Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

VICENTE D. CABANTING and LALAINE V. CABANTING, Petitioners,	**G.R. No. 201927**
	Present:
- *versus* -	VELASCO, JR., *J.*, *Chairperson*, PERALTA, PEREZ, REYES, and JARDELEZA, *JJ.*
BPI FAMILY SAVINGS BANK, INC., Respondent.	**Promulgated:** February 17, 2016

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DECISION

PERALTA, *J.*:

This deals with the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court praying that the Decision[1] of the Court of Appeals (*CA*), promulgated on September 28, 2011, and the Resolution[2] dated May 16, 2012, denying petitioner's motion for reconsideration thereof, be reversed and set aside.

The antecedent facts are as follows:

On January 14, 2003, petitioners bought on installment basis from Diamond Motors Corporation a 2002 Mitsubishi Adventure SS MT and for value received, petitioners also signed, executed and delivered to Diamond Motors a Promissory Note with Chattel Mortgage. Therein, petitioners jointly and severally obligated themselves to pay Diamond Motors the sum

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[1] Penned by Associate Justice Ramon A. Cruz, with Associate Justices Jose C. Reyes, Jr. and Antonio L. Villamor, concurring; *rollo*, pp. 38-47.

[2] *Id.* at 49-51.

of ₱836,032.00, payable in monthly installments in accordance with the schedule of payment indicated therein, and which obligation is secured by a chattel mortgage on the aforementioned motor vehicle. On the day of the execution of the document, Diamond Motors, with notice to petitioners, executed a Deed of Assignment, thereby assigning to BPI Family Savings Bank, Inc. (*BPI Family*) all its rights, title and interest to the Promissory Note with Chattel Mortgage.

Come October 16, 2003, however, a Complaint was filed by BPI Family against petitioners for Replevin and damages before the Regional Trial Court of Manila (*RTC*), praying that petitioners be ordered to pay the unpaid portion of the vehicle's purchase price, accrued interest thereon at the rate of 36% *per annum* as of August 26, 2003, 25% attorney's fees and 25% liquidated damages, as stipulated on the Promissory Note with Chattel Mortgage. BPI Family likewise prayed for the issuance of a writ of replevin but it failed to file a bond therefor, hence, the writ was never issued. BPI Family alleged that petitioners failed to pay three (3) consecutive installments and despite written demand sent to petitioners through registered mail, petitioners failed to comply with said demand to pay or to surrender possession of the vehicle to BPI Family.

In their Answer, petitioners alleged that they sold the subject vehicle to one Victor S. Abalos, with the agreement that the latter shall assume the obligation to pay the remaining monthly installments. It was then Abalos who made payments to BPI Family through his personal checks, and BPI Family accepted the post-dated checks delivered to it by Abalos. The checks issued by Abalos for the months of May 2003 to October 2003 were made good, but subsequent checks were dishonored and not paid. Petitioners pointed out that BPI Family should have sued Abalos instead of them.

Trial ensued, where BPI Family dispensed with the testimony of its sole witness and formally offered its documentary evidence. When it was petitioners' turn to present its defense, several hearing dates were cancelled, sometimes due to failure of either or both the petitioners' and/or respondent's counsels to appear. What is clear, though, is that despite numerous opportunities given to petitioners to present evidence, they were never able to present their witness, Jacobina T. Alcantara, despite the court's issuance of a *subpoena duces tecum ad testificandum.* Said failure to present evidence on several hearing dates and petitioners' absence at the hearing on February 13, 2008 prompted BPI Family to move that petitioners' right to present evidence be deemed waived. On the same date, the RTC granted said motion and the case was submitted for decision. There is nothing on record to show that petitioners ever moved for reconsideration of the Order dated February 13, 2008.

