Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

RODRIGO RIVERA,
Petitioner,

- versus -

SPOUSES SALVADOR CHUA AND VIOLETA S. CHUA,
Respondents.

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SPS. SALVADOR CHUA and VIOLETA S. CHUA,
Petitioners,

-versus-

RODRIGO RIVERA,
Respondent.

G.R. No. 184458

G.R. NO. 184472

Present:

SERENO, *CJ.*,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
PEREZ, and
PERLAS-BERNABE, *JJ.*

Promulgated:

JAN 14 2015

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DECISION

PEREZ, *J.*:

Before us are consolidated Petitions for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] of the Court of Appeals in CA-G.R. SP No. 90609 which affirmed with modification the separate rulings of the Manila City trial courts, the Regional Trial Court, Branch 17 in Civil Case No. 02-105256[2] and the Metropolitan Trial Court (MeTC), Branch 30, in Civil Case No. 163661,[3] a case for collection of a sum of money due a promissory note. While all three (3) lower courts upheld the validity and authenticity of the promissory note as duly signed by the obligor, Rodrigo Rivera (Rivera), petitioner in G.R. No. 184458, the appellate court modified the trial courts' consistent awards: (1) the stipulated interest rate of sixty percent (60%) reduced to twelve percent (12%) *per annum* computed from the date of judicial or extrajudicial demand, and (2) reinstatement of the award of attorney's fees also in a reduced amount of □50,000.00.

In G.R. No. 184458, Rivera persists in his contention that there was no valid promissory note and questions the entire ruling of the lower courts. On the other hand, petitioners in G.R. No. 184472, Spouses Salvador and Violeta Chua (Spouses Chua), take exception to the appellate court's reduction of the stipulated interest rate of sixty percent (60%) to twelve percent (12%) *per annum*.

We proceed to the facts.

The parties were friends of long standing having known each other since 1973: Rivera and Salvador are *kumpadres*, the former is the godfather of the Spouses Chua's son.

On 24 February 1995, Rivera obtained a loan from the Spouses Chua:

> PROMISSORY NOTE
>
> 120,000.00
>
> FOR VALUE RECEIVED, I, RODRIGO RIVERA promise to pay spouses SALVADOR C. CHUA and VIOLETA SY CHUA, the sum of One Hundred Twenty Thousand Philippine Currency (□120,000.00) on December 31, 1995.

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1 *Rollo* in G.R. No. 184458, pp. 52-62; Penned by Associate Justice Ricardo R. Rosario with Associate Justices Mariano C. Del Castillo (now a member of this Court) and Arcangelita Romilla-Lontok concurring.

2 Id. at 152-156; Penned by Presiding Judge Eduardo B. Peralta, Jr.

3 *Rollo* in G.R. No. 184472, pp. 52-56; Penned by Presiding Judge Nina G. Antonio-Valenzuela.

> It is agreed and understood that failure on my part to pay the amount of (□120,000.00) One Hundred Twenty Thousand Pesos on December 31, 1995. (*sic*) I agree to pay the sum equivalent to FIVE PERCENT (5%) interest monthly from the date of default until the entire obligation is fully paid for.
>
> Should this note be referred to a lawyer for collection, I agree to pay the further sum equivalent to twenty percent (20%) of the total amount due and payable as and for attorney's fees which in no case shall be less than □5,000.00 and to pay in addition the cost of suit and other incidental litigation expense.
>
> Any action which may arise in connection with this note shall be brought in the proper Court of the City of Manila.
>
> Manila, February 24, 1995[.]
>
> (SGD.) RODRIGO RIVERA[4]

In October 1998, almost three years from the date of payment stipulated in the promissory note, Rivera, as partial payment for the loan, issued and delivered to the Spouses Chua, as payee, a check numbered 012467, dated 30 December 1998, drawn against Rivera's current account with the Philippine Commercial International Bank (PCIB) in the amount of □25,000.00.

