

Republic of the Philippines  
**Supreme Court**  
 Manila

**FIRST DIVISION**

**EQUITABLE SAVINGS BANK,**  
 (now known as the merged entity  
 “BDO Unibank, Inc.”)

**G.R. No. 214752**

Petitioner,

Present:

- versus -

SERENO, C.J., Chairperson,  
 LEONARDO-DE CASTRO,  
 BERSAMIN,  
 PERLAS-BERNABE, and  
 CAGUIOA, JJ.

**ROSALINDA C. PALCES,**  
 Respondent.

Promulgated:  
**MAR 09 2016**

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**DECISION**

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on *certiorari*<sup>1</sup> are the Decision<sup>2</sup> dated February 13, 2014 and the Resolution<sup>3</sup> dated October 8, 2014 of the Court of Appeals (CA) in CA-G.R. CV No. 96008, which partially affirmed the Decision<sup>4</sup> dated May 20, 2010 of the Regional Trial Court of Pasay City, Branch 114 (RTC) in Civil Case No. 07-0386-CFM and ordered petitioner Equitable Savings Bank, now BDO Unibank, Inc. (petitioner), to reimburse respondent Rosalinda C. Palces (respondent) the installments she made in March 2007 amounting to ₱103,000.00.

<sup>1</sup> *Rollo*, pp. 11-28.

<sup>2</sup> *Id.* at 106-121. Penned by Associate Justice Myra V. Garcia-Fernandez with Associate Justices Fernanda Lampas-Peralta and Francisco P. Acosta concurring.

<sup>3</sup> *Id.* at 131-135.

<sup>4</sup> *Id.* at 60-66. Penned by Judge Edwin B. Ramizo.

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### The Facts

On August 15, 2005, respondent purchased a Hyundai Starex GRX Jumbo (subject vehicle) through a loan granted by petitioner in the amount of ₱1,196,100.00. In connection therewith, respondent executed a Promissory Note with Chattel Mortgage<sup>5</sup> in favor of petitioner, stating, *inter alia*, that: (a) respondent shall pay petitioner the aforesaid amount in 36-monthly installments of ₱33,225.00 per month, beginning September 18, 2005 and every 18<sup>th</sup> of the month thereafter until full payment of the loan; (b) respondent's default in paying any installment renders the remaining balance due and payable; and (c) respondent's failure to pay any installments shall give petitioner the right to declare the entire obligation due and payable and may likewise, at its option, x x x foreclose this mortgage; or file an ordinary civil action for collection and/or such other action or proceedings as may be allowed under the law.<sup>6</sup>

From September 18, 2005 to December 21, 2006, respondent paid the monthly installment of ₱33,225.00 per month. However, she failed to pay the monthly installments in January and February 2007, thereby triggering the acceleration clause contained in the Promissory Note with Chattel Mortgage<sup>7</sup> and prompting petitioner to send a demand letter<sup>8</sup> dated February 22, 2007 to compel respondent to pay the remaining balance of the loan in the amount of ₱664,500.00.<sup>9</sup> As the demand went unheeded, petitioner filed on March 7, 2007 the instant Complaint for Recovery of Possession with Replevin with Alternative Prayer for Sum of Money and Damages<sup>10</sup> against respondent before the RTC, praying that the court *a quo*: (a) issue a writ of replevin ordering the seizure of the subject vehicle and its delivery to petitioner; or (b) in the alternative as when the recovery of the subject vehicle cannot be effected, to render judgment ordering respondent to pay the remaining balance of the loan, including penalties, charges, and other costs appurtenant thereto.<sup>11</sup>

Pending respondent's answer, summons<sup>12</sup> and a writ of replevin<sup>13</sup> were issued and served to her personally on April 26, 2007, and later on, a Sheriff's Return<sup>14</sup> dated May 8, 2007 was submitted as proof of the implementation of such writ.<sup>15</sup>

<sup>5</sup> Id. at 40-43.

<sup>6</sup> Id. See also id. at 106-107.

<sup>7</sup> Records, pp. 18-19.

<sup>8</sup> Id. at 24.

<sup>9</sup> *Rollo*, pp. 107-108.

<sup>10</sup> Id. at 32-37.

<sup>11</sup> See also id. at 107-109.

<sup>12</sup> Records, p. 48.

<sup>13</sup> Id. at 46.

<sup>14</sup> Id. at 47.

<sup>15</sup> *Rollo*, pp. 61 and 66.

