Flow. The term Net Cash Flow is defined as Net Income After Tax plus Depreciation Charges plus Other Non-Cash Charges.**

13.2 **In the event that the Restructured Loans are fully settled before the 15[-]year repayment period, VMC Cash Flow in excess of Capital Expenditure requirements shall be used to pay/redeem the [CN] (principal plus accumulated interest).**<sup>40</sup> (Emphases supplied)

Relatedly, the subject CN provides for VMC's unconditional promise to pay the CN value in immediately available funds:

CONVERTIBLE NOTE

Amount: PhP 200,396,734.00

Issue Date: September 1, 2003

Place of Issue: Makati City

FOR VALUE RECEIVED, [VMC], x x x (the "ISSUER") hereby unconditionally **promises to pay** [EAST WEST BANK] (the "HOLDER") x x x on September 1, 2018 **in immediately available funds**, the principal amount of TWO HUNDRED MILLION THREE HUNDRED NINETY

<sup>38</sup> *Norton Resources and Development Corporation v. All Asia Bank Corporation*, 620 Phil. 381, 391-392 (2009).

<sup>39</sup> *Rollo*, p. 76.

<sup>40</sup> *Id.* at 166-167.

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SIX THOUSAND SEVEN HUNDRED THIRTY FOUR & 00/100 PESOS (PhP200,396,734.00) at the rate of Eight Percent (8%) per annum, subject to the terms and conditions provided hereinbelow.<sup>41</sup> (Emphasis Supplied)

Clearly from the foregoing, VMC was mandated by their agreement to pre-pay its restructured loans when its net cash flow exceeds the projected cash flow in a particular crop year. Upon full payment of said loans, VMC was further obligated to use its excess cash flow to pay or redeem the CNs it issued to its creditors. This is precisely what VMC undertook to accomplish when it sent written notices to its creditors to pay/redeem the CNs after it was able to settle all its restructured loans.

The subject CN also provides that:

[VMC] shall have the option to redeem this Note by paying [East West Bank] in cash an amount equivalent to the subscription price, plus all accrued interest beginning at the end of the third (3<sup>rd</sup>) year from the Issue Date and ending on the last day of the fifteenth (15<sup>th</sup>) year from Issue Date (the "Final Redemption Date"). **[VMC] may exercise its option to redeem this Note at any time prior to Final Redemption Date by sending written notice thereof to [East West Bank], which notice, when so sent, shall be deemed final and irrevocable.**<sup>42</sup> x x x. (Emphasis supplied)

It is clear from the said provision that upon delivery of such notice to redeem, VMC has already effectively exercised its option to pay/redeem. Notably, VMC's notices to pay/redeem were coupled with payments which were returned by East West Bank. East West Bank posits that it may refuse to accept such notice and instead opts to convert the CN to common stocks.

We cannot subscribe to East West Bank's position.

East West Bank's refusal to allow VMC to exercise its option and perform its obligation to pay/redeem finds no basis in their agreement. As correctly ruled by the CA, the Panel erred in ruling that while it is mandatory for VMC to pay/redeem the CNs under Section 13.2 of the DRA and paragraph 5 of the ARP, East West Bank has no parallel mandatory obligation to accept the same under their agreement.

It will be oft-repeated in this disquisition that the cardinal rule in contract interpretation is that a contract must be interpreted from the language of the contract itself according to its plain meaning.<sup>43</sup> The court's or tribunal's purpose in examining a contract is to interpret the intent of the

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<sup>41</sup> Id. at 209.

<sup>42</sup> Id. at 210.