On 21 December 1998, the Spouses Chua received another check presumably issued by Rivera, likewise drawn against Rivera's PCIB current account, numbered 013224, duly signed and dated, but blank as to payee and amount. Ostensibly, as per understanding by the parties, PCIB Check No. 013224 was issued in the amount of □133,454.00 with "cash" as payee. Purportedly, both checks were simply partial payment for Rivera's loan in the principal amount of □120,000.00.

Upon presentment for payment, the two checks were dishonored for the reason "account closed."

As of 31 May1999, the amount due the Spouses Chua was pegged at □366,000.00 covering the principal of □120,000.00 plus five percent (5%) interest per month from 1 January 1996 to 31 May 1999.

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4 *Rollo* in G.R. No. 184458, p. 76.

The Spouses Chua alleged that they have repeatedly demanded payment from Rivera to no avail. Because of Rivera's unjustified refusal to pay, the Spouses Chua were constrained to file a suit on 11 June 1999. The case was raffled before the MeTC, Branch 30, Manila and docketed as Civil Case No. 163661.

In his Answer with Compulsory Counterclaim, Rivera countered that: (1) he never executed the subject Promissory Note; (2) in all instances when he obtained a loan from the Spouses Chua, the loans were always covered by a security; (3) at the time of the filing of the complaint, he still had an existing indebtedness to the Spouses Chua, secured by a real estate mortgage, but not yet in default; (4) PCIB Check No. 132224 signed by him which he delivered to the Spouses Chua on 21 December 1998, should have been issued in the amount of only □1,300.00, representing the amount he received from the Spouses Chua's saleslady; (5) contrary to the supposed agreement, the Spouses Chua presented the check for payment in the amount of □133,454.00; and (6) there was no demand for payment of the amount of □120,000.00 prior to the encashment of PCIB Check No. 0132224. [5]

In the main, Rivera claimed forgery of the subject Promissory Note and denied his indebtedness thereunder.

The MeTC summarized the testimonies of both parties' respective witnesses:

> [The spouses Chua's] evidence include[s] documentary evidence and oral evidence (consisting of the testimonies of [the spouses] Chua and NBI Senior Documents Examiner Antonio Magbojos). x x x
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> x x x x
>
> Witness Magbojos enumerated his credentials as follows: joined the NBI (1987); NBI document examiner (1989); NBI Senior Document Examiner (1994 to the date he testified); registered criminologist; graduate of 18th Basic Training Course [i]n Questioned Document Examination conducted by the NBI; twice attended a seminar on US Dollar Counterfeit Detection conducted by the US Embassy in Manila; attended a seminar on Effective Methodology in Teaching and Instructional design conducted by the NBI Academy; seminar lecturer on Questioned Documents, Signature Verification and/or Detection; had examined more than a hundred thousand questioned documents at the time he testified.

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5 Id. at 53-54.

> Upon [order of the MeTC], Mr. Magbojos examined the purported signature of [Rivera] appearing in the Promissory Note and compared the signature thereon with the specimen signatures of [Rivera] appearing on several documents. After a thorough study, examination, and comparison of the signature on the questioned document (Promissory Note) and the specimen signatures on the documents submitted to him, he concluded that the questioned signature appearing in the Promissory Note and the specimen signatures of [Rivera] appearing on the other documents submitted were written by one and the same person. In connection with his findings, Magbojos prepared Questioned Documents Report No. 712-1000 dated 8 January 2001, with the following conclusion: "The questioned and the standard specimen signatures RODGRIGO RIVERA were written by one and the same person."
>
> [Rivera] testified as follows: he and [respondent] Salvador are "kumpadres;" in May 1998, he obtained a loan from [respondent] Salvador and executed a real estate mortgage over a parcel of land in favor of [respondent Salvador] as collateral; aside from this loan, in October, 1998 he borrowed □25,000.00 from Salvador and issued PCIB Check No. 126407 dated 30 December 1998; he expressly denied execution of the Promissory Note dated 24 February 1995 and alleged that the signature appearing thereon was not his signature; [respondent Salvador's] claim that PCIB Check No. 0132224 was partial payment for the Promissory Note was not true, the truth being that he delivered the check to [respondent Salvador] with the space for amount left blank as he and [respondent] Salvador had agreed that the latter was to fill it in with the amount of □1,300.00 which amount he owed [the spouses Chua]; however, on 29 December 1998 [respondent] Salvador called him and told him that he had written □133,454.00 instead of □1,300.00; x x x. To rebut the testimony of NBI Senior Document Examiner Magbojos, [Rivera] reiterated his averment that the signature appearing on the Promissory Note was not his signature and that he did not execute the Promissory Note.[6]

