Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

LEONARDO BOGNOT, Petitioner,	**G.R. No. 180144**
	Present:
- versus -	CARPIO, *J., Chairperson,* BRION, DEL CASTILLO, MENDOZA, and LEONEN, *JJ.*
RRI LENDING CORPORATION, represented by its General Manager, DARIO J. BERNARDEZ, Respondent.	Promulgated: SEP 24 2014

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DECISION

BRION, *J.*:

Before the Court is the petition for review on *certiorari*[1] filed by Leonardo Bognot (*petitioner*) assailing the March 28, 2007 decision[2] and the October 15, 2007 resolution[3] of the Court of Appeals (*CA*) in CA-G.R. CV No. 66915.

Background Facts

RRI Lending Corporation (*respondent*) is an entity engaged in the business of lending money to its borrowers within Metro Manila. It is duly represented by its General Manager, Mr. Dario J. Bernardez (*Bernardez*).

Sometime in September 1996, the petitioner and his younger brother, Rolando A. Bognot (*collectively referred to as the "Bognot siblings"*),

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1 Under Rule 45 of the Rules of Court; *rollo*, pp. 8-61.

2 *Rollo,* pp. 270-283; penned by Associate Justice Ramon R. Garcia, and concurred in by Associate Justice Josefina Guevara-Salonga and Associate Justice Vicente Q. Roxas.

3 Id. at 312-313.

applied for and obtained a loan of Five Hundred Thousand Pesos (₱500,000.00) from the respondent, payable on November 30, 1996.[4] The loan was evidenced by a promissory note and was secured by a post dated check[5] dated November 30, 1996.

Evidence on record shows that the petitioner renewed the loan several times on a monthly basis. He paid a renewal fee of ₱54,600.00 for each renewal, issued a new post-dated check as security, and executed and/or renewed the promissory note previously issued. The respondent on the other hand, cancelled and returned to the petitioner the post-dated checks issued prior to their renewal.

Sometime in March 1997, the petitioner applied for another loan renewal. He again executed as principal and signed Promissory Note No. 97-035[6] payable on April 1, 1997; his co-maker was again Rolando. As security for the loan, the petitioner also issued BPI Check No. 0595236,[7] post dated to April 1, 1997.[8]

Subsequently, the loan was again renewed on a monthly basis (until June 30, 1997), as shown by the Official Receipt No. 797[9] dated May 5, 1997, and the Disclosure Statement dated May 30, 1997 duly signed by Bernardez. The petitioner purportedly paid the renewal fees and issued a post-dated check dated June 30, 1997 as security. As had been done in the past, the respondent superimposed the date "*June 30, 1997*" on the upper right portion of Promissory Note No. 97-035 to make it appear that it would mature on the said date.

Several days before the loan's maturity, Rolando's wife, Julieta Bognot (*Mrs. Bognot*), went to the respondent's office and applied for another renewal of the loan. She issued in favor of the respondent Promissory Note No. 97-051, and International Bank Exchange (*IBE*) Check No. 00012522, dated July 30, 1997, in the amount of ₱54,600.00 as renewal fee.

On the excuse that she needs to bring home the loan documents for the Bognot siblings' signatures and replacement, Mrs. Bognot asked the respondent's clerk to release to her the promissory note, the disclosure statement, and the check dated July 30, 1997. Mrs. Bognot, however, never returned these documents nor issued a new post-dated check. Consequently, the respondent sent the petitioner follow-up letters demanding payment of the loan, plus interest and penalty charges. These demands went unheeded.

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4 Id. at 271.
5 Id. at 97.
6 Id. at 67-68.
7 Id. at 97.
8 Id. at 272.
9 Id. at 83.

On November 27, 1997, the respondent, through Bernardez, filed a complaint for sum of money before the Regional Trial Court (*RTC*) against the Bognot siblings. The respondent mainly alleged that the loan renewal payable on June 30, 1997 which the Bognot siblings applied for remained unpaid; that before June 30, 1997, Mrs. Bognot applied for another loan extension and issued IBE Check No. 00012522 as payment for the renewal fee; that Mrs. Bognot convinced the respondent's clerk to release to her the promissory note and the other loan documents; that since Mrs. Bognot never issued any replacement check, no loan extension took place and the loan, originally payable on June 30, 1997, became due on this date; and despite repeated demands, the Bognot siblings failed to pay their joint and solidary obligation.

