Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NORLINDA S. MARILAG, Petitioner,	**G.R. No. 201892**
	Present:
- versus -	PERALTA,* *J.* BERSAMIN, *J.*, Acting Chairperson** PEREZ,
MARCELINO B. MARTINEZ, Respondent.	PERLAS-BERNABE, and LEONEN,*** *JJ.*
	Promulgated: JUL 22 2015

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D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated November 4, 2011 and the Resolution[3] dated May 14, 2012 of the Court of Appeals (CA) in CA-G.R. CV No. 81258 which recalled and set aside the Orders dated November 3, 2003[4] and January 14, 2004[5] of the Regional Trial Court (RTC) of Las Piñas City, Branch 202 (court *a quo*) in Civil Case No. 98-0156, and reinstated the Decision[6] dated August 28, 2003 directing petitioner Norlinda S. Marilag (petitioner) to return to respondent Marcelino B. Martinez (respondent) the latter's excess payment, plus interest, and to pay attorney's fees and the costs of suit.

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* Designated Acting Member per Special Order No. 2103 dated July 13, 2015.
** Per Special Order No. 2102 dated July 13, 2015.
*** Designated Acting Member per Special Order No. 2108 dated July 13, 2015.
1 *Rollo*, pp. 8-16.
2 Id. at 29-45. Penned by Associate Justice Leoncia R. Dimagiba with Associate Justices Noel G. Tijam and Marlene Gonzales concurring.
3 Id. at 60-61.
4 Id. at 26-28. Penned by Judge Elizabeth Yu Garay.
5 Records, pp. 462-466.
6 *Rollo*, pp. 19-25.

The Facts

On July 30, 1992, Rafael Martinez (Rafael), respondent's father, obtained from petitioner a loan in the amount of ₱160,000.00, with a stipulated monthly interest of five percent (5%), payable within a period of six (6) months. The loan was secured by a real estate mortgage over a parcel of land covered by Transfer Certificate of Title (TCT) No. T-208400. Rafael failed to settle his obligation upon maturity and despite repeated demands, prompting petitioner to file a Complaint for Judicial Foreclosure of Real Estate Mortgage before the RTC of Imus, Cavite, Branch 90[7] (RTC-Imus) on November 10, 1995,[8] docketed as Civil Case No. 1208-95 (judicial foreclosure case).

Rafael failed to file his answer and, upon petitioner's motion, was declared in default. After an *ex parte* presentation of petitioner's evidence, the RTC-Imus issued a Decision[9] dated January 30, 1998, (January 30, 1998 Decision) in the foreclosure case, declaring the stipulated 5% monthly interest to be usurious and reducing the same to 12% per annum (p.a.). Accordingly, it ordered Rafael to pay petitioner the amount of ₱229,200.00, consisting of the principal of ₱160,000.00 and accrued interest of ₱59,200.00 from July 30, 1992 to September 30, 1995.[10] Records do not show that this Decision had already attained finality.

Meanwhile, prior to Rafael's notice of the above decision, respondent agreed to pay Rafael's obligation to petitioner which was pegged at ₱689,000.00. After making a total payment of ₱400,000.00,[11] he executed a promissory note[12] dated February 20, 1998 (subject PN), binding himself to pay on or before March 31, 1998 the amount of ₱289,000.00, "representing the balance of the agreed financial obligation of [his] father to [petitioner]."[13] After learning of the January 30, 1998 Decision, respondent refused to pay the amount covered by the subject PN despite demands, prompting petitioner to file a complaint[14] for sum of money and damages before the court *a quo* on July 2, 1998, docketed as Civil Case No. 98-0156 (collection case).