After trial, the MeTC ruled in favor of the Spouses Chua:

> WHEREFORE, [Rivera] is required to pay [the spouses Chua]: □120,000.00 plus stipulated interest at the rate of 5% per month from 1 January 1996, and legal interest at the rate of 12% percent per annum from 11 June 1999, as actual and compensatory damages; 20% of the whole amount due as attorney's fees.[7]

On appeal, the Regional Trial Court, Branch 17, Manila affirmed the Decision of the MeTC, but deleted the award of attorney's fees to the Spouses Chua:

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6 *Rollo* in G.R. No. 184472, pp. 53-54.

7 Id. at 56.

> **WHEREFORE**, except as to the amount of attorney's fees which is hereby deleted, the rest of the Decision dated October 21, 2002 is hereby **AFFIRMED**.[8]

Both trial courts found the Promissory Note as authentic and validly bore the signature of Rivera.

Undaunted, Rivera appealed to the Court of Appeals which affirmed Rivera's liability under the Promissory Note, reduced the imposition of interest on the loan from 60% to 12% *per annum*, and reinstated the award of attorney's fees in favor of the Spouses Chua:

> **WHEREFORE**, the judgment appealed from is hereby **AFFIRMED**, subject to the **MODIFICATION** that the interest rate of 60% per annum is hereby reduced to 12% per annum and the award of attorney's fees is reinstated at the reduced amount of □50,000.00 Costs against [Rivera].[9]

Hence, these consolidated petitions for review on *certiorari* of Rivera in G.R. No. 184458 and the Spouses Chua in G.R. No. 184472, respectively raising the following issues:

> A. In G.R. No. 184458
>
> 1. WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN UPHOLDING THE RULING OF THE RTC AND M[e]TC THAT THERE WAS A VALID PROMISSORY NOTE EXECUTED BY [RIVERA].
>
> 2. WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT DEMAND IS NO LONGER NECESSARY AND IN APPLYING THE PROVISIONS OF THE NEGOTIABLE INSTRUMENTS LAW.
>
> 3. WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN AWARDING ATTORNEY'S FEES DESPITE THE FACT THAT THE SAME HAS NO BASIS IN FACT AND IN LAW AND DESPITE THE FACT THAT [THE SPOUSES CHUA] DID NOT APPEAL FROM THE DECISION OF THE RTC DELETING THE AWARD OF ATTORNEY'S FEES.[10]
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> B. In G.R. No. 184472

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8 Id. at 61.

9 *Rollo* in G.R. No. 184458, p. 62.

10 Id. at 29.

> [WHETHER OR NOT] THE HONORABLE COURT OF APPEALS COMMITTED GROSS LEGAL ERROR WHEN IT MODIFIED THE APPEALED JUDGMENT BY REDUCING THE INTEREST RATE FROM 60% PER ANNUM TO 12% PER ANNUM IN SPITE OF THE FACT THAT RIVERA NEVER RAISED IN HIS ANSWER THE DEFENSE THAT THE SAID STIPULATED RATE OF INTEREST IS EXORBITANT, UNCONSCIONABLE, UNREASONABLE, INEQUITABLE, ILLEGAL, IMMORAL OR VOID.[11]

As early as 15 December 2008, we already disposed of G.R. No. 184472 and denied the petition, *via* a Minute Resolution, for failure to sufficiently show any reversible error in the ruling of the appellate court specifically concerning the correct rate of interest on Rivera's indebtedness under the Promissory Note.[12]

On 26 February 2009, Entry of Judgment was made in G.R. No. 184472.

Thus, what remains for our disposition is G.R. No. 184458, the appeal of Rivera questioning the entire ruling of the Court of Appeals in CA-G.R. SP No. 90609.

