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THIRD DIVISION

[G.R. No. 182963, June 03, 2013]

SPOUSES DEO AGNER AND MARICON AGNER, PETITIONERS, VS. BPI FAMILY SAVINGS BANK, INC., RESPONDENT.

D E C I S I O N

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]

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.

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]

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.

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]

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 P39,054.86 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 (P60,000.00) 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]

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 P39,054.86, 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 P60,000.00, 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.