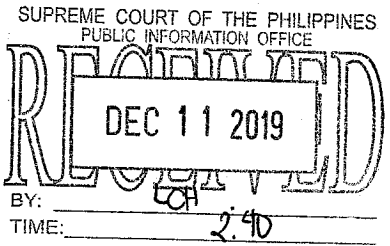




Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **November 25, 2019** which reads as follows:

“G.R. No. 219534 - Spouses Zoilo J. Abella and Gregoria S. Abella v. Spouses Grace Abella and Alden Abella.

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court against the Decision¹ dated December 16, 2014 and the Resolution² dated July 14, 2015 of the Court of Appeals–Cebu City (CA-Cebu City) in CA-G.R. CEB SP No. 07831.

The facts follow.

Zoilo J. Abella (Zoilo) extended a loan of ₱800,000.00 to his nephew’s wife, Grace Abella (Grace), in October 2002 which was paid in installments. In September 2005, to cover the outstanding balance of ₱300,000.00, Grace issued three post-dated checks in the same amount of ₱100,000.00.³

The first check, Equitable-PCI Bank Check No. 0000152255 dated September 30, 2005, was encashed by Zoilo. The second check, Equitable-PCI Bank Check No. 0000152256 dated November 30, 2005, was exchanged with cash by Grace. The third check, Equitable-PCI Bank Check No. 0000152257 dated January 30, 2006, is the subject of the present controversy.⁴

Zoilo and his spouse, Gregoria Abella (petitioners), claimed that the amount of ₱100,000.00 remained unpaid despite follow ups,

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¹ Penned by Associate Justice Gabriel T. Ingles, with Associate Justices Pamela Ann Abella Maxino and Renato C. Francisco, concurring; *rollo*, pp. 31-38.

² *Id.* at 39-40.

³ *Id.* at 10-11.

⁴ *Id.* at 16.

even if they had returned possession of the third check to Grace.⁵ Claiming full payment of the loan, Grace refused to pay, which led to the filing of the Complaint⁶ for Collection of Sum of Money and Damages from which this petition originated.

During trial, Grace and her spouse, Alden Abella (respondents), contended that the last check was also exchanged with cash personally given to Zoilo.⁷

Finding that petitioners failed to establish their claim by preponderant evidence, the First Municipal Circuit Trial Court (MCTC) of New Washington and Batan, New Washington, Aklan, dismissed petitioners' complaint in a Decision⁸ dated December 7, 2012. As disposed:

WHEREFORE, premises considered, this Court hereby renders judgment in favor of [respondents] by ordering the **DISMISSAL** of the instant Complaint and by directing [petitioners] to pay to herein [respondents] attorney's fees and expenses of litigation in the sum of Php25,000.00 and to pay the costs.

SO ORDERED.⁹

Petitioners' subsequent Motion for Reconsideration was denied by the MCTC in its Order dated January 14, 2013.¹⁰

On appeal, the Regional Trial Court (RTC) of Kalibo, Aklan, Branch 9, affirmed the MCTC's ruling through a Decision¹¹ dated April 22, 2013. Thus:

WHEREFORE, premises considered, the Court finds no cogent reason whatsoever to reverse, alter, or modify the assailed judgment of [the] court *a quo* which is hereby **AFFIRMED in toto**.

SO ORDERED.¹²

The RTC also denied petitioners' Motion for Reconsideration for raising no new matter, per its Order dated June 21, 2013.¹³

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⁵ Id. at 32.

⁶ Id. at 41-44.

⁷ Id. at 66.

⁸ Id. at 61-73.

⁹ Id. at 73.

¹⁰ Id. at 85.

¹¹ Id. at 86-91.

¹² Id. at 91.

¹³ Id. at 99.

Upon review, the CA-Cebu City concurred with the findings and rulings of the MCTC and the RTC in the now assailed Decision¹⁴ dated December 16, 2014, the dispositive portion of which states:

WHEREFORE, on the view above taken, the instant petition is **DENIED**. The assailed Decision dated April 22, 2013 of the Regional Trial Court (RTC), 6th Judicial Region, Branch 9, Kalibo, Aklan is hereby **AFFIRMED** [*in toto*].

SO ORDERED.¹⁵

Subsequently, in a Resolution¹⁶ dated July 14, 2015, the CA denied petitioners' Motion for Reconsideration for lack of merit. Hence, the present petition raising issues¹⁷ which may be distilled to:

- a) Whether or not respondents failed to pay, or replace with cash the third check dated January 30, 2006 to cover the remaining balance of ₱100,000.00 from their loan obligation; and
- b) Whether or not the award of attorney's fees is proper.

We resolve.

"In the absence of compelling reasons, the Court cannot reexamine, review or reevaluate 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."¹⁸ A review is not a matter of right, but of sound judicial discretion. Here, no special or important reason exists to warrant a departure from the findings of the CA, which we sustain.