Rivera continues to deny that he executed the Promissory Note; he claims that given his friendship with the Spouses Chua who were money lenders, he has been able to maintain a loan account with them. However, each of these loan transactions was respectively "secured by checks or sufficient collateral."

Rivera points out that the Spouses Chua "never demanded payment for the loan nor interest thereof (*sic*) from [Rivera] for almost four (4) years from the time of the alleged default in payment [*i.e.*, after December 31, 1995]."[13]

On the issue of the supposed forgery of the promissory note, we are not inclined to depart from the lower courts' uniform rulings that Rivera indeed signed it.

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11 *Rollo* in G.R. No. 184472, p. 13

12 Id. at p. 103.

13 *Rollo* in G.R. No. 184458, p. 32.

Rivera offers no evidence for his asseveration that his signature on the promissory note was forged, only that the signature is not his and varies from his usual signature. He likewise makes a confusing defense of having previously obtained loans from the Spouses Chua who were money lenders and who had allowed him a period of "almost four (4) years" before demanding payment of the loan under the Promissory Note.

First, we cannot give credence to such a naked claim of forgery over the testimony of the National Bureau of Investigation (NBI) handwriting expert on the integrity of the promissory note.

On that score, the appellate court aptly disabled Rivera's contention:

> [Rivera] failed to adduce clear and convincing evidence that the signature on the promissory note is a forgery. The fact of forgery cannot be presumed but must be proved by clear, positive and convincing evidence. Mere variance of signatures cannot be considered as conclusive proof that the same was forged. Save for the denial of Rivera that the signature on the note was not his, there is nothing in the records to support his claim of forgery. And while it is true that resort to experts is not mandatory or indispensable to the examination of alleged forged documents, the opinions of handwriting experts are nevertheless helpful in the court's determination of a document's authenticity.
>
> To be sure, a bare denial will not suffice to overcome the positive value of the promissory note and the testimony of the NBI witness. In fact, even a perfunctory comparison of the signatures offered in evidence would lead to the conclusion that the signatures were made by one and the same person.
>
> It is a basic rule in civil cases that the party having the burden of proof must establish his case by preponderance of evidence, which simply means "evidence which is of greater weight, or more convincing than that which is offered in opposition to it."
>
> Evaluating the evidence on record, we are convinced that [the Spouses Chua] have established a *prima facie* case in their favor, hence, the burden of evidence has shifted to [Rivera] to prove his allegation of forgery. Unfortunately for [Rivera], he failed to substantiate his defense.[14]

Well-entrenched in jurisprudence is the rule that factual findings of the trial court, especially when affirmed by the appellate court, are accorded the highest degree of respect and are considered conclusive between the parties.[15] A review of such findings by this Court is not warranted except upon a showing of highly meritorious circumstances, such as: (1) when the

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14 Id. at 58-59.

15 *Siain Enterprises v.Cupertino Realty Corp.,* G.R. No. 170782, 22 June 2009, 590 SCRA 435, 445.

findings of a trial court are grounded entirely on speculation, surmises or conjectures; (2) when a lower court's inference from its factual findings is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion in the appreciation of facts; (4) when the findings of the appellate court go beyond the issues of the case, or fail to notice certain relevant facts which, if properly considered, will justify a different conclusion; (5) when there is a misappreciation of facts; (6) when the findings of fact are conclusions without mention of the specific evidence on which they are based, are premised on the absence of evidence, or are contradicted by evidence on record.[16] None of these exceptions obtains in this instance. There is no reason to depart from the separate factual findings of the three (3) lower courts on the validity of Rivera's signature reflected in the Promissory Note.

