Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

SPOUSES DEO AGNER and MARICON AGNER, Petitioners,	**G.R. No. 182963**
	Present:
	VELASCO, JR., *J., Chairperson*, PERALTA,
- versus -	ABAD, MENDOZA, and LEONEN, *JJ.*
BPI FAMILY SAVINGS BANK, INC., Respondent.	**Promulgated**: JUN 03 2013

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DECISION

PERALTA, *J.*:

This is a petition for review on *certiorari* assailing the April 30, 2007 Decision[1] and May 19, 2008 Resolution[2] of the Court of Appeals in CA–G.R. CV No. 86021, which affirmed the August 11, 2005 Decision[3] of the Regional Trial Court, Branch 33, Manila City.

On February 15, 2001, petitioners spouses Deo Agner and Maricon Agner executed a Promissory Note with Chattel Mortgage in favor of Citimotors, Inc. The contract provides, among others, that: for receiving the amount of Php834,768.00, petitioners shall pay Php17,391.00 every 15th day of each succeeding month until fully paid; the loan is secured by a 2001 Mitsubishi Adventure Super Sport; and an interest of 6% per month shall be imposed for failure to pay each installment on or before the stated due date.[4]

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1 Penned by Associate Justice Vicente Q. Roxas, with Associate Justices Josefina Guevara-Salonga and Ramon R. Garcia concurring; *rollo*, pp. 49-54.

2 *Id.* at 56.

3 Records, pp. 149-151.

4 *Id.* at 28.

On the same day, Citimotors, Inc. assigned all its rights, title and interests in the Promissory Note with Chattel Mortgage to ABN AMRO Savings Bank, Inc. (ABN AMRO), which, on May 31, 2002, likewise assigned the same to respondent BPI Family Savings Bank, Inc.[5]

For failure to pay four successive installments from May 15, 2002 to August 15, 2002, respondent, through counsel, sent to petitioners a demand letter dated August 29, 2002, declaring the entire obligation as due and demandable and requiring to pay Php576,664.04, or surrender the mortgaged vehicle immediately upon receiving the letter.[6] As the demand was left unheeded, respondent filed on October 4, 2002 an action for Replevin and Damages before the Manila Regional Trial Court (RTC).

A writ of replevin was issued.[7] Despite this, the subject vehicle was not seized.[8] Trial on the merits ensued. On August 11, 2005, the Manila RTC Br. 33 ruled for the respondent and ordered petitioners to jointly and severally pay the amount of Php576,664.04 plus interest at the rate of 72% per annum from August 20, 2002 until fully paid, and the costs of suit.

Petitioners appealed the decision to the Court of Appeals (CA), but the CA affirmed the lower court's decision and, subsequently, denied the motion for reconsideration; hence, this petition.

Before this Court, petitioners argue that: (1) respondent has no cause of action, because the Deed of Assignment executed in its favor did not specifically mention ABN AMRO's account receivable from petitioners; (2) petitioners cannot be considered to have defaulted in payment for lack of competent proof that they received the demand letter; and (3) respondent's remedy of resorting to both actions of replevin and collection of sum of money is contrary to the provision of Article 1484[9] of the Civil Code and the *Elisco Tool Manufacturing Corporation v. Court of Appeals*[10] ruling.

The contentions are untenable.

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5 *Id*. at 29, 33-35.

6 *Id*. at 36.

7 *Id*. at 40.

8 TSN, November 23, 2004, p. 15.

9 ART. 1484. In a contract of sale of personal property, the price of which is payable in installments, the vendor may exercise any of the following remedies:

(1) Exact fulfillment of the obligation, should the vendee fail to pay;

(2) Cancel the sale, should the vendee's failure to pay cover two or more installments;

(3) Foreclose the chattel mortgage on the thing sold, if one has been constituted, should the vendee's failure to pay cover two or more installments. In this case, he shall have no further action against the purchaser to recover any unpaid balance of the price. Any agreement to the contrary shall be void.