Respondent filed his answer,[15] contending that petitioner has no cause of action against him. He averred that he has fully settled Rafael's obligation and that he committed a mistake in paying more than the amount due under

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7 Id. at 30.
8 Id. at 20.
9 Records, pp. 31-34.
10 Id. at 33-34.
11 Id. at 25 and 220-221.
12 Id. at 12.
13 Id.
14 Id. at 1-5.
15 Id. at 23-30.

the loan, *i.e.*, the amount of ₱229,200.00 as adjudged by the RTC-Imus in the judicial foreclosure case which, thus, warranted the return of the excess payment. He therefore prayed for the dismissal of the complaint, and interposed a compulsory counterclaim for the release of the mortgage, the return of the excess payment, and the payment of moral and exemplary damages, attorney's fees and litigation expenses.[16]

The Court *A Quo*'s Ruling

In a Decision[17] dated August 28, 2003 (August 28, 2003 Decision), the court *a quo* denied recovery on the subject PN. It found that the consideration for its execution was Rafael's indebtedness to petitioner, the extinguishment of which necessarily results in the consequent extinguishment of the cause therefor. Considering that the RTC-Imus had adjudged Rafael liable to petitioner only for the amount of ₱229,200.00, for which a total of ₱400,000.00 had already been paid, the court *a quo* found no valid or compelling reason to allow petitioner to recover further on the subject PN. There being an excess payment of ₱171,000.00, it declared that a quasi-contract (in the concept of *solutio indebiti*) exists between the parties and, accordingly, directed petitioner to return the said amount to respondent, plus 6% interest p.a.[18] reckoned from the date of judicial demand[19] on August 6, 1998 until fully paid, and to pay attorney's fees and the costs of suit.[20]

In an Order[21] dated November 3, 2003 (November 3, 2003 Order), however, the court *a quo* granted petitioner's motion for reconsideration, and recalled and set aside its August 28, 2003 Decision. It declared that the causes of action in the collection and foreclosure cases are distinct, and respondent's failure to comply with his obligation under the subject PN justifies petitioner to seek judicial relief. It further opined that the stipulated 5% monthly interest is no longer usurious and is binding on respondent considering the suspension of the Usury Law pursuant to Central Bank Circular 905, series of 1982. Accordingly, it directed respondent to pay the amount of ₱289,000.00 due under the subject PN, plus interest at the legal rate reckoned from the last extra-judicial demand on May 15, 1998, until fully paid, as well as attorney's fees and the costs of suit.[22]

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16 Id. at 25 and 28.
17 *Rollo*, pp. 19-25.
18 Id. at 23-24.
19 Filing of the Answer with Compulsory Counterclaim for the Return of the Overpayment; records, pp. 23 and 28.
20 *Rollo*, p. 25.
21 Id. at 26-28.
22 Id. at 27-28.

Aggrieved, respondent filed a motion for reconsideration[23] which was denied in an Order[24] dated January 14, 2004, prompting him to elevate the matter to the CA.[25]

The CA Ruling

In a Decision[26] dated November 4, 2011, the CA recalled and set aside the court *a quo's* November 3, 2003 and January 14, 2004 Orders, and reinstated the August 28, 2003 Decision. It held that the doctrine of *res judicata* finds application in the instant case,[27] considering that both the judicial foreclosure and collection cases were filed as a consequence of the non-payment of Rafael's loan, which was the principal obligation secured by the real estate mortgage and the primary consideration for the execution of the subject PN. Since *res judicata* only requires substantial, not actual, identity of causes of action and/or identity of issue,[28] it ruled that the judgment in the judicial foreclosure case relating to Rafael's obligation to petitioner is final and conclusive on the collection case.

Petitioner's motion for reconsideration was denied in a Resolution[29] dated May 14, 2012; hence, this petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA committed reversible error in upholding the dismissal of the collection case.

The Court's Ruling

The petition lacks merit.

A case is barred by prior judgment or *res judicata* when the following elements concur: (*a*) the judgment sought to bar the new action must be ***final***; (*b*) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (*c*) the disposition of the case must be a judgment on the merits; and (*d*) there must be as between the first and second action, identity of parties, subject matter, and causes of action.[30]

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23 Dated December 1, 2003; records, pp. 445-450.
24 Id. at 462-466.
25 *Rollo*, p. 40.
26 Id. at 29-45.
27 Id. at 41.
28 Id. at 43-44.
29 Id. at 60-61.
30 *Heirs of Miguel v. Heirs of Miguel*, G.R. No. 158916, March 19, 2014, 719 SCRA 413, 427.