<sup>43</sup> *Adriatico Consortium, Inc. v. Land Bank of the Philippines*, 623 Phil. 1027, 1040 (2009).

contracting parties, as objectively manifested by them.<sup>44</sup> It is not the province of the court or tribunal to alter a contract by construction or to make a new contract for the parties; its duty is confined to the interpretation of the one which they have made for themselves, without regard to its wisdom or folly, as the court cannot supply material stipulations or read into the contract words which it does not contain.<sup>45</sup>

In ruling that East West Bank has the right to reject VMC's exercise of its option and performance of its duty to pay/redeem the CNs, the Panel unduly supplied the terms of the agreement. Indeed, if it was the parties' intention to give East West Bank the superior right to disallow VMC's exercise of its option and/or compliance with its obligation to pay/redeem, then the ARP, DRA, and CN could have simply stated so but they did not. Further, to subscribe to such ruling would render nugatory the obligation mandated upon and/or option given to VMC to pay/redeem the CNs granted to VMC under the agreement. If a preferential right is given to East West Bank to reject VMC's payment/redemption, then no option and/or obligation to pay/redeem should have been given to VMC as the same can, at any rate, be overridden by East West Bank at its option.

East West Bank specifically invokes the following provision of the CN to support its contention that its option to convert is superior than VMC's option to pay/redeem, to wit:

Notwithstanding the foregoing, the conversion of this Note into common shares of the Issuer at the option of the Holder during the conversion period shall prevail over the exercise by the Issuer of its option to redeem this Note.<sup>46</sup>

Foremost, a single provision in the CN cannot, however, be relied upon to give life to the intention of the parties. Well-established is the principle that provisions of complementary contracts, like the ARP, DRA, and CN, should be read in their entirety and construed together to arrive at their true meaning. As can be gleaned from the foregoing, the DRA was executed to give effect to the objective of the ARP, while the CN was issued as a debt reduction measure pursuant to the DRA. As such, their provisions cannot be segregated and then made to control.<sup>47</sup> Thus, one stipulation in the CN cannot be taken singly and disregard the others. As discussed, there was nothing in the parties' agreement that gives unbridled preferential right to East West Bank to exercise its option to convert.

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<sup>44</sup> *Abad v. Goldloop Properties, Inc.*, 549 Phil. 641, 654 (2007).

<sup>45</sup> *Limpo v. Court of Appeals*, 517 Phil. 529, 535 (2006).

<sup>46</sup> *Rollo*, p. 210.

<sup>47</sup> *Spouses Rigor v. Consolidated Orix Leasing and Finance Corporation*, 436 Phil. 243, 249 (2002).

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At any rate, the invocation of such provision is misplaced. To reiterate for emphasis, said provision states that “notwithstanding [VMC's exercise of its option to pay/redeem the CN], the conversion of [the CN] into common shares of [VMC] at the option of [East West Bank] *during the conversion period* shall prevail over the exercise by [VMC] of its option to redeem this [CN].” It is undisputed that VMC exercised its option to pay/redeem the CN *outside* the conversion period. Thus, at such time, no preference was given to East West Bank's option to convert. In fact, East West Bank has no conversion privilege to exercise at all at that time considering that they were still outside the conversion period. It is, thus, improper and against the terms of their agreement, if not arbitrary on the part of East West Bank, to refuse and disallow VMC to exercise its option and perform its obligation to pay/redeem the CN.

Likewise, East West Bank's contention that its option to convert may be exercised at any time as the conversion schedule under the ARP, DRA, and CN pertains only to the actual conversion and not to the exercise of the right to convert, is unfounded.

We emphasize the fundamental rule in the interpretation of contracts that where the language of a written contract is clear and unambiguous, the contract must be taken to mean that which, on its face, it purports to mean, unless some good reason can be assigned to show that the words should be understood in a different sense.<sup>48</sup> The intention of the parties must be gathered from the plain and literal language of such agreement, and from that language alone.<sup>49</sup>

East West Bank's interpretation of this particular provision on the conversion schedule does not find support to the clear and simple language of the said provision and the relevant provisions thereto. The DRA and CN provisions are emphatic and clear that the holder of the CN may exercise its right or option to convert only “during the designated conversion periods.” Specifically, the DRA provides:

(h) Convertibility Feature:

The [CNs] shall be converted at the option of the [holder] thereof into common shares of VMC at a ratio of one (1) [CN] to

<sup>48</sup> *Norton Resources and Development Corporation v. All Asia Bank Corporation*, 620 Phil. 381, 389 (2009).

<sup>49</sup> *Id.* at 388-389.