10 G.R. No. 109966, May 31, 1999, 307 SCRA 731.

With respect to the first issue, it would be sufficient to state that the matter surrounding the Deed of Assignment had already been considered by the trial court and the CA. Likewise, it is an issue of fact that is not a proper subject of a petition for review under Rule 45. An issue is factual when the doubt or difference arises as to the truth or falsehood of alleged facts, or when the query invites calibration of the whole evidence, considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to each other and to the whole, and the probabilities of the situation.[11] Time and again, We stress that this Court is not a trier of facts and generally does not weigh anew evidence which lower courts have passed upon.

As to the second issue, records bear that both verbal and written demands were in fact made by respondent prior to the institution of the case against petitioners.[12] Even assuming, for argument's sake, that no demand letter was sent by respondent, there is really no need for it because petitioners legally waived the necessity of notice or demand in the Promissory Note with Chattel Mortgage, which they voluntarily and knowingly signed in favor of respondent's predecessor-in-interest. Said contract expressly stipulates:

> In case of my/our failure to pay when due and payable, any sum which I/We are obliged to pay under this note and/or any other obligation which I/We or any of us may now or in the future owe to the holder of this note or to any other party whether as principal or guarantor x x x then the entire sum outstanding under this note shall, **without prior notice or demand,** immediately become due and payable. (Emphasis and underscoring supplied)

A provision on waiver of notice or demand has been recognized as legal and valid in *Bank of the Philippine Islands v. Court of Appeals*,[13] wherein We held:

> The Civil Code in Article 1169 provides that one incurs in delay or is in default from the time the obligor demands the fulfillment of the obligation from the obligee. However, the law expressly provides that demand is not necessary under certain circumstances, and one of these circumstances is when the parties expressly waive demand. Hence, since the co-signors expressly waived demand in the promissory notes, demand was unnecessary for them to be in default.[14]

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11 *Royal Cargo Corporation v. DFS Sports Unlimited, Inc.*, G.R. No. 158621, December 10, 2008, 573 SCRA 414, 421.

12 TSN, November 23, 2004, p. 11.

13 523 Phil. 548 (2006).

14 *Id*. at 560.

Further, the Court even ruled in *Navarro v. Escobido*[15] that prior demand is not a condition precedent to an action for a writ of replevin, since there is nothing in Section 2, Rule 60 of the Rules of Court that requires the applicant to make a demand on the possessor of the property before an action for a writ of replevin could be filed.

Also, petitioners' representation that they have not received a demand letter is completely inconsequential as the mere act of sending it would suffice. Again, We look into the Promissory Note with Chattel Mortgage, which provides:

> All correspondence relative to this mortgage, including demand letters, summonses, subpoenas, or notifications of any judicial or extrajudicial action shall be sent to the MORTGAGOR at the address indicated on this promissory note with chattel mortgage or at the address that may hereafter be given in writing by the MORTGAGOR to the MORTGAGEE or his/its assignee. **The mere act of sending any correspondence by mail or by personal delivery to the said address shall be valid and effective notice to the mortgagor for all legal purposes and the fact that any communication is not actually received by the MORTGAGOR** or that it has been returned unclaimed to the MORTGAGEE or that no person was found at the address given, or that the address is fictitious or cannot be located **shall not excuse or relieve the MORTGAGOR from the effects of such notice.**[16] (Emphasis and underscoring supplied)

The Court cannot yield to petitioners' denial in receiving respondent's demand letter. To note, their postal address evidently remained unchanged from the time they executed the Promissory Note with Chattel Mortgage up to time the case was filed against them. Thus, the presumption that "a letter duly directed and mailed was received in the regular course of the mail"[17] stands in the absence of satisfactory proof to the contrary.

Petitioners cannot find succour from *Ting v. Court of Appeals*[18] simply because it pertained to violation of *Batas Pambansa Blg. 22* or the Bouncing Checks Law. As a higher quantum of proof – that is, proof beyond reasonable doubt – is required in view of the criminal nature of the case, We found insufficient the mere presentation of a copy of the demand letter allegedly sent through registered mail and its corresponding registry receipt as proof of receiving the notice of dishonor.