After a punctilious review of the records, the Court finds the principle of *res judicata* to be inapplicable to the present case. This is because the records are bereft of any indication that the August 28, 2003 Decision in the judicial foreclosure case had already attained finality, evidenced, for instance, by a copy of the entry of judgment in the said case. Accordingly, with the very first element of *res judicata* missing, said principle cannot be made to obtain.

This notwithstanding, the Court holds that petitioner's prosecution of the collection case was barred, instead, by the principle of *litis pendentia* in view of the substantial identity of parties and singularity of the causes of action in the foreclosure and collection cases, such that the prior foreclosure case barred petitioner's recourse to the subsequent collection case.

To lay down the basics, ***litis pendentia*, as a ground for the dismissal of a civil action, refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious**. For the bar of *litis pendentia* to be invoked, the following requisites must concur: (*a*) identity of parties, or at least such parties as represent the same interests in both actions; (*b*) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (*c*) the identity of the two preceding particulars is such that any judgment rendered in the pending case, regardless of which party is successful would amount to *res judicata* in the other.[31] The underlying principle of *litis pendentia* is the theory that a party is not allowed to vex another more than once regarding the same subject matter and for the same cause of action. This theory is founded on the public policy that the same subject matter should not be the subject of controversy in courts more than once, in order that possible conflicting judgments may be avoided for the sake of the stability of the rights and status of persons, and also to avoid the costs and expenses incident to numerous suits.[32] Consequently, a party will not be permitted to split up a single cause of action and make it a basis for several suits as the whole cause must be determined in one action.[33] **To be sure, splitting a cause of action is a mode of forum shopping by filing multiple cases based on the same cause of action, but with different prayers, where the ground of dismissal is *litis pendentia* (or *res judicata*, as the case may be).**[34]

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31 *Brown-Araneta v. Araneta*, G.R. No. 190814, October 9, 2013, 707 SCRA 222, 244; *Yap v. Chua*, G.R. No. 186730, June 13, 2012, 672 SCRA 419, 428-429.

32 *Film Development Council of the Philippines v. SM Prime Holdings, Inc.*, G.R. No. 197937, April 3, 2013, 695 SCRA 175, 187.

33 *BPI Family Savings Bank, Inc. v. Vda. de Coscolluela*, 526 Phil. 419, 436-437 (2006).

34 *Chua v. Metropolitan Bank & Trust Company*, 613 Phil. 143, 154 (2009).

In this relation, it must be noted that the question of whether a cause of action is single and entire *or* separate is not always easy to determine and the same must often be resolved, not by the general rules, but by reference to the facts and circumstances of the particular case. The true rule, therefore, is **whether the entire amount arises from one and the same act or contract which must, thus, be sued for in one action, *or* the several parts arise from distinct and different acts or contracts, for which a party may maintain separate suits.**[35]

In loan contracts secured by a real estate mortgage, the rule is that the creditor-mortgagee has a **single cause of action** against the debtor-mortgagor, *i.e.*, **to recover the debt**, through the **filing of a personal action for collection of sum of money *or* the institution of a real action to foreclose on the mortgage security**. The two remedies are **alternative**,[36] not cumulative or successive,[37] and each remedy is complete by itself. Thus, if the creditor-mortgagee opts to foreclose the real estate mortgage, he waives the action for the collection of the unpaid debt,[38] ***except only*** for the recovery of whatever deficiency may remain in the outstanding obligation of the debtor-mortgagor **after deducting the bid price in the public auction sale of the mortgaged properties**.[39] Accordingly, a deficiency judgment shall only issue after it is established that the mortgaged property was sold at public auction for an amount less than the outstanding obligation.

In the present case, records show that petitioner, as creditor-mortgagee, instituted an action for judicial foreclosure pursuant to the provisions of Rule 68 of the Rules of Court in order to recover on Rafael's debt. In light of the foregoing discussion, the availment of such remedy thus bars recourse to the subsequent filing of a personal action for collection of **the same debt**, in this case, under the principle of *litis pendentia*, considering that the foreclosure case only remains pending as it was not shown to have attained finality.