Summons were served on the Bognot siblings. However, only the petitioner filed his answer.

In his Answer,[10] the petitioner claimed that the complaint states no cause of action because the respondent's claim had been paid, waived, abandoned or otherwise extinguished. He denied being a party to any loan application and/or renewal in May 1997. He also denied having issued the BPI check post-dated to June 30, 1997, as well as the promissory note dated June 30, 1997, claiming that this note had been tampered. He claimed that the one (1) month loan contracted by Rolando and his wife in November 1996 which was lastly renewed in March 1997 had already been fully paid and extinguished in April 1997.[11]

Trial on the merits thereafter ensued.

The Regional Trial Court Ruling

In a decision[12] dated January 17, 2000, the RTC ruled in the respondent's favor and ordered the Bognot siblings to pay the amount of the loan, plus interest and penalty charges. It considered the wordings of the promissory note and found that the loan they contracted was joint and solidary. It also noted that the petitioner signed the promissory note as a principal (and not merely as a guarantor), while Rolando was the co-maker. It brushed the petitioner's defense of full payment aside, ruling that the respondent had successfully proven, by preponderance of evidence, the non-payment of the loan. The trial court said:

> Records likewise reveal that while he claims that the obligation had been fully paid in his Answer, he did not, in order to protect his right filed (*sic*) a cross-claim against his co-defendant Rolando Bognot despite the fact that the latter did not file any responsive pleading.

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10 Id. at 70-74.
11 Id. at 70.
12 Id. at 156-165.

> In fine, defendants are liable solidarily to plaintiff and must pay the loan of ₱500,000.00 plus 5% interest monthly as well as 10% monthly penalty charges from the filing of the complaint on December 3, 1997 until fully paid. As plaintiff was constrained to engage the services of counsel in order to protect his right, defendants are directed to pay the former jointly and severally the amount of ₱50,000.00 as and by way of attorney's fee.

The petitioner appealed the decision to the Court of Appeals.

The Court of Appeals Ruling

In its decision dated March 28, 2007, the CA affirmed the RTC's findings. It found the petitioner's defense of payment untenable and unsupported by clear and convincing evidence. It observed that the petitioner did not present any evidence showing that the check dated June 30, 1997 had, in fact, been encashed by the respondent and the proceeds applied to the loan, or any official receipt evidencing the payment of the loan. It further stated that the only document relied upon by the petitioner to substantiate his defense was the April 1, 1997 check he issued which was cancelled and returned to him by the respondent.

The CA, however, noted the respondent's established policy of cancelling and returning the post-dated checks previously issued, as well as the subsequent loan renewals applied for by the petitioner, as manifested by the official receipts under his name. The CA thus ruled that the petitioner failed to discharge the burden of proving payment.

The petitioner moved for the reconsideration of the decision, but the CA denied his motion in its resolution of October 15, 2007, hence, the present recourse to us pursuant to Rule 45 of the Rules of Court.

The Petition

The petitioner submits that the CA erred in holding him solidarily liable with Rolando and his wife. He claimed that based on the legal presumption provided by Article 1271 of the Civil Code,[13] his obligation had been discharged by virtue of his possession of the post-dated check (stamped "CANCELLED") that evidenced his indebtedness. He argued that it was Mrs. Bognot who subsequently assumed the obligation by renewing the loan, paying the fees and charges, and issuing a check. Thus, there is an entirely new obligation whose payment is her sole responsibility.

The petitioner also argued that as a result of the alteration of the promissory note without his consent (*e.g., the superimposition of the date "June 30, 1997" on the upper right portion of Promissory Note No. 97-035 to make it appear that it would mature on this date*), the respondent can no

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[13] Art. 1271. The delivery of a private document evidencing a credit, made voluntarily by the creditor to the debtor, implies the renunciation of the action which the former had against the latter.

longer collect on the tampered note, let alone, hold him solidarily liable with Rolando for the payment of the loan. He maintained that even without the proof of payment, the material alteration of the promissory note is sufficient to extinguish his liability.

Lastly, he claimed that he had been released from his indebtedness by novation when Mrs. Bognot renewed the loan and assumed the indebtedness.