One (1) common share of VMC, **subject to the following schedule.**<sup>50</sup>  
(Emphasis supplied)

Even the invoked CN provision, above-cited, clearly provides that the holder's option to convert prevails only when the same is exercised during the conversion period.<sup>51</sup> The paragraph preceding said provision also provides:

[East West Bank] has **the right and option to convert** this Note into common shares of the Issuer **during the designated conversion periods** x x x. A Final Conversion Period, x x x, shall be allowed for the conversion of any or all Notes which were not converted during the previous conversion periods.<sup>52</sup>

Again, if it was the parties' intention to give East West Bank the right to exercise its conversion privilege "at any time" then they could have simply stated so but they did not. In fact, in the same CN provision being invoked by East West Bank, as well as in Section 16(i) of the DRA quoted below, it was VMC which was granted the privilege to exercise its payment/redemption option "at any time." The CN provides:

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- (i) Maximum of Twenty Percent (20%) of the original Issue Amount of the Convertible Notes may be converted within a period beginning on the thirty first (31st) day after the end of the third (3rd) year from Issue Date and shall expire sixty (60) days thereafter (the "First Conversion Period");
  - (ii) Maximum of Twenty Percent (20%) of the original Issue Amount of the Convertible Notes may be converted within a period beginning on the thirty first (31st) day after the end of the fourth (4th) year from Issue Date and shall expire sixty (60) days thereafter (the "Second Conversion Period");
  - (iii) Maximum of Twenty Percent (20%) of the original Issue Amount of the Convertible Notes may be converted within a period beginning on the thirty first (31st) day after the end of the fifth (5th) year from Issue Date and shall expire sixty (60) days thereafter (the "Third Conversion Period");
  - (iv) Maximum of Twenty Percent (20%) of the original Issue Amount of the Convertible Notes may be converted within a period beginning on the thirty first (31st) day after the end of the sixth (6th) year from Issue Date and shall expire sixty (60) days thereafter (the "Fourth Conversion Period");
  - (v) Any or all outstanding unconverted Convertible Notes which were not converted during the First, Second, Third, and Fourth Conversion Periods may be converted within a period beginning on the thirty first (31st) day after the end of the seventh (7th) year from Issue Date and shall expire sixty (60) days thereafter (the "Fifth Conversion Period");
  - (vi) After the Fifth Conversion Period, a maximum of Thirteen Percent (13%) of the Outstanding Unconverted Convertible Notes may be converted per year from the eighth (8th) year to the fourteenth (14th) year. The Convertible Notes may be converted within a period beginning on the thirty first (31st) day after the end of each succeeding year from the Fifth Conversion Period and shall expire sixty (60) days thereafter. The term "Outstanding Unconverted Convertible Notes" is defined as the principal amount of the Convertible Notes outstanding as of the ninety-second (92nd) day after the end of the seventh (7th) year; and
  - (vii) Any or all Convertible Notes which were not converted during the previous conversion periods, may be converted within a period beginning on the sixtieth (60th) day before the end of the fifteenth (15th) year from Issue Date and shall expire thirty (30) days thereafter (the "Final Conversion Period").

The aggregate amount of Convertible Notes that may be converted into common shares of VMC shall not exceed Twenty Percent (20%) of the original Issue Amount of the Convertible Notes for each year covering the conversion period beginning the third (3rd) year to the sixth (6th) year.

For the period beginning the eighth year to the fourteenth (14th) year, the annual aggregate amount of Convertible Notes that may be converted into common shares of VMC shall not exceed Thirteen Percent (13%) of the Outstanding Unconverted Notes. *Rollo*, pp. 170-171.

<sup>51</sup> Notwithstanding the foregoing, the conversion of this Note into common shares of the Issuer at the option of the Holder during the conversion period shall prevail over the exercise by the Issuer of its option to redeem this Note." *Id.* at 210.

<sup>52</sup> *Id.* at 209-210.