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In her defense,<sup>16</sup> while admitting that she indeed defaulted on her installments for January and February 2007, respondent nevertheless insisted that she called petitioner regarding such delay in payment and spoke to a bank officer, a certain Rodrigo Dumagpi, who gave his consent thereto. Respondent then maintained that in order to update her installment payments, she paid petitioner the amounts of ₱70,000.00 on March 8, 2007 and ₱33,000.00 on March 20, 2007, or a total of ₱103,000.00. Despite the aforesaid payments, respondent was surprised when petitioner filed the instant complaint, resulting in the sheriff taking possession of the subject vehicle.<sup>17</sup>

### The RTC Ruling

In a Decision<sup>18</sup> dated May 20, 2010, the RTC ruled in petitioner's favor and, accordingly, confirmed petitioner's right and possession over the subject vehicle and ordered respondent to pay the former the amount of ₱15,000.00 as attorney's fees as well as the costs of suit.<sup>19</sup>

The RTC found that respondent indeed defaulted on her installment payments in January and February 2007, thus, rendering the entire balance of the loan amounting to ₱664,500.00 due and demandable. In this relation, the RTC observed that although respondent made actual payments of the installments due, such payments were all late and irregular, and the same were not enough to fully pay her outstanding obligation, considering that petitioner had already declared the entire balance of the loan due and demandable. However, since the writ of replevin over the subject vehicle had already been implemented, the RTC merely confirmed petitioner's right to possess the same and ruled that it is no longer entitled to its alternative prayer, *i.e.*, the payment of the remaining balance of the loan, including penalties, charges, and other costs appurtenant thereto.<sup>20</sup>

Respondent moved for reconsideration,<sup>21</sup> but was denied in an Order<sup>22</sup> dated August 31, 2010. Dissatisfied, respondent appealed<sup>23</sup> to the CA, contending that petitioner acted in bad faith in seeking to recover more than what is due by attempting to collect the balance of the loan and, at the same time, recover the subject vehicle.<sup>24</sup>

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<sup>16</sup> See Answer dated July 10, 2007; *id.* at 56-59.

<sup>17</sup> See *id.* at 109-110.

<sup>18</sup> *Id.* at 60-66.

<sup>19</sup> *Id.* at 66.

<sup>20</sup> *Id.* at 64-66.

<sup>21</sup> See motion for reconsideration dated June 21, 2010; records, pp. 421-424.

<sup>22</sup> *Id.* at 441.

<sup>23</sup> See Appellant's Brief dated July 4, 2010; CA *rollo*, pp. 24-33.

<sup>24</sup> *Rollo*, pp. 113-114.

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### **The CA Ruling**

In a Decision<sup>25</sup> dated February 13, 2014, the CA affirmed the RTC ruling with modification: (a) ordering petitioner to return the amount of ₱103,000.00 to respondent; and (b) deleting the award of attorney's fees in favor of petitioner for lack of sufficient basis. It held that while respondent was indeed liable to petitioner under the Promissory Note with Chattel Mortgage, petitioner should not have accepted respondent's late partial payments in the aggregate amount of ₱103,000.00. In this regard, the CA opined that by choosing to recover the subject vehicle *via* a writ of replevin, petitioner already waived its right to recover any unpaid installments, pursuant to Article 1484 of the Civil Code. As such, the CA concluded that respondent is entitled to the recovery of the aforesaid amount.<sup>26</sup>

Aggrieved, petitioner moved for partial reconsideration<sup>27</sup> – specifically praying for the setting aside of the order to return the amount of ₱103,000.00 to respondent – which was, however, denied in a Resolution<sup>28</sup> dated October 8, 2014; hence, this petition.

### **The Issues Before The Court**

The issues raised for the Court's resolution are whether or not the CA correctly: (a) ordered petitioner to return to respondent the amount of ₱103,000.00 representing the latter's late installment payments; and (b) deleted the award of attorney's fees in favor of petitioner.

### **The Court's Ruling**

The petition is partly meritorious.

Citing Article 1484 of the Civil Code, specifically paragraph 3 thereof, the CA ruled that petitioner had already waived its right to recover any unpaid installments when it sought – and was granted – a writ of replevin in order to regain possession of the subject vehicle. As such, petitioner is no longer entitled to receive respondent's late partial payments in the aggregate amount of ₱103,000.00.

The CA is mistaken on this point.

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<sup>25</sup> Id. at 106-121.

<sup>26</sup> Id. at 115-120.

<sup>27</sup> See motion for partial reconsideration dated March 4, 2014; CA *rollo*, pp. 102-109.

<sup>28</sup> *Rollo*, pp. 131-135.

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Article 1484 of the Civil Code, which governs the sale of personal properties in installments, states in full:

Article 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 fulfilment 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. (Emphases and underscoring supplied)

In this case, there was no vendor-vendee relationship between respondent and petitioner. A judicious perusal of the records would reveal that respondent never bought the subject vehicle from petitioner but from a third party, and merely sought financing from petitioner for its full purchase price. In order to document the loan transaction between petitioner and respondent, a Promissory Note with Chattel Mortgage<sup>29</sup> dated August 18, 2005 was executed wherein, *inter alia*, respondent acknowledged her indebtedness to petitioner in the amount of ₱1,196,100.00 and placed the subject vehicle as a security for the loan.<sup>30</sup> Indubitably, a loan contract with the accessory chattel mortgage contract – and not a contract of sale of personal property in installments – was entered into by the parties with respondent standing as the debtor-mortgagor and petitioner as the creditor-mortgagee. Therefore, the conclusion of the CA that Article 1484 finds application in this case is misplaced, and thus, must be set aside.