The Case for the Respondents

The respondent submits that the issues the petitioner raised hinge on the appreciation of the adduced evidence and of the factual lower courts' findings that, as a rule, are not reviewable by this Court.

The Issues

The case presents to us the following issues:

1. Whether the CA committed a reversible error in holding the petitioner solidarily liable with Rolando;

2. Whether the petitioner is relieved from liability by reason of the material alteration in the promissory note; and

3. Whether the parties' obligation was extinguished by: (i) payment; and (ii) novation by substitution of debtors.

Our Ruling

We find the petition partly meritorious.

As a rule, the Court's jurisdiction in a Rule 45 petition is limited to the review of pure questions of law.[14] Appreciation of evidence and inquiry on the correctness of the appellate court's factual findings are not the functions of this Court; we are not a trier of facts.[15]

A question of law exists when the doubt or dispute relates to the application of the law on given facts. On the other hand, a question of fact exists when the doubt or dispute relates to the truth or falsity of the parties' factual allegations.[16]

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[14] Section 1, Rule 45 of the Rules of Court provides: Section 1. Filing of petition with Supreme Court. — A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth. [Italics supplied]

[15] *First Metro Investment Corporation v. Este Del Sol Mountain Reserve, Inc., et. al*, 420 Phil. 902, 914 (2001).

[16] *Land Bank of the Philippines v. Yatco Agricultural Enterprises*, G.R. No.172551, January 15, 2014.

As the respondent correctly pointed out, the petitioner's allegations are **factual issues** that are not proper for the petition he filed. In the absence of compelling reasons, the Court cannot re-examine, review or re-evaluate the evidence and the lower courts' factual conclusions. This is especially true when the CA affirmed the lower court's findings, as in this case. Since the CA's findings of facts affirmed those of the trial court, they are binding on this Court, rendering any further factual review unnecessary.

If only to lay the issues raised - both factual and legal – to rest, we shall proceed to discuss their merits and demerits.

No Evidence Was Presented to Establish the Fact of Payment

Jurisprudence tells us that one who pleads payment has the burden of proving it;[17] the burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment.[18] Indeed, once the existence of an indebtedness is duly established by evidence, the burden of showing with legal certainty that the obligation has been discharged by payment rests on the debtor.[19]

In the present case, the petitioner failed to satisfactorily prove that his obligation had already been extinguished by payment. As the CA correctly noted, the petitioner failed to present any evidence that the respondent had in fact encashed his check and applied the proceeds to the payment of the loan. Neither did he present official receipts evidencing payment, nor any proof that the check had been dishonored.

We note that the petitioner merely relied on the respondent's cancellation and return to him of the check dated April 1, 1997. The evidence shows that this check was issued to secure the indebtedness. The acts imputed on the respondent, standing alone, do not constitute sufficient evidence of payment.

Article 1249, paragraph 2 of the Civil Code provides:

x x x x

> The delivery of promissory notes payable to order, or bills of exchange or other mercantile documents shall **produce the effect of payment only when they have been cashed**, or when through the fault of the creditor they have been impaired. (Emphasis supplied)

Also, we held in *Bank of the Philippine Islands v. Spouses Royeca*:[20]

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17 *Vitarich Corporation v. Chona Losin*, G.R. No. 181560, November 15, 2010, 634 SCRA 671, 680-681.

18 *Bank of the Philippine Islands v. Spouses Royeca*, G.R. No. 176664, 581 Phil. 188, 195 (2008).

19 *Spouses Deo Agner and Maricon Agner v. BPI Family Savings Bank, Inc.*, G.R. No. 182963, June 3, 2013, 697 SCRA 89, 97.

20 581 Phil. 188, 196 (2008).

> Settled is the rule that payment must be made in legal tender. A check is not legal tender and, therefore, cannot constitute a valid tender of payment. Since a negotiable instrument is only a substitute for money and not money, the delivery of such an instrument does not, by itself, operate as payment. Mere delivery of checks does not discharge the obligation under a judgment. **The obligation is not extinguished and remains suspended until the payment by commercial document is actually realized.** (Emphasis supplied)

Although Article 1271 of the Civil Code provides for a legal presumption of renunciation of action (in cases where a private document evidencing a credit was voluntarily returned by the creditor to the debtor), this presumption is merely *prima facie* and is not conclusive; the presumption loses efficacy when faced with evidence to the contrary.