Indeed, Rivera had the burden of proving the material allegations which he sets up in his Answer to the plaintiff's claim or cause of action, upon which issue is joined, whether they relate to the whole case or only to certain issues in the case.[17]

In this case, Rivera's bare assertion is unsubstantiated and directly disputed by the testimony of a handwriting expert from the NBI. While it is true that resort to experts is not mandatory or indispensable to the examination or the comparison of handwriting, the trial courts in this case, on its own, using the handwriting expert testimony only as an aid, found the disputed document valid.[18]

Hence, the MeTC ruled that:

> [Rivera] executed the Promissory Note after consideration of the following: categorical statement of [respondent] Salvador that [Rivera] signed the Promissory Note before him, in his ([Rivera's]) house; the conclusion of NBI Senior Documents Examiner that the questioned signature (appearing on the Promissory Note) and standard specimen signatures "Rodrigo Rivera" "were written by one and the same person"; actual view at the hearing of the enlarged photographs of the questioned signature and the standard specimen signatures.[19]

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16 *Durban Apartments Corporation v. Pioneer Insurance and Surety Corporation*, G.R. No. 179419, 12 January 2011, 639 SCRA 441, 449.

17 Francisco, Evidence, (3rd Ed. 1996), p. 385.

18 *Lorzano v. Tabayag, Jr.*, G.R. No. 189647, 6 February 2012, 665 SCRA 38, 47.

19 *Rollo* in G.R. No. 184458, p. 113.

Specifically, Rivera insists that: "[i]f that promissory note indeed exists, it is beyond logic for a money lender to extend another loan on May 4, 1998 secured by a real estate mortgage, when he was already in default and has not been paying any interest for a loan incurred in February 1995."[20]

We disagree.

It is likewise likely that precisely because of the long standing friendship of the parties as "*kumpadres*," Rivera was allowed another loan, albeit this time secured by a real estate mortgage, which will cover Rivera's loan should Rivera fail to pay. There is nothing inconsistent with the Spouses Chua's two (2) and successive loan accommodations to Rivera: one, secured by a real estate mortgage and the other, secured by only a Promissory Note.

Also completely plausible is that given the relationship between the parties, Rivera was allowed a substantial amount of time before the Spouses Chua demanded payment of the obligation due under the Promissory Note.

In all, Rivera's evidence or lack thereof consisted only of a barefaced claim of forgery and a discordant defense to assail the authenticity and validity of the Promissory Note. Although the burden of proof rested on the Spouses Chua having instituted the civil case and after they established a *prima facie* case against Rivera, the burden of evidence shifted to the latter to establish his defense.[21] Consequently, Rivera failed to discharge the burden of evidence, refute the existence of the Promissory Note duly signed by him and subsequently, that he did not fail to pay his obligation thereunder. On the whole, there was no question left on where the respective evidence of the parties preponderated—in favor of plaintiffs, the Spouses Chua.

Rivera next argues that even assuming the validity of the Promissory Note, demand was still necessary in order to charge him liable thereunder. Rivera argues that it was grave error on the part of the appellate court to apply Section 70 of the Negotiable Instruments Law (NIL).[22]

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20 Id. at 33.

21 *De Leon v. Bank of the Philippine Islands*, G.R. No. 184565, 20 November 2013.

22 Sec. 70. ***Effect of want of demand on principal debtor.*** - Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers.

We agree that the subject promissory note is not a negotiable instrument and the provisions of the NIL do not apply to this case. Section 1 of the NIL requires the concurrence of the following elements to be a negotiable instrument:

> (a) It must be in writing and signed by the maker or drawer;
> (b) Must contain an unconditional promise or order to pay a sum certain in money;
> (c) Must be payable on demand, or at a fixed or determinable future time;
> (d) Must be payable to order or to bearer; and
> (e) Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

On the other hand, Section 184 of the NIL defines what negotiable promissory note is:

> SECTION 184. *Promissory Note, Defined*. – A negotiable promissory note within the meaning of this Act is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him.

The Promissory Note in this case is made out to specific persons, herein respondents, the Spouses Chua, and not to order or to bearer, or to the order of the Spouses Chua as payees.

However, even if Rivera's Promissory Note is not a negotiable instrument and therefore outside the coverage of Section 70 of the NIL which provides that presentment for payment is not necessary to charge the person liable on the instrument, Rivera is still liable under the terms of the Promissory Note that he issued.

The Promissory Note is unequivocal about the date when the obligation falls due and becomes demandable—31 December 1995. As of 1 January 1996, Rivera had already incurred in delay when he failed to pay the amount of □120,000.00 due to the Spouses Chua on 31 December 1995 under the Promissory Note.