While the ensuing collection case was anchored on the promissory note executed by respondent who was not the original debtor, the same does not constitute a separate and distinct contract of loan which would have given rise to a separate cause of action upon breach. Notably, records are bereft of any indication that respondent's agreement to pay Rafael's loan obligation and the execution of the subject PN extinguished by novation[40] the contract of loan between Rafael and petitioner, in the absence of express agreement or any act of equal import. Well-settled is the rule that novation is

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35 *BPI Family Savings Bank, Inc. v. Vda. de Coscolluela*, supra note 33, at 437-438.
36 *Flores v. Lindo, Jr.*, 664 Phil. 210, 216 (2011).
37 *Allandale Sportsline, Inc. v. The Good Dev't. Corp.*, 595 Phil. 265, 280 (2008).
38 *Flores v. Lindo, Jr.*, supra note 36.
39 *Spouses Tanchan v. Allied Banking Corporation*, 592 Phil. 252, 273-274 (2008).
40 Article 1293 of the Civil Code defines novation as follows:

Art. 1293. Novation which consists in substituting a new debtor in the place of the original one, may be made even without the knowledge or against the will of the latter, but not without the consent of the creditor. Payment by the new debtor gives him rights mentioned in articles 1236 and 1237.

never presumed, but must be clearly and unequivocally shown. Thus, in order for a new agreement to supersede the old one, the parties to a contract must expressly agree that they are abrogating their old contract in favor of a new one,[41] which was not shown here.

On the contrary, it is significant to point out that: (*a*) the consideration for the subject PN was the same consideration that supported the original loan obligation of Rafael; (*b*) respondent merely assumed to pay Rafael's remaining unpaid balance in the latter's behalf, *i.e.*, as Rafael's agent or representative;[42] and (*c*) the subject PN was executed after respondent had assumed to pay Rafael's obligation and made several payments thereon. Case law states that the fact that the creditor accepts payments from a third person, who has assumed the obligation, will result merely in the addition of debtors, not novation, and the creditor may enforce the obligation against both debtors.[43] For ready reference, the subject PN reads in full:

February 20, 1998

PROMISSORY NOTE

₱289,000.00

I, MARCELINO B. MARTINEZ, son of Mr. RAFAEL MARTINEZ, of legal age, Filipino, married and a resident of No. 091 Anabu I-A, Imus, Cavite, by these presents do hereby specifically and categorically PROMISE, UNDERTAKE and bind myself **in behalf of my father**, to pay to Miss NORLINDA S. MARILAG, Mortgagee-Creditor of my said father, the sum of TWO HUNDRED EIGHTY NINE THOUSAND PESOS (₱289,000.00), Philippine Currency, on or before MARCH 31, 1998, **representing the balance of the agreed financial obligation of my said father to her**. (Emphases supplied)

Executed at Pamplona I, Las Piñas City, Metro Manila, this 20th day of February, 1998.

Sgd.
MARCELINO B. MARTINEZ
Promissor[44]

Petitioner's contention that the judicial foreclosure and collection cases enforce independent rights[45] must, therefore, fail because the Deed of Real Estate Mortgage[46] and the subject PN both refer to one and the same

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41 *S.C. Megaworld Construction and Development Corporation v. Parada*, G.R. No. 183804, September 11, 2013, 705 SCRA 584, 602.

42 in behalf of. (n.d.). *Dictionary.com Unabridged.* <http://dictionary.reference.com/browse/in behalf of> (last visited July 15, 2015).

43 *S.C. Megaworld Construction and Development Corporation v. Parada*, supra note 41.

44 Records, p. 12.

45 *Rollo*, p. 78.

46 Records, pp. 190 to 190-A.

obligation, *i.e.*, Rafael's loan obligation. As such, there exists ***only one cause of action*** for a single breach of that obligation. Petitioner cannot split her cause of action on Rafael's unpaid loan obligation by filing a petition for the judicial foreclosure of the real estate mortgage covering the said loan, and, thereafter, a personal action for the collection of the unpaid balance of said obligation not comprising a deficiency arising from foreclosure, without violating the proscription against splitting a single cause of action, where the ground for dismissal is either *res judicata* or *litis pendentia*, as in this case.