Moreover, the cited provision merely raises a presumption, **not of payment, but of the renunciation of the credit** where more convincing evidence would be required than what normally would be called for to prove payment.[21] Thus, reliance by the petitioner on the legal presumption to prove payment is misplaced.

To reiterate, no cash payment was proven by the petitioner. The cancellation and return of the check dated April 1, 1997, simply established his renewal of the loan – not the fact of payment. Furthermore, it has been established during trial, through repeated acts, that the respondent cancelled and surrendered the post-dated check previously issued whenever the loan is renewed. We trace what would amount to a practice under the facts of this case, to the following testimonial exchanges:

> Civil Case No. 97-0572
>
> TSN December 14, 1998, Page 13.
>
> Atty. Almeda:
>
> Q: In the case of the renewal of the loan you admitted that a renewal fee is charged to the debtor which he or she must pay before a renewal is allowed. I show you Exhibit "3" official receipt of plaintiff dated July 3, 1997, would this be your official receipt which you issued to your client which they make renewal of the loan?
>
> A: Yes, sir.
>
> xxx xxx xxx
>
> **Q: And naturally when a loan has been renewed, the old one which is replaced by the renewal has already been cancelled, is that correct?**
>
> **A: Yes, sir.**

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[21] *Trans-Pacific Industrial Supplies, Inc. v. Court of Appeals*, G.R. No. 109172, August 19, 1994, 235 SCRA 494, 502.

Q: **It is also true to say that all promissory notes and all postdated checks covered by the old loan which have been the subject of the renewal are deemed cancelled and replaced is that correct?**

A: **Yes, sir. xxx**[22]

Civil Case No. 97-0572
TSN November 27, 1998, Page 27.

Q: **What happened to the check that Mr. Bognot issued?**

Court: There are two Bognots. Who in particular?

Q: Leonardo Bognot, Your Honor.

A: **Every month, they were renewed, he issued a new check, sir.**

Q: Do you have a copy of the checks?

A: **We returned the check upon renewing the loan.**[23]

In light of these exchanges, we find that the petitioner failed to discharge his burden of proving payment.

The Alteration of the Promissory Note Did Not Relieve the Petitioner From Liability

We now come to the issue of material alteration. The petitioner raised as defense the alleged material alteration of Promissory Note No. 97-035 as basis to claim release from his loan. He alleged that the respondent's superimposition of the due date "*June 30, 1997*" on the promissory note without his consent effectively relieved him of liability.

We find this defense untenable.

Although the respondent did not dispute the fact of alteration, he nevertheless denied that the alteration was done without the petitioner's consent. The parties' Pre-Trial Order dated November 3, 1998[24] states that:

> xxx There being no possibility of a possible compromise agreement, stipulations, admissions, and denials were made, to wit:
>
> FOR DEFENDANT LEONARDO BOGNOT
>
> 13. That the promissory note subject of this case marked as Annex "A" of the complaint was originally dated April 1, 1997 with a

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22 *Rollo*, pp. 251.
23 Id. at 240
24 Id. at 86-91.

> superimposed rubber stamp mark "June 30, 1997" **to which the plaintiff admitted the superimposition.**
>
> 14. The superimposition was done without the knowledge, consent or prior consultation with Leonardo Bognot **which was denied by plaintiff**."[25] (Emphasis supplied)

Significantly, the respondent also admitted in the Pre-Trial Order that part of its company practice is to rubber stamp, or make a superimposition through a rubber stamp, the old promissory note which has been renewed to make it appear that there is a new loan obligation. The petitioner did not rebut this statement. To our mind, the failure to rebut is tantamount to an admission of the respondent's allegations:

> "22. That it is the practice of plaintiff to just rubber stamp or make superimposition through a rubber stamp on old promissory note which has been renewed to make it appear that there is a new loan obligation **to which the plaintiff admitted**." (Emphasis Supplied).[26]

Even assuming that the note had indeed been tampered without the petitioner's consent, the latter cannot totally avoid payment of his obligation to the respondent based on the contract of loan.