Article 1169 of the Civil Code explicitly provides:

> Art. 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.
>
> **However, the demand by the creditor shall not be necessary in order that delay may exist**:
>
> > **(1) When the obligation or the law expressly so declare**; or
> > (2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or
> > (3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.
>
> In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins. (Emphasis supplied)

There are four instances when demand is not necessary to constitute the debtor in default: (1) when there is an express stipulation to that effect; (2) where the law so provides; (3) when the period is the controlling motive or the principal inducement for the creation of the obligation; and (4) where demand would be useless. In the first two paragraphs, it is not sufficient that the law or obligation fixes a date for performance; it must further state expressly that after the period lapses, default will commence.

We refer to the clause in the Promissory Note containing the stipulation of interest:

> It is agreed and understood that failure on my part to pay the amount of (□120,000.00) One Hundred Twenty Thousand Pesos on December 31, 1995. (*sic*) I agree to pay the sum equivalent to FIVE PERCENT (5%) interest monthly from the date of default until the entire obligation is fully paid for.[23]

which expressly requires the debtor (Rivera) to pay a 5% monthly interest from the "date of default" until the entire obligation is fully paid for. The parties evidently agreed that the maturity of the obligation at a date certain, 31 December 1995, will give rise to the obligation to pay interest. The

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23 *Rollo* in G.R. No. 184472, p. 76.

Promissory Note expressly provided that after 31 December 1995, default commences and the stipulation on payment of interest starts.

The date of default under the Promissory Note is 1 January 1996, the day following 31 December 1995, the due date of the obligation. On that date, Rivera became liable for the stipulated interest which the Promissory Note says is equivalent to 5% a month. In sum, until 31 December 1995, demand was not necessary before Rivera could be held liable for the principal amount of □120,000.00. Thereafter, on 1 January 1996, upon default, Rivera became liable to pay the Spouses Chua damages, in the form of stipulated interest.

The liability for damages of those who default, including those who are guilty of delay, in the performance of their obligations is laid down on Article 1170[24] of the Civil Code.

Corollary thereto, Article 2209 solidifies the consequence of payment of interest as an indemnity for damages when the obligor incurs in delay:

> Art. 2209. **If the obligation consists in the payment of a sum of money, and the debtor incurs in delay**, **the indemnity for damages**, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six percent per annum. (Emphasis supplied)

Article 2209 is specifically applicable in this instance where: (1) the obligation is for a sum of money; (2) the debtor, Rivera, incurred in delay when he failed to pay on or before 31 December 1995; and (3) the Promissory Note provides for an indemnity for damages upon default of Rivera which is the payment of a 5% monthly interest from the date of default.

We do not consider the stipulation on payment of interest in this case as a penal clause although Rivera, as obligor, assumed to pay additional 5% monthly interest on the principal amount of □120,000.00 upon default.

Article 1226 of the Civil Code provides:

> Art. 1226. In obligations with a penal clause, **the penalty shall substitute the indemnity for damages and the payment of interests in**

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[24] Art. 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.

> **case of noncompliance, if there is no stipulation to the contrary.** Nevertheless, damages shall be paid if the obligor refuses to pay the penalty or is guilty of fraud in the fulfillment of the obligation.
>
> The penalty may be enforced only when it is demandable in accordance with the provisions of this Code.

The penal clause is generally undertaken to insure performance and works as either, or both, punishment and reparation. It is an exception to the general rules on recovery of losses and damages. As an exception to the general rule, a penal clause must be specifically set forth in the obligation.[25]

In high relief, the stipulation in the Promissory Note is designated as payment of interest, not as a penal clause, and is simply an indemnity for damages incurred by the Spouses Chua because Rivera defaulted in the payment of the amount of □120,000.00. The measure of damages for the Rivera's delay is limited to the interest stipulated in the Promissory Note. In apt instances, in default of stipulation, the interest is that provided by law.[26]

In this instance, the parties stipulated that in case of default, Rivera will pay interest at the rate of 5% a month or 60% *per annum*. On this score, the appellate court ruled:

> It bears emphasizing that the undertaking based on the note clearly states the date of payment to be 31 December 1995. Given this circumstance, demand by the creditor is no longer necessary in order that delay may exist since the contract itself already expressly so declares. The mere failure of [Spouses Chua] to immediately demand or collect payment of the value of the note does not exonerate [Rivera] from his liability therefrom. Verily, the trial court committed no reversible error when it imposed interest from 1 January 1996 on the ratiocination that [Spouses Chua] were relieved from making demand under Article 1169 of the Civil Code.
> x x x x
>
> As observed by [Rivera], the stipulated interest of 5% per month or 60% per annum in addition to legal interests and attorney's fees is, indeed, highly iniquitous and unreasonable. Stipulated interest rates are illegal if they are unconscionable and the Court is allowed to temper interest rates when necessary. Since the interest rate agreed upon is void, the parties are considered to have no stipulation regarding the interest rate, thus, the rate of interest should be 12% per annum computed from the date of judicial or extrajudicial demand.[27]

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25 4 Tolentino, Civil Code of the Philippines, p. 260.
26 5 Tolentino, Civil Code of the Philippines, pp. 649-650.
27 *Rollo* in G.R. No. 184458, pp. 59-61.

The appellate court found the 5% a month or 60% *per annum* interest rate, on top of the legal interest and attorney's fees, steep, tantamount to it being illegal, iniquitous and unconscionable.

Significantly, the issue on payment of interest has been squarely disposed of in G.R. No. 184472 denying the petition of the Spouses Chua for failure to sufficiently show any reversible error in the ruling of the appellate court, specifically the reduction of the interest rate imposed on Rivera's indebtedness under the Promissory Note. Ultimately, the denial of the petition in G.R. No. 184472 is *res judicata* in its concept of "bar by prior judgment" on whether the Court of Appeals correctly reduced the interest rate stipulated in the Promissory Note.

Res judicata applies in the concept of "bar by prior judgment" if the following requisites concur: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; and (4) there must be, between the first and the second action, identity of parties, of subject matter and of causes of action.[28]

In this case, the petitions in G.R. Nos. 184458 and 184472 involve an identity of parties and subject matter raising specifically errors in the Decision of the Court of Appeals. Where the Court of Appeals' disposition on the propriety of the reduction of the interest rate was raised by the Spouses Chua in G.R. No. 184472, our ruling thereon affirming the Court of Appeals is a "bar by prior judgment."

At the time interest accrued from 1 January 1996, the date of default under the Promissory Note, the then prevailing rate of legal interest was 12% per *annum* under Central Bank (CB) Circular No. 416 in cases involving the loan or forbearance of money.[29] Thus, the legal interest accruing from the Promissory Note is 12% per *annum* from the date of default on 1 January 1996.

However, the 12% *per annum* rate of legal interest is only applicable until 30 June 2013, before the advent and effectivity of *Bangko Sentral ng Pilipinas* (BSP) Circular No. 799, Series of 2013 reducing the rate of legal

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28 *Agustin v. Sps. Delos Santos*, 596 Phil. 630, 642-643 (2009).

29 *See Eastern Shipping Lines v. Court of Appeals*, G.R. No. 97412, 12 July 1994, 234 SCRA 78.

interest to 6% *per annum*. Pursuant to our ruling in *Nacar v. Gallery Frames*,[30] BSP Circular No. 799 is prospectively applied from 1 July 2013. In short, the applicable rate of legal interest from 1 January 1996, the date when Rivera defaulted, to date when this Decision becomes final and executor is divided into two periods reflecting two rates of legal interest: (1) 12% *per annum* from 1 January 1996 to 30 June 2013; and (2) 6% *per annum* FROM 1 July 2013 to date when this Decision becomes final and executory.

As for the legal interest accruing from 11 June 1999, when judicial demand was made, to the date when this Decision becomes final and executory, such is likewise divided into two periods: (1) 12% *per annum* from 11 June 1999, the date of judicial demand to 30 June 2013; and (2) 6% *per annum* from 1 July 2013 to date when this Decision becomes final and executor.[31] We base this imposition of interest on **interest due earning legal interest** on Article 2212 of the Civil Code which provides that "interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent on this point."