The Issuer may exercise its option to redeem this Note **at any time** prior to Final Redemption Date by sending written notice thereof to the Holder, which notice, when so sent, shall be deemed final and irrevocable.<sup>53</sup> x x x (Emphasis supplied)

Section 16(i) of the DRA also provides:

(i) Redemption at the Option of VMC (Call Option):

VMC may redeem the [CNs] **at any time** at Issue Price plus accrued interest beginning at the end of the third (3<sup>rd</sup>) year from Issue Date and ending on Redemption Date which is at the end of the fifteen (15) years from Issue Date; Provided that, VMC shall use externally raised equity funds such as from rights offering.<sup>54</sup> x x x (Emphasis supplied)

It cannot be overemphasized, thus, that the option to convert may be exercised only during certain conversion periods, while the option to pay/redeem may be exercised at any time beginning at the end of the third year from issue date until its maturity. This cannot be said to go against the dictates of fairness and reason as what is of paramount consideration when the parties enter into the agreement is, precisely, VMC's rehabilitation, not the creditor's interest.

East West Bank further argues that the right to convert was purchased by the CN holders through substantial and valuable consideration and, as such, is a property right. East West Bank points out that the CN holders accepted the CNs, which merely offer a fixed rate of 8% per annum interest for 15 years, making it clearly inferior to the terms of an ordinary loan. According to East West Bank, CN holders merely rely upon the contingent benefit of the appreciation value of VMC's common stocks to compromise whatever they may lose for accepting the inferior terms of the CNs. Thus, East West Bank posits that preference is reasonably given to the CN holders to exercise the option to convert, considering the value of the stocks come conversion period. For East West Bank, the CN is not a mere evidence of indebtedness as they grant a property right akin to capital investment.

We do not agree.

It is important to stress that the CN was issued to give effect to the objectives of the ARP and DRA. The DRA provides:

**WHEREAS, to effect the terms of the restructuring of the Outstanding Loan Obligation as required under the [ARP], the parties hereto have agreed to execute a debt restructuring agreement, subject to the terms and conditions herein set forth;**<sup>55</sup> x x x (Emphasis supplied)

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<sup>53</sup> Id. at 210.

<sup>54</sup> Id. at 171.

<sup>55</sup> Id. at 162.

## Section 16

CONVERSION OF ₱2.4 BILLION WORTH OF OUTSTANDING  
LOAN OBLIGATION INTO CONVERTIBLE NOTES

16. **As a debt reduction measure and as part of capital infusion feature of the [ARP]**, VMC shall issue at least Two Billion Four Hundred Million Pesos (₱2.4 Billion) worth of long-term commercial papers or debt securities in the form of Convertible Notes, under the following terms and conditions:<sup>56</sup>

x x x x

Accordingly, contrary to East West Bank's contention, it became a "holder" of the CN not by purchase thereof as an investor but by virtue of its agreement to the terms of VMC's debt restructuring program pursuant to the rehabilitation process. Simply put, East West Bank, as a CN holder pursuant to a debt restructuring agreement to effect the rehabilitation of a distressed corporation, has a standing different from that of a plain investor. Having agreed to cooperate with the debt restructuring and reduction measures for VMC's rehabilitation, East West Bank cannot argue for better terms in its favor. In executing the DRA, East West Bank, together with the other creditors, made a commitment indicating its readiness and willingness to contribute fund, which in this case is VMC's outstanding loan obligation and the acceptance of CNs therefor, to guarantee the continued successful operation of VMC during its rehabilitation. Thus, as specifically provided in the CN, "[t]he terms references, interpretation and construction of the content of this Note shall be construed according to the terms of the DRA executed by and among the Issuer and its creditors" pursuant to the ARP.

East West Bank cannot also argue that its plan to convert the entire CN to common stocks is actually in furtherance of the objectives of rehabilitation considering that the conversion of debt to equity requires no cash out on the part of VMC. It should be pointed out, however, that merely 13% of the subject CN was sought to be converted. In that case, VMC will still be indebted to East West Bank for the remaining unconverted 87%. While East West Bank argues that it will eventually convert the CN to common stocks, the remaining unconverted portion continues to incur an 8% interest pursuant to the DRA and the CN. Clearly, contrary to East West Bank's argument, this cannot be beneficial to VMC's rehabilitation at all. On the other hand, allowing VMC to exercise its option to pay/redeem the CN is actually fully satisfying its obligation with East West Bank, which settles its loan obligation and prevents the loan to incur more interests.