Based on the records, the Bognot Siblings had applied for and were granted a loan of ₱500,000.00 by the respondent. The loan was evidenced by a promissory note and secured by a post-dated check[27] dated November 30, 1996. In fact, the petitioner himself admitted his loan application was evidenced by the Promissory Note dated April 1, 1997.[28] This loan was renewed several times by the petitioner, after paying the renewal fees, as shown by the Official Receipt Nos. 797[29] and 587[30] dated May 5 and July 3, 1997, respectively. These official receipts were issued in the name of the petitioner. Although the petitioner had insisted that the loan had been extinguished, no other evidence was presented to prove payment other than the cancelled and returned post-dated check.

Under this evidentiary situation, the petitioner cannot validly deny his obligation and liability to the respondent solely on the ground that the Promissory Note in question was tampered. Notably, the existence of the obligation, as well as its subsequent renewals, have been duly established by: *first*, the petitioner's application for the loan; *second*, his admission that the loan had been obtained from the respondent; *third*, the post-dated checks issued by the petitioner to secure the loan; *fourth*, the testimony of Mr. Bernardez on the grant, renewal and non-payment of the loan; *fifth*, proof of non-payment of the loan; *sixth*, the loan renewals; and *seventh*, the approval and receipt of the loan renewals.

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25 Id. at 86-91.
26 Id. at 89.
27 Id. at 97.
28 Id. at 86-91.
29 Id. at 83.
30 Id.

In *Guinsatao v. Court of Appeals*,[31] this Court pointed out that while a promissory note is evidence of an indebtedness, it is not the only evidence, for the existence of the obligation can be proven by other documentary evidence such as a written memorandum signed by the parties.

In *Pacheco v. Court of Appeals*,[32] this Court likewise expressly recognized that a check constitutes an evidence of indebtedness and is a veritable proof of an obligation. It can be used in lieu of and for the same purpose as a promissory note and can therefore be presented to establish the existence of indebtedness.[33]

In the present petition, we find that the totality of the evidence on record sufficiently established the existence of the petitioner's indebtedness (and liability) based on the contract of loan. Even with the tampered promissory note, we hold that the petitioner can still be held liable for the unpaid loan.

The Petitioner's Belated Claim of Novation by Substitution May no Longer be Entertained

It has not escaped the Court's attention that the petitioner raised the argument that the obligation had been extinguished by novation. The petitioner never raised this issue before the lower courts.

It is a settled principle of law that no issue may be raised on appeal unless it has been brought before the lower tribunal for its consideration.[34] Matters neither alleged in the pleadings nor raised during the proceedings below cannot be ventilated for the first time on appeal before the Supreme Court.[35]

In any event, we find no merit in the defense of novation as we discuss at length below.

Novation cannot be presumed and must be clearly and unequivocably proven.

Novation is a mode of extinguishing an obligation by changing its objects or principal obligations, by substituting a new debtor in place of the old one, or by subrogating a third person to the rights of the creditor.[36]

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31 *Guinsatao v. CA*, G.R. No. 95083, February 9, 1993, 218 SCRA 708.
32 377 Phil. 627 (1999).
33 *Rollo*, p. 637.
34 *Sesbreno v. Central Board of Assessment Appeals*, G.R. No. 106588, 337 Phil. 89, 99 (1997).
35 *People of the Philippines v. Echegaray*, G.R. No. 117472, 335 Phil. 343, 349 (1997).
36 *Garcia v. Llamas*, 462 Phil. 779, 788 (2003); *Agro Conglomerates, Inc. v. CA*, 401 Phil. 644, 655 (2000).

Article 1293 of the Civil Code defines novation as follows:

> "Art. 1293. Novation which consists in substituting a new debtor in the place of the original one, may be made even without the knowledge or against the will of the latter, but not without the consent of the creditor. Payment by the new debtor gives him rights mentioned in Articles 1236 and 1237."

To give novation legal effect, the original debtor must be expressly released from the obligation, and the new debtor must assume the original debtor's place in the contractual relationship. Depending on who took the initiative, novation by substitution of debtor has two forms – **substitution by *expromision*** and **substitution by *delegacion***. The difference between these two was explained in *Garcia v. Llamas*:[37]

> "In expromision, the initiative for the change does not come from -- and may even be made without the knowledge of -- the debtor, since it consists of a third person's assumption of the obligation. As such, it logically requires the consent of the third person and the creditor. In delegacion, the debtor offers, and the creditor accepts, a third person who consents to the substitution and assumes the obligation; thus, the consent of these three persons are necessary."