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15 G.R. No. 153788, November 27, 2009, 606 SCRA 1, 20-21.
16 Records, p. 31.
17 RULES OF COURT, Rule 131, Sec. 3 (v).
18 398 Phil. 481 (2000).

Perusing over the records, what is clear is that petitioners did not take advantage of all the opportunities to present their evidence in the proceedings before the courts below. They miserably failed to produce the original cash deposit slips proving payment of the monthly amortizations in question. Not even a photocopy of the alleged proof of payment was appended to their Answer or shown during the trial. Neither have they demonstrated any written requests to respondent to furnish them with official receipts or a statement of account. Worse, petitioners were not able to make a formal offer of evidence considering that they have not marked any documentary evidence during the presentation of Deo Agner's testimony.[19]

Jurisprudence abounds that, in civil cases, one who pleads payment has the burden of proving it; the burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment.[20] When the creditor is in possession of the document of credit, proof of non-payment is not needed for it is presumed.[21] Respondent's possession of the Promissory Note with Chattel Mortgage strongly buttresses its claim that the obligation has not been extinguished. As held in *Bank of the Philippine Islands v. Spouses Royeca*:[22]

> x x x The creditor's possession of the evidence of debt is proof that the debt has not been discharged by payment. A promissory note in the hands of the creditor is a proof of indebtedness rather than proof of payment. In an action for replevin by a mortgagee, it is *prima facie* evidence that the promissory note has not been paid. Likewise, an uncanceled mortgage in the possession of the mortgagee gives rise to the presumption that the mortgage debt is unpaid.[23]

Indeed, when the existence of a debt is fully established by the evidence contained in the record, the burden of proving that it has been extinguished by payment devolves upon the debtor who offers such defense to the claim of the creditor.[24] The debtor has the burden of showing with legal certainty that the obligation has been discharged by payment.[25]

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19 Records, p. 145.

20 *Royal Cargo Corporation v. DFS Sports Unlimited, Inc., supra* note 11, at 422; *Bank of the Philippine Islands v. Spouses Royeca*, G.R. No. 176664, July 21, 2008, 559 SCRA 207, 216; *Benguet Corporation v. Department of Environment and Natural Resources-Mines Adjudication Board*, G.R. No. 163101, February 13, 2008, 545 SCRA 196, 213; *Citibank, N.A. v. Sabeniano*, 535 Phil. 384, 419 (2006); *Keppel Bank Philippines, Inc. v. Adao*, 510 Phil. 158, 166-167 (2005); and *Far East Bank and Trust Company v. Querimit*, 424 Phil. 721, 730-731 (2002).

21 *Tai Tong Chuache & Co. v. Insurance Commission*, 242 Phil. 104, 112 (1988).

22 *Supra* note 20.

23 *Bank of the Philippine Islands v. Spouses Royeca*, *id.* at 219.

24 *Id.* at 216; *Citibank, N.A. v. Sabeniano*, *supra* note 20; and *Coronel v. Capati*, 498 Phil. 248, 255 (2005).

25 *Royal Cargo Corporation v. DFS Sports Unlimited, Inc.*, *supra* note 11, at 422; *Bank of the Philippine Islands v. Spouses Royeca*, *supra* note 20; *Benguet Corporation v. Department of Environment and Natural Resources-Mines Adjudication Board*, *supra* note 20; *Citibank, N.A. v. Sabeniano*, *supra* note

Lastly, there is no violation of Article 1484 of the Civil Code and the Court's decision in *Elisco Tool Manufacturing Corporation v. Court of Appeals*.[26]

In *Elisco*, petitioner's complaint contained the following prayer:

> WHEREFORE, plaintiffs [pray] that judgment be rendered as follows:
>
> *ON THE FIRST CAUSE OF ACTION*
>
> Ordering defendant Rolando Lantan to pay the plaintiff the sum of ₱39,054.86 plus legal interest from the date of demand until the whole obligation is fully paid;
>
> *ON THE SECOND CAUSE OF ACTION*
>
> To forthwith issue a Writ of Replevin ordering the seizure of the motor vehicle more particularly described in paragraph 3 of the Complaint, from defendant Rolando Lantan and/or defendants Rina Lantan, John Doe, Susan Doe and other person or persons in whose possession the said motor vehicle may be found, complete with accessories and equipment, and direct deliver thereof to plaintiff in accordance with law, and after due hearing to confirm said seizure and plaintiff's possession over the same;
>
> *ON THE ALTERNATIVE CAUSE OF ACTION*
>
> In the event that manual delivery of the subject motor vehicle cannot be effected for any reason, to render judgment in favor of plaintiff and against defendant Rolando Lantan ordering the latter to pay the sum of SIXTY THOUSAND PESOS (₱60,000.00) which is the estimated actual value of the above-described motor vehicle, plus the accrued monthly rentals thereof with interests at the rate of fourteen percent (14%) per annum until fully paid;
>
> *PRAYER COMMON TO ALL CAUSES OF ACTION*
>
> 1. Ordering the defendant Rolando Lantan to pay the plaintiff an amount equivalent to twenty-five percent (25%) of his outstanding obligation, for and as attorney's fees;
> 2. Ordering defendants to pay the cost or expenses of collection, repossession, bonding fees and other incidental expenses to be proved during the trial; and
> 3. Ordering defendants to pay the costs of suit.
>
> Plaintiff also prays for such further reliefs as this Honorable Court may deem just and equitable under the premises.[27]

20; *Coronel v. Capati*, *supra* note 24, at 256; and *Far East Bank and Trust Company v. Querimit*, *supra* note 20.

[26] *Supra* note 10.

[27] *Elisco Tool Manufacturing Corporation v. Court of Appeals, id.* at 735-736.

The Court therein ruled:

> The remedies provided for in Art. 1484 are alternative, not cumulative. The exercise of one bars the exercise of the others. This limitation applies to contracts purporting to be leases of personal property with option to buy by virtue of Art. 1485. The condition that the lessor has deprived the lessee of possession or enjoyment of the thing for the purpose of applying Art. 1485 was fulfilled in this case by the filing by petitioner of the complaint for replevin to recover possession of movable property. By virtue of the writ of seizure issued by the trial court, the deputy sheriff seized the vehicle on August 6, 1986 and thereby deprived private respondents of its use. The car was not returned to private respondent until April 16, 1989, after two (2) years and eight (8) months, upon issuance by the Court of Appeals of a writ of execution.
>
> Petitioner prayed that private respondents be made to pay the sum of ₱39,054.86, the amount that they were supposed to pay as of May 1986, plus interest at the legal rate. At the same time, it prayed for the issuance of a writ of replevin or the delivery to it of the motor vehicle "complete with accessories and equipment." In the event the car could not be delivered to petitioner, it was prayed that private respondent Rolando Lantan be made to pay petitioner the amount of ₱60,000.00, the "estimated actual value" of the car, "plus accrued monthly rentals thereof with interests at the rate of fourteen percent (14%) per annum until fully paid." This prayer of course cannot be granted, even assuming that private respondents have defaulted in the payment of their obligation. This led the trial court to say that petitioner wanted to eat its cake and have it too.[28]

In contrast, respondent in this case prayed:

> (a) Before trial, and upon filing and approval of the bond, to [forthwith] issue a Writ of Replevin ordering the seizure of the motor vehicle above-described, complete with all its accessories and equipments, together with the Registration Certificate thereof, and direct the delivery thereof to plaintiff in accordance with law and after due hearing, to confirm the said seizure;
>
> (b) Or, in the event that manual delivery of the said motor vehicle cannot be effected to render judgment in favor of plaintiff and against defendant(s) ordering them to pay to plaintiff, jointly and severally, the sum of ₱576,664.04 plus interest and/or late payment charges thereon at the rate of 72% per annum from August 20, 2002 until fully paid;
>
> (c) In either case, to order defendant(s) to pay jointly and severally:
>
> (1) the sum of ₱297,857.54 as attorney's fees, liquidated damages, bonding fees and other expenses incurred in the seizure of the said motor vehicle; and
>
> (2) the costs of suit.