The Promissory Note with Chattel Mortgage subject of this case expressly stipulated, among others, that: (a) monthly installments shall be paid on due date without prior notice or demand;<sup>31</sup> (b) in case of default, the total unpaid principal sum plus the agreed charges shall become immediately due and payable;<sup>32</sup> and (c) the mortgagor's default will allow the mortgagee to exercise the remedies available to it under the law. In light of the foregoing provisions, petitioner is justified in filing his Complaint<sup>33</sup> before the RTC seeking for either the recovery of possession of the subject vehicle

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<sup>29</sup> Id. at 40-43.

<sup>30</sup> See id. at 33, 57, 60-61, and 106-108.

<sup>31</sup> See id. at 40.

<sup>32</sup> See id. 40 and 43.

<sup>33</sup> Dated March 7, 2007. Id. at 32-37.

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so that it can exercise its rights as a mortgagee, *i.e.*, to conduct foreclosure proceedings over said vehicle;<sup>34</sup> or in the event that the subject vehicle cannot be recovered, to compel respondent to pay the outstanding balance of her loan.<sup>35</sup> Since it is undisputed that petitioner had regained possession of the subject vehicle, it is only appropriate that foreclosure proceedings, if none yet has been conducted/concluded, be commenced in accordance with the provisions of Act No. 1508,<sup>36</sup> otherwise known as “The Chattel Mortgage Law,” as intended. Otherwise, respondent will be placed in an unjust position where she is deprived of possession of the subject vehicle while her outstanding debt remains unpaid, either in full or in part, all to the undue advantage of petitioner – a situation which law and equity will never permit.<sup>37</sup>

Further, there is nothing in the Promissory Note with Chattel Mortgage that bars petitioner from receiving any late partial payments from respondent. If at all, petitioner’s acceptance of respondent’s late partial payments in the aggregate amount of ₱103,000.00 will only operate to reduce her outstanding obligation to petitioner from ₱664,500.00 to ₱561,500.00. Such a reduction in respondent’s outstanding obligation should be accounted for when petitioner conducts the impending foreclosure sale of the subject vehicle. Once such foreclosure sale has been made, the proceeds thereof should be applied to the reduced amount of respondent’s outstanding obligation, and the excess of said proceeds, if any, should be returned to her.<sup>38</sup>

In sum, the CA erred in ordering petitioner to return the amount of ₱103,000.00 to respondent. In view of petitioner’s prayer for and subsequent possession of the subject vehicle in preparation for its foreclosure, it is only proper that petitioner be ordered to commence foreclosure proceedings, if none yet has been conducted/concluded, over the vehicle in accordance with the provisions of the Chattel Mortgage Law, *i.e.*, within thirty (30) days from the finality of this Decision.<sup>39</sup>

Finally, anent the issue of attorney’s fees, it is settled that attorney’s fees “cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit. The power of the court to award

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<sup>34</sup> See *id.* at 33-35.

<sup>35</sup> See *id.* at 35-36.

<sup>36</sup> Entitled “AN ACT PROVIDING FOR THE MORTGAGING OF PERSONAL PROPERTY, AND FOR THE REGISTRATION OF THE MORTGAGES SO EXECUTED” (August 1, 1906).

<sup>37</sup> See *De La Cruz v. Asian Consumer and Industrial Finance Corp.*, G.R. No. 94828, September 18, 1992, 214 SCRA 103, 107-108.

<sup>38</sup> See Section 14 of Act No. 1508.

<sup>39</sup> *Id.*

attorney's fees under Article 2208<sup>40</sup> of the Civil Code demands factual, legal, and equitable justification. Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still, attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause."<sup>41</sup> In this case, suffice it to say that the CA correctly ruled that the award of attorney's fees and costs of suit should be deleted for lack of sufficient basis.

**WHEREFORE**, the petition is **PARTLY GRANTED**. The Decision dated February 13, 2014 and the Resolution dated October 8, 2014 of the Court of Appeals in CA-G.R. CV No. 96008 are hereby **SET ASIDE**. In case foreclosure proceedings on the subject chattel mortgage has not yet been conducted/concluded, petitioner Equitable Savings Bank, now BDO Unibank, Inc., is **ORDERED** to commence foreclosure proceedings on the subject vehicle in accordance with the Chattel Mortgage Law, *i.e.*, within thirty (30) days from the finality of this Decision. The proceeds therefrom should be applied to the reduced outstanding balance of respondent Rosalinda C. Palces in the amount of ₱561,500.00, and the excess, if any, should be returned to her.

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<sup>40</sup> Article 2208 of the Civil Code reads:

Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

- (1) When exemplary damages are awarded;
- (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- (6) In actions for legal support;
- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;
- (10) When at least double judicial costs are awarded;
- (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

<sup>41</sup> See *Spouses Vergara v. Sonkin*, G.R. No. 193659, June 15, 2015, citing *The President of the Church of Jesus Christ of the Latter Day Saints v. BTL Construction Corporation*, G.R. No. 176439, January 15, 2014, 713 SCRA 455, 472-473.

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**SO ORDERED.**


  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice


**WE CONCUR:**

  
**MARIA LOURDES P. A. SERENO**

Chief Justice  
Chairperson

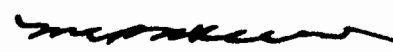
  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, 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