In both cases, the original debtor must be released from the obligation; otherwise, there can be no valid novation.[38] Furthermore, novation by substitution of debtor must always be made with the consent of the creditor.[39]

The petitioner contends that novation took place through a substitution of debtors when Mrs. Bognot renewed the loan and assumed the debt. He alleged that Mrs. Bognot assumed the obligation by paying the renewal fees and charges, and by executing a new promissory note. He further claimed that she issued her own check[40] to cover the renewal fees, which fact, according to the petitioner, was done with the respondent's consent.

Contrary to the petitioner's contention, Mrs. Bognot did not substitute the petitioner as debtor. She merely attempted to renew the original loan by executing a new promissory note[41] and check. The purported one month renewal of the loan, however, did not push through, as Mrs. Bognot did not return the documents or issue a new post dated check. Since the loan was not renewed for another month, the original due date, June 30, 1997, continued to stand.

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37 Id.

38 *SC Megaworld Construction and Development Corporation v. Parada*, G.R. No. 183804, September 11, 2013, 705 SCRA 584, 599-600.

39 *Testate Estate of Mota v. Serra*, 47 Phil. 464 (1925).

40 International Bank Exchange (*IBE*) Check No. 00012522 dated July 30, 1997.

41 Promissory Note No. 97-051.

More importantly, the respondent never agreed to release the petitioner from his obligation. That the respondent initially allowed Mrs. Bognot to bring home the promissory note, disclosure statement and the petitioner's previous check dated June 30, 1997, does not *ipso facto* result in novation. Neither will this acquiescence constitute an implied acceptance of the substitution of the debtor.

In order to give novation legal effect, the creditor should consent to the substitution of a new debtor. **Novation must be clearly and unequivocally shown, and cannot be presumed.**

Since the petitioner failed to show that the respondent assented to the substitution, no valid novation took place with the effect of releasing the petitioner from his obligation to the respondent.

Moreover, in the absence of showing that Mrs. Bognot and the respondent had agreed to release the petitioner, the respondent can still enforce the payment of the obligation against the original debtor. Mere acquiescence to the renewal of the loan, when there is clearly no agreement to release the petitioner from his responsibility, does not constitute novation.

The Nature of the Petitioner's Liability

On the nature of the petitioner's liability, we rule however, that the CA erred in holding the petitioner solidarily liable with Rolando.

A solidary obligation is one in which each of the debtors is liable for the entire obligation, and each of the creditors is entitled to demand the satisfaction of the whole obligation from any or all of the debtors.[42] There is solidary liability when the obligation expressly so states, when the law so provides, or *when the nature of the obligation so requires*.[43] Thus, when the obligor undertakes to be "jointly and severally" liable, the obligation is solidary,

In this case, both the RTC and the CA found the petitioner solidarily liable with Rolando based on Promissory Note No. 97-035 dated June 30, 1997. Under the promissory note, the Bognot Siblings defined the parameters of their obligation as follows:

> "FOR VALUE RECEIVED, **I/WE, jointly and severally,** promise to pay to READY RESOURCES INVESTORS RRI LENDING CORPO. or Order, its office at Paranaque, M.M. the principal sum of Five Hundred Thousand PESOS (₱500,000.00), Philippine Currency, with interest thereon at the rate of Five percent (5%) per month/annum, payable in One Installment (01) equal daily/weekly/semi-monthly/monthly of PESOS

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42 *PH Credit Corporation v. Court of Appeals*, G.R. No. 109648, 421 Phil. 821, 832 (2001).

43 *Querubin L. Alba and Rizalinda D. de Guzman v. Robert L. Yupangco*, G.R. No. 188233, June 29, 2010, 622 SCRA 503, 507.

> Five Hundred Thousand Pesos (₱500,000.00), first installment to become due on June 30, 1997. xxx"[44] (Emphasis Ours).

Although the phrase "jointly and severally" in the promissory note clearly and unmistakably provided for the solidary liability of the parties, we note and stress that **the promissory note is merely a *photocopy* of the original**, which was never produced.