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[28] *Id.* at 743-744.

> Plaintiff further prays for such other relief as this Honorable Court may deem just and equitable in the premises.[29]

Compared with *Elisco*, the vehicle subject matter of this case was never recovered and delivered to respondent despite the issuance of a writ of replevin. As there was no seizure that transpired, it cannot be said that petitioners were deprived of the use and enjoyment of the mortgaged vehicle or that respondent pursued, commenced or concluded its actual foreclosure. The trial court, therefore, rightfully granted the alternative prayer for sum of money, which is equivalent to the remedy of "[e]xact[ing] fulfillment of the obligation." Certainly, there is no double recovery or unjust enrichment[30] to speak of.

All the foregoing notwithstanding, We are of the opinion that the interest of 6% per month should be equitably reduced to one percent (1%) per month or twelve percent (12%) per annum, to be reckoned from May 16, 2002 until full payment and with the remaining outstanding balance of their car loan as of May 15, 2002 as the base amount.

Settled is the principle which this Court has affirmed in a number of cases that stipulated interest rates of three percent (3%) per month and higher are excessive, iniquitous, unconscionable, and exorbitant.[31] While Central Bank Circular No. 905-82, which took effect on January 1, 1983, effectively removed the ceiling on interest rates for both secured and unsecured loans, regardless of maturity, nothing in the said circular could possibly be read as granting *carte blanche* authority to lenders to raise interest rates to levels which would either enslave their borrowers or lead to a hemorrhaging of their assets.[32] Since the stipulation on the interest rate is void for being contrary to morals, if not against the law, it is as if there was no express contract on said interest rate; thus, the interest rate may be reduced as reason and equity demand.[33]

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[29] Records, pp. 24-25.

[30] In *Cabrera v. Ameco Contractors Rental, Inc.* (G.R. No. 201560, June 20, 2012 Second Division Minute Resolution), We held:

> The principle of unjust enrichment is provided under Article 22 of the Civil Code which provides:
>
> > Article 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.
>
> There is unjust enrichment "when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience." The principle of unjust enrichment requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at the expense of another.

[31] *Arthur F. Menchavez v. Marlyn M. Bermudez*, G.R. No. 185368, October 11, 2012.

[32] *Macalinao v. Bank of the Philippine Islands*, G.R. No. 175490, September 17, 2009, 600 SCRA 67, 77, citing *Chua v. Timan*, G.R. No. 170452, August 13, 2008, 562 SCRA 146, 149-150.

[33] *Arthur F. Menchavez v. Marlyn M. Bermudez*, G.R. No. 185368, October 11, 2012, citing *Macalinao v. Bank of the Philippine Islands*, *supra*, at 77, and *Chua v. Timan*, *supra*, *at* 150.

WHEREFORE, the petition is **DENIED** and the Court **AFFIRMS WITH MODIFICATION** the April 30, 2007 Decision and May 19, 2008 Resolution of the Court of Appeals in CA-G.R. CV No. 86021. Petitioners spouses Deo Agner and Maricon Agner are **ORDERED** to pay, jointly and severally, respondent BPI Family Savings Bank, Inc. (1) the remaining outstanding balance of their auto loan obligation as of May 15, 2002 with interest at one percent (1%) per month from May 16, 2002 until fully paid; and (2) costs of suit.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

ROBERTO A. ABAD
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION

I attest 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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

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.

MARIA LOURDES P. A. SERENO
Chief Justice