Petitioners have the burden of proof, but failed to establish the subsistence of the obligation by a preponderance of evidence¹⁹ due to inconsistencies in their testimonies. Petitioners' testimonial evidence yielded conflicting answers on the date when the second check was exchanged for cash, as to whether it was paid in March or February of 2006.²⁰ While petitioners contend that the trial and appellate courts belabored the inconsistencies as to when the second check was paid, although the dispute only involves the third check, the inconsistencies

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¹⁴ Supra note 1.

¹⁵ Id. at 37.

¹⁶ Supra note 2.

¹⁷ Id. at 14-15.

¹⁸ *Bognot v. RRI Lending Corp.*, 744 Phil. 59, 69 (2014).

¹⁹ RULES OF COURT, Rule 133, Sec. 1.

²⁰ *Rollo*, p. 71.

render petitioners' claim of an existing obligation doubtful as it was possible to confuse the payments of the second and third checks. While old age might explain the inconsistencies, petitioners failed to adduce further evidence to support their assertion that respondents did not also exchange the third check with cash.

Petitioners point out that their assertion on respondents' failure to make good the last check was consistent throughout the proceedings. However, the check itself or any written agreement would have been the best evidence in this case. "A check constitutes an evidence of indebtedness and is a veritable proof of an obligation."²¹

On the other hand, the inconsistency between respondents' statements in their Answer with Motion to Dismiss and their testimony does not necessarily belie respondents' claim of payment. Respondents' Answer referred only to one check, although there were actually three checks issued, because it was in response to the Complaint which referred only to one post-dated Equitable PCI Bank check issued in September 2005.²² In fact, it was only during trial when it was discovered that there were three checks involved and that the third check is the subject of the present controversy.²³ Petitioners cannot shift the blame to respondents for a confusion that they caused.

"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."²⁴ Thus, while it is true that "one who pleads payment has the burden of proving it,"²⁵ the burden of showing the discharge of the obligation by the debtor only arises once the existence of indebtedness is duly established by evidence. Here, petitioners failed to show that respondents are still indebted to them.

At any rate, respondents have possession of the check in question. Thus, the courts *a quo* properly relied on Section 119(e) of the Negotiable Instruments Law. Pursuant to the said section, respondents' possession of the subject check bolstered the fact of full satisfaction of their loan obligation.

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²¹ *Bognot v. RRI Lending Corp.*, supra, at 74, citing *Pacheco v. Court of Appeals*, 377 Phil. 627, 637 (1999).

²² *Rollo*, pp. 35, 42.

²³ *Id.* at 32.

²⁴ *Bognot v. RRI Lending Corp.*, supra note 18, citing *Spouses Agner v. BPI Family Savings Bank, Inc.*, 710 Phil. 82, 89 (2013).

²⁵ *Vitarich Corp. v. Losin*, 649 Phil. 164, 177 (2010); *Jimenez v. National Labor Relations Commission*, 326 Phil. 89, 95 (1996).

Section 119(e) of the Negotiable Instruments Law provides that a negotiable instrument like a check may be discharged by any other act which will discharge a simple contract for the payment of money, such as when the principal debtor becomes the holder of the instrument at or after maturity in his own right. In order that there will be discharge under subsection (e), the reacquisition must be: (1) by the principal debtor; (2) in his own right; and (3) at or after the date of maturity.

First, it is undisputed from the records that respondents, as the debtors in the present case, reacquired the third check. *Second*, the reacquisition by respondents was clearly in their own right and not in a representative capacity, such as being an agent of another or as a pledge from the petitioners who, in fact, freely gave it to them. *Third*, the maturity date of the check was on January 30, 2006 and the reacquisition was made after the said date.

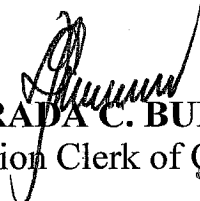

Finally, we sustain the award of attorney's fees.

In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered.²⁶ As an exception, it may be recovered where, among others, the court deems it just and equitable.²⁷ Respondents were forced to litigate to protect their interest. Hence, the sum of ₱25,000.00 is proper and reasonable.

WHEREFORE, finding no reversible error in the Decision dated December 16, 2014 and the Resolution dated July 14, 2015 of the Court of Appeals-Cebu City in CA-G.R. CEB SP No. 07831, the subject petition is **DENIED**.

SO ORDERED. *Caguioa, J., on official leave. Inting, J., Additional Member per Special Order No. 2726.*

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court 

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²⁶ CIVIL CODE, Art. 2208.

²⁷ Id.



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Regional Trial Court, Branch 9
Kalibo, 5600 Aklan
(Civil Case No. 9611)

The Hon. Presiding Judge
First Municipal Circuit Trial Court of
New Washington and Batan
New Washington, 5610 Aklan
(Civil Case No. 1340)

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