On April 14, 2008, the RTC rendered a Decision, the dispositive portion of which reads as follows:

> **WHEREFORE**, and in the view of the foregoing considerations, judgment is hereby rendered in favor of the plaintiff BPI Family Savings Bank, Inc. and against the defendants **VICENTE D. CABANTING** and **LALAINE V. CABANTING**, by ordering the latter to pay the plaintiff Bank the sum of Php742,022.92, with interest at the rate of 24% *per annum* from the filing of the Complaint, until its full satisfaction, as well as the amount of ₱20,000.00 for and as attorney's fees.
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> With costs against the defendants.
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> **SO ORDERED**.[3]

Aggrieved by the RTC's Decision, herein petitioners appealed to the CA. However, in its Decision dated September 28, 2011, the appellate court affirmed with modification the judgment of the trial court, to wit:

> **WHEREFORE**, premises considered, the appeal is **DISMISSED**. The Decision of the Regional Trial Court dated April 14, 2008 is **AFFIRMED but with MODIFICATION**. The defendants-appellants are ordered to pay the plaintiff-appellee the sum of **Seven Hundred Forty Thousand One Hundred Fifty-Five Pesos and Eighteen Centavos (₱740,155.18), in Philippine currency, with legal interest of 12% *per annum*** from the filing of the Complaint, until its full satisfaction. **The award of Twenty Thousand Pesos (₱20,000.00) as attorney's fees is DELETED**.
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> Costs against the defendants-appellants.
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> **SO ORDERED**.[4]

The CA ruled that a preponderance of evidence was in favor of respondent, as the evidence, coupled with petitioners' admission in their Answer, established that petitioners indeed executed a Promissory Note with Chattel Mortgage and then failed to pay the forty-three (43) monthly amortizations. Moreover, since petitioners were deemed to have waived their right to present evidence, there is nothing on record to prove their claim that there was a valid assumption of obligation by one Victor S. Abalos. Petitioners' motion for reconsideration of the CA Decision was denied per Resolution dated May 16, 2012.

Elevating the matter to this Court *via* a petition for review on *certiorari*, petitioners now raise the following issues:

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3 *Rollo*, p. 115. (Emphasis in the original)

4 *Id.* at 47. (Emphasis in the original)

> 1. Whether or not respondent bank may be held entitled to the possession of the motor vehicle subject of the instant case for replevin, or the payment of its value and damages, without proof of prior demand;
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> 2. Whether or not petitioners were deprived of their right to due process when they were deemed to have waived their right to present evidence in their behalf.[5]

The petition is devoid of merit.

The CA is correct that no prior demand was necessary to make petitioners' obligation due and payable. The Promissory Note with Chattel Mortgage clearly stipulated that "[i]n case of my/our [petitioners'] failure to pay when due and payable, any sum which I/We x x x or any of us may now or in the future owe to the holder of this note x x x then the entire sum outstanding under this note shall immediately become due and payable without the necessity of notice or demand which I/We hereby waive."[6] Petitioners argue that such stipulation should be deemed invalid as the document they executed was a contract of adhesion. It is important to stress the Court's ruling in *Dio v. St. Ferdinand Memorial Park, Inc.*,[7] to wit:

> A contract of adhesion, wherein one party imposes a ready-made form of contract on the other, is not strictly against the law. **A contract of adhesion is as binding as ordinary contracts, the reason being that the party who adheres to the contract is free to reject it entirely.** Contrary to petitioner's contention, not every contract of adhesion is an invalid agreement. As we had the occasion to state in *Development Bank of the Philippines v. Perez*:
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> > x x x In discussing the consequences of a contract of adhesion, we held in *Rizal Commercial Banking Corporation v. Court of Appeals*:
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> > > It bears stressing that a contract of adhesion is just as binding as ordinary contracts. It is true that we have, on occasion, struck down such contracts as void when the weaker party is imposed upon in dealing with the dominant bargaining party and is reduced to the alternative of taking it or leaving it, completely deprived of the opportunity to bargain on equal footing, **Nevertheless, contracts of adhesion are not invalid *per se*; they are not entirely prohibited. The one who adheres to the contract is in reality free to reject it**

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5 *Id.* at 22.
6 *Id.* at 61.
7 538 Phil. 944 (2006).

> **entirely; if he adheres, he gives his consent.**
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> **The validity or enforceability of the impugned contracts will have to be determined by the peculiar circumstances obtaining in each case and the situation of the parties concerned.** Indeed, Article 24 of the New Civil Code provides that "[in] all contractual, property or other relations, when one of the parties is at a disadvantage on account of his moral dependence, ignorance, indigence, mental weakness, tender age, or other handicap, the courts must be vigilant for his protection." x x x[8]

Here, there is no proof that petitioners were disadvantaged, uneducated or utterly inexperienced in dealing with financial institutions; thus, there is no reason for the court to step in and protect the interest of the supposed weaker party.