Under the best evidence rule, when the subject of inquiry is the contents of a document, no evidence is admissible other than the original document itself except in the instances mentioned in Section 3, Rule 130 of the Revised Rules of Court.[45]

The records show that the respondent had the custody of the original promissory note dated April 1, 1997, with a superimposed rubber stamp mark "June 30, 1997", and that it had been given every opportunity to present it. The respondent even admitted during pre-trial that it could not present the original promissory note because it is in the custody of its cashier who is stranded in Bicol.[46] Since the respondent never produced the original of the promissory note, much less offered to produce it, the photocopy of the promissory note cannot be admitted as evidence.

Other than the promissory note in question, the respondent has not presented any other evidence to support a finding of solidary liability. As we earlier noted, both lower courts completely relied on the note when they found the Bognot siblings solidarily liable.

The well-entrenched rule is that solidary obligation cannot be inferred lightly. It must be positively and clearly expressed and cannot be presumed.[47]

In view of the inadmissibility of the promissory note, and in the absence of evidence showing that the petitioner had bound himself solidarily with Rolando for the payment of the loan, we cannot but conclude that the obligation to pay is only joint.[48]

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44 *Rollo*, pp. 67-68.

45 Section 3, Rule 130 of the Revised Rules of Court provides: 1. Best Evidence Rule, Section 3**.** *Original document must be produced*; *exceptions*. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:
(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and
(d) When the original is a public record in the custody of a public officer or is recorded in a public office.

46 *Rollo*, pp. 88.

47 *Smith, Bell & Co., Inc. v. CA*, 335 Phil. 194, 203 (1997).

48 *Escaño v. Ortigas, Jr.*, G.R. No. 151953, June 29, 2007, 526 SCRA 26, 45.

The 5% Monthly Interest Stipulated in the Promissory Note is Unconscionable and Should be Equitably Reduced

Finally, on the issue of interest, while we agree with the CA that the petitioner is liable to the respondent for the unpaid loan, we find the imposition of the 5% monthly interest to be excessive, iniquitous, unconscionable and exorbitant, and hence, contrary to morals and jurisprudence.

Although parties to a loan agreement have wide latitude to stipulate on the applicable interest rate under Central Bank Circular No. 905 s. 1982 (which suspended the Usury Law ceiling on interest effective January 1, 1983), we stress that unconscionable interest rates may still be declared illegal.[49]

In several cases, we have ruled that stipulations authorizing iniquitous or unconscionable interests are contrary to morals and are illegal. In *Medel v. Court of Appeals*,[50] we annulled a stipulated 5.5% per month or 66% per annum interest on a ₱500,000.00 loan, and a 6% per month or 72% per annum interest on a ₱60,000.00 loan, respectively, for being excessive, iniquitous, unconscionable and exorbitant.

We reiterated this ruling in *Chua v. Timan*,[51] where we held that the stipulated interest rates of 3% per month and higher are excessive, iniquitous, unconscionable and exorbitant, and must therefore be reduced to 12% per annum.

Applying these cited rulings, we now accordingly hold that the stipulated interest rate of 5% per month, (or 60% per annum) in the promissory note is excessive, unconscionable, contrary to morals and is thus illegal. It is void ab initio for violating Article 1306[52] of the Civil Code. We accordingly find it equitable to reduce the interest rate from 5% per month to 1% per month or 12% per annum in line with the prevailing jurisprudence.

WHEREFORE, premises considered, the Decision dated March 28, 2007 of the Court of Appeals in CA-G.R. CV No. 66915 is hereby **AFFIRMED with MODIFICATION**, as follows:

1. The petitioner Leonardo A. Bognot and his brother, Rolando A. Bognot are **JOINTLY LIABLE** to pay the sum of ₱500,000.00

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49 *Menchavez v. Bermudez*, G.R. No. 185368, October 11, 2012, 684 SCRA 168, 178; *Cuaton v. Salud*, G.R. No. 158382, January 27, 2004, 421 SCRA 278, 282.

50 G.R. No. 131622, 358 Phil. 820-830 (1998).

51 G.R. No. 170452, 584 Phil. 144-150 (2008).

52 Article 1306 of the Civil Code provides:

> The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.

plus 12% interest per annum from December 3, 1997 until fully paid.

2. The rest of the Court of Appeals' dispositions are hereby **AFFIRMED**.

Costs against petitioner Leonardo A. Bognot.

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

MARVIC M.V.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.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second 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