From the time of judicial demand, 11 June 1999, the actual amount owed by Rivera to the Spouses Chua could already be determined with reasonable certainty given the wording of the Promissory Note.[32]

> We cite our recent ruling in *Nacar v. Gallery Frames*:[33]
> 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:

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30 G.R. No. 189871, 13 August 2013.

31 *BSP* Circular No. 799, Series of 2013 amending *BSP* Circular No. 905, Series of 1982.

> Section 1. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of contracts as to such rate or interest, shall be six percent (6%) *per annum*. <http://www.bsp.gov.ph/downloads/regulations/attachments/2013/c799.pdf> visited 11 May 2014.

32 Article 2213 of the Civil Code: Interest cannot be recovered upon unliquidated claims or damages except when the demand can be established with reasonable certainty.

33 Supra note 30.

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.
   And, in addition to the above, judgments that have become final and executory prior to July 1, 2013, shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein. (Emphasis supplied)

On the reinstatement of the award of attorney's fees based on the stipulation in the Promissory Note, we agree with the reduction thereof but not the ratiocination of the appellate court that the attorney's fees are in the

nature of liquidated damages or penalty. The interest imposed in the Promissory Note already answers as liquidated damages for Rivera's default in paying his obligation. We award attorney's fees, albeit in a reduced amount, in recognition that the Spouses Chua were compelled to litigate and incurred expenses to protect their interests.[34] Thus, the award of □50,000.00 as attorney's fees is proper.

For clarity and to obviate confusion, we chart the breakdown of the total amount owed by Rivera to the Spouses Chua:

Face value of the Promissory Note	Stipulated Interest A & B	Interest due earning legal interest A & B	Attorney's fees	Total Amount
February 24, 1995 to December 31, 1995	A. January 1, 1996 to June 30, 2013 B. July 1 2013 to date when this Decision becomes final and executory	A. June 11, 1999 (date of judicial demand) to June 30, 2013 B. July 1, 2013 to date when this Decision becomes final and executory	Wholesale amount	
□120,000.00	A. 12 % *per annum* on the principal amount of □120,000.00 B. 6% *per annum* on the principal amount of □120,000.00	A. 12% *per annum* on the total amount of column 2 B. 6% *per annum* on the total amount of column 2[35]	□50,000.00	Total amount of Columns 1-4

The total amount owing to the Spouses Chua set forth in this Decision shall further earn legal interest at the rate of 6% *per annum* computed from

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[34] Article 2208 of the Civil Code: In the absence of stipulation, attorney's fees, and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x

(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;

x x x x

[35] Based on Article 2212 of the Civil Code: Interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point.

its finality until full payment thereof, the interim period being deemed to be a forbearance of credit.

WHEREFORE, the petition in G.R. No. 184458 is **DENIED.** The Decision of the Court of Appeals in CA-G.R. SP No. 90609 is **MODIFIED.** Petitioner Rodrigo Rivera is ordered to pay respondents Spouse Salvador and Violeta Chua the following:

(1) the principal amount of □120,000.00;

(2) legal interest of 12% *per annum* of the principal amount of ₱120,000.00 reckoned from 1 January 1996 until 30 June 2013;

(3) legal interest of 6% *per annum* of the principal amount of P120,000.00 form 1 July 2013 to date when this Decision becomes final and executory;

(4) 12% *per annum* applied to the total of paragraphs 2 and 3 from 11 June 1999, date of judicial demand, to 30 June 2013, as interest due earning legal interest;

(5) 6% *per annum* applied to the total amount of paragraphs 2 and 3 from 1 July 2013 to date when this Decision becomes final and executor, as interest due earning legal interest;

(6) Attorney's fees in the amount of □50,000.00; and

(7) 6% *per annum* interest on the total of the monetary awards from the finality of this Decision until full payment thereof.

Costs against petitioner Rodrigo Rivera.

SO ORDERED.

JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

ESTELA M. PERLAS-BERNABE
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