Finally, East West Bank points out that VMC failed to comply with the requirements for a valid tender of payment and consignment. As such, the consignment of the check payments to the SEC-appointed Receiver did

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<sup>56</sup> Id. at 168.

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not constitute payment that would prevent East West Bank to exercise its option to convert the outstanding CN.

We do not agree.

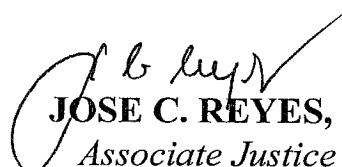
The matter of consignment is not at all relevant to the issue of whether or not VMC had effectively exercised its option to redeem the CN. The subject CN expressly states that “the Issuer may exercise its option to redeem [the CN] at any time prior to Final Redemption Date *by sending written notice thereof to the Holder*, which notice, when so sent, shall be deemed final and irrevocable.” Clearly, by mere written notice, VMC had already effectively exercised its option to redeem.

Neither will VMC’s payment in checks affect the efficacy or legal ramifications of the exercise of its option to pay/redeem the CN. True, jurisprudence holds that, in general, a check does not constitute legal tender, and that the creditor may validly refuse it as payment. Conversely, a check may still be a valid payment if the creditor does not refuse it as such.<sup>57</sup> In this case, VMC delivered written notices and checks several times to East West Bank to exercise its option to pay/redeem. Records, however, show no instance when East West Bank refused to accept the same for not being a legal tender. What East West Bank continuously refused to accept is VMC’s exercise of its option to pay/redeem the CN, which refusal, as we have established, is improper and unfounded. East West Bank cannot, therefore, be allowed to use such afterthought as an excuse to justify its unfounded refusal to allow VMC to pay/redeem the CN. Thus, we still hold that VMC had already effectively exercised its option to pay/redeem the CN which East West Bank cannot validly refuse.

In all, the SEC *En Banc*, as affirmed by the CA, unerringly denied East West Bank’s Motion to Compel VMC to convert the CN into shares. VMC had effectively exercised its option to pay/redeem the subject CN and East West Bank has no legal or contractual basis to refuse to accept VMC’s payment/redemption, much less, to insist on the conversion of the subject CN to VMC’s common shares.


**WHEREFORE**, premises considered, this petition is **DENIED**. The Decision dated January 19, 2016 and the Resolution dated May 16, 2016 of the Court of Appeals in CA-G.R. SP No. 141969 are hereby **AFFIRMED**.

**SO ORDERED.**

  
**JOSE C. REYES, JR.**  
*Associate Justice*

<sup>57</sup> *Far East Bank and Trust Company v. Diaz Realty, Inc.*, 416 Phil. 147, 158 (2001).

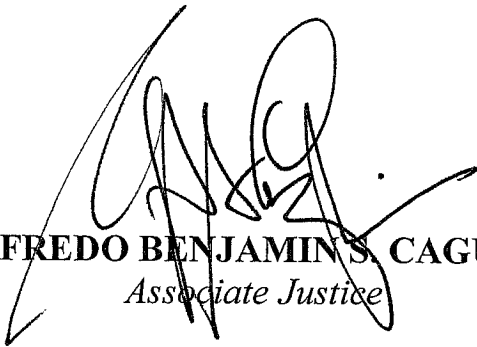
**WE CONCUR:**



**DIOSDADO M. PERALTA**

*Chief Justice*

*Chairperson*



**ALFREDO BENJAMINS CAGUIOA**

*Associate Justice*



**AMY C. LAZARO-JAVIER**

*Associate Justice*

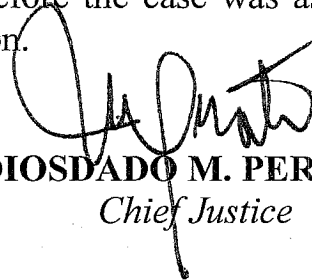


**HENRI JEAN PAUL B. INTING**

*Associate Justice*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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.



**DIOSDADO M. PERALTA**

*Chief Justice*