Verily, petitioners are bound by the aforementioned stipulation in the Promissory Note with Chattel Mortgage waiving the necessity of notice and demand to make the obligation due and payable. *Agner v. BPI Family Savings Bank, Inc.*,[9] which is closely similar to the present case, is squarely applicable. Petitioners therein also executed a Promissory Note with Chattel Mortgage containing the stipulation waiving the need for notice and demand. The Court ruled:

> x x x 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:
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> > 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)
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> 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*, wherein We held:
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> > 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

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8 *Dio v. St. Ferdinand Memorial Park, Inc., supra,* at 959-960. (Emphasis supplied)

9 G.R. No. 182963, June 3, 2013, 697 SCRA 89.

> 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.
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> Further, the Court even ruled in *Navarro v. Escobido* 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.[10]

Clearly, as stated above, Article 1169 (1) of the Civil Code allows a party to waive the need for notice and demand. Petitioners' argument that their liability cannot be deemed due and payable for lack of proof of demand must be struck down.

There is likewise no merit to petitioners' claim that they were deprived of due process when they were deemed to have waived their right to present evidence. Time and again, the Court has stressed that there is no deprivation of due process when a party is given an opportunity to be heard, not only through hearings but even through pleadings, so that one may explain one's side or arguments; or an opportunity to seek reconsideration of the action or ruling being assailed.[11] The records bear out that herein petitioners were given several opportunities to present evidence, but said opportunities were frittered away. We stress the fact that petitioners did not even bother to move for reconsideration of the Order dated February 13, 2008, deeming petitioners to have waived their right to present evidence. Such is glaring proof of their propensity to waste the opportunities granted them to present their evidence.

Lastly, the CA is correct that the interest rate being charged by respondent under the Promissory Note with Chattel Mortgage is quite unreasonable. In *New Sampaguita Builders Construction, Inc. (NSBCI) v. Philippine National Bank*,[12] the Court ruled that "**the interest ranging from 26 percent to 35 percent in the statements of account – 'must be equitably reduced for being iniquitous, unconscionable and exorbitant.' Rates found to be iniquitous or unconscionable are void, as if it there were no express contract thereon.** Above all, it is undoubtedly against public policy to charge excessively for the use of money." However, pursuant to prevailing jurisprudence and banking regulations, the Court must modify the lower court's award of legal interest. In *Nacar v. Gallery Frames*,[13] the Court held, thus:

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10 *Agner v. BPI Family Savings Bank, Inc., supra*, at 94-95.
11 *Resurreccion v. People*, G.R. No. 192866, July 9, 2014, 729 SCRA 508, 524.
12 479 Phil. 483, 499 (2004). (Emphasis supplied, citations omitted)
13 G.R. No. 189871, August 13, 2013, 703 SCRA 439.

x x x **the guidelines laid down in the case of *Eastern Shipping Lines* are accordingly modified to embody BSP-MB Circular No. 799, as follows:**

I. When an obligation, regardless of its source, *i.e.*, law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% *per annum* to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% *per annum*. No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.[14]

Thus, legal interest, effective July 1, 2013, was set at six percent (6%) *per annum* in accordance with *Bangko Sentral ng Pilipinas* – Monetary Board Circular No. 799, Series of 2013.

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[14] *Id.* at 457-458.

WHEREFORE, the petition is **DENIED**. The Decision of the Court of Appeals, promulgated on September 28, 2011, and the Resolution dated May 16, 2012 in CA-G.R. CV No. 91814 are **AFFIRMED with MODIFICATION** by ordering payment of legal interest at the rate of twelve percent (12%) *per annum* from the time of filing of the complaint up to June 30, 2013, and thereafter, at the lower rate of six percent (6%) *per annum* from July 1, 2013 until full satisfaction, pursuant to *Bangko Sentral ng Pilipinas* – Monetary Board Circular No. 799, Series of 2013 and applicable jurisprudence.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

JOSE PORTUGAL PEREZ
Associate Justice

BIENVENIDO L. REYES
Associate Justice

FRANCIS H. JARDELEZA
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

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
MAR 03 2016