As elucidated by this Court in the landmark case of *Bachrach Motor Co., Inc. v. Icarangal.*[47]

> **For non-payment of a note secured by mortgage, the creditor has a single cause of action against the debtor.** This single cause of action consists in the recovery of the credit with execution of the security. In other words, the creditor in his action may make two demands, the payment of the debt and the foreclosure of his mortgage. But both demands arise from the same cause, the non-payment of the debt, and, for that reason, they constitute a single cause of action. **Though the debt and the mortgage constitute separate agreements, the latter is subsidiary to the former, and both refer to one and the same obligation. Consequently, there exists only one cause of action for a single breach of that obligation.** ***Plaintiff, then, by applying the rule above stated, cannot split up his single cause of action by filing a complaint for payment of the debt, and thereafter another complaint for foreclosure of the mortgage***. If he does so, the filing of the first complaint will bar the subsequent complaint. By allowing the creditor to file two separate complaints simultaneously or successively, one to recover his credit and another to foreclose his mortgage, we will, in effect, be authorizing him plural redress for a single breach of contract at so much cost to the courts and with so much vexation and oppression to the debtor. (Emphases and underscoring supplied)

Further on the point, the fact that no foreclosure sale appears to have been conducted is of no moment because the remedy of foreclosure of mortgage is deemed chosen upon the filing of the complaint therefor.[48] In *Suico Rattan & Buri Interiors, Inc. v. CA*,[49] it was explained:

> x x x x In sustaining the rule that prohibits mortgage creditors from pursuing both the remedies of a personal action for debt or a real action to foreclose the mortgage, the Court held in the case of *Bachrach Motor Co., Inc. v. Esteban Icarangal, et al.* that a rule which would authorize the plaintiff to bring a personal action against the debtor and simultaneously or successively another action against the mortgaged property, would result not only in multiplicity of suits so offensive to justice and obnoxious to law and equity, but also in subjecting the defendant to the vexation of being sued in the place of his residence or of the residence of the plaintiff, and then again in the place where the

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47 68 Phil. 287, 293-294 (1939).
48 *Suico Rattan & Buri Interiors, Inc. v. CA*, 524 Phil. 92, 116 (2006).
49 Id.

> property lies. Hence, **a remedy is deemed chosen upon the filing of the suit for collection or upon the filing of the complaint in an action for foreclosure of mortgage, pursuant to the provisions of Rule 68 of the Rules of Court.** As to extrajudicial foreclosure, such remedy is deemed elected by the mortgage creditor upon filing of the petition not with any court of justice but with the office of the sheriff of the province where the sale is to be made, in accordance with the provisions of Act No. 3135, as amended by Act No. 4118. (Emphases supplied)

As petitioner had already instituted judicial foreclosure proceedings over the mortgaged property, she is now barred from availing herself of an ordinary action for collection, regardless of whether or not the decision in the foreclosure case had attained finality. In fine, the dismissal of the collection case is in order. Considering, however, that respondent's claim for return of excess payment partakes of the nature of a compulsory counterclaim and, thus, survives the dismissal of petitioner's collection suit, the same should be resolved based on its own merits and evidentiary support.[50]

Records show that other than the matter of interest, the principal loan obligation and the payments made were not disputed by the parties. Nonetheless, the Court finds the stipulated 5% monthly interest to be excessive and unconscionable. In a plethora of cases, the Court has affirmed that **stipulated interest rates of three percent (3%) per month and higher are excessive, iniquitous, unconscionable, and exorbitant,[51] hence, illegal[52] and void for being contrary to morals.**[53] In *Agner v. BPI Family Savings Bank, Inc.*,[54] the Court had the occasion to rule:

> Settled is the principle which this Court has affirmed in a number of cases that stipulated interest rates of three percent (3%) per month and higher are excessive, iniquitous, unconscionable, and exorbitant. While Central Bank Circular No. 905-82, which took effect on January 1, 1983, effectively removed the ceiling on interest rates for both secured and unsecured loans, regardless of maturity, nothing in the said circular could possibly be read as granting *carte blanche* authority to lenders to raise interest rates to levels which would either enslave their borrowers or lead to a hemorrhaging of their assets. **Since the stipulation on the interest rate is void for being contrary to morals, if not against the law, it is as if there was no express contract on said interest rate; thus, the interest rate may be reduced as reason and equity demand.** (Emphases supplied)

As such, the stipulated 5% monthly interest should be equitably reduced to 1% per month or 12% p.a. reckoned from the execution of the real estate mortgage on July 30, 1992. In order to determine whether there

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50 *Perkin Elmer Singapore Pte Ltd. v. Dakila Trading Corp.*, 556 Phil. 822, 851 (2007).
51 *Agner v. BPI Family Savings Bank, Inc.*, G.R. No. 182963, June 3, 2013, 697 SCRA 89, 102.
52 *RGM Industries, Inc. v. United Pacific Capital Corporation*, 689 Phil. 660, 664-665 (2012).
53 *Chua v.* Timan, 584 Phil. 144, 148 (2008).
54 *Agner v. BPI Family Savings Bank, Inc.*, supra note 51.

was any overpayment as claimed by respondent, we first compute the interest until January 30, 1998[55] when he made a payment in the amount of ₱300,000.00 on Rafael's loan obligation. Accordingly, the amount due on the loan as of the latter date is hereby computed as follows:

Principal	₱160,000.00
Add: Interest from 07/30/1992 to 01/30/1998 (₱160,000.00 x 12% x 5.5 yrs.)	105,600.00
Amount due on the loan	₱265,600.00
Less: Payment made on 01/30/98	(300,000.00)
Overpayment as of 01/30/98	(₱ 34,400.00)[56]

Thus, as of January 30, 1998, only the amount of ₱265,600.00 was due under the loan contract, and the receipt of an amount more than that renders petitioner liable for the return of the excess. Respondent, however, made further payment in the amount of ₱100,000.00[57] on the belief that the subject loan obligation had not yet been satisfied. Such payments were, therefore, clearly made by mistake, giving rise to the quasi-contractual obligation of *solutio indebiti* under Article 2154[58] in relation to Article 2163[59] of the Civil Code. Not being a loan or forbearance of money, an interest of 6% p.a. should be imposed on the amount to be refunded and on the damages and attorney's fees awarded, if any, computed from the time of demand[60] until its satisfaction.[61] Consequently, petitioner must return to respondent the excess payments in the total amount of ₱134,400.00, with legal interest at the rate of 6% p.a. from the filing of the Answer on August 6, 1998[62] interposing a counterclaim for such overpayment, until fully settled.

However, inasmuch as the court *a quo* failed to state in the body of its decision the factual or legal basis for the award of attorney's fees to the respondent, as required under Article 2208[63] of the New Civil Code, the

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55 Records, p. 220.

56 Id.

57 On February 20, 1998; id. at 221.

58 ART. 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

59 ART. 2163. It is presumed that **there was a mistake in the payment if something which** had never been due or **had already been paid was delivered**; but he from whom the return is claimed may prove that the delivery was made out of liberality or for any other just cause.

60 *Siga-an v. Villanueva*, 596 Phil. 760, 776 (2009), citing the case of *Eastern Shipping Lines, Inc. v. Court of Appeals* (G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95-97), holding that 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 rate of 6% per annum.

61 *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013, 703 SCRA 439, 458.

62 Records, p. 23-30.

63 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;

Court resolves to delete the same. The rule is well-settled that the trial court must clearly state the reasons for awarding attorney's fees in the body of its decision, not merely in its dispositive portion, as the appellate courts are precluded from supplementing the bases for such award.[64]

Finally, in the absence of showing that the court a *quo's* award of the costs of suit in favor of respondent was patently capricious,[65] the Court finds no reason to disturb the same.

WHEREFORE, the petition is **DENIED**. The Decision dated November 4, 2011 and the Resolution dated May 14, 2012 of the Court of Appeals in CA-G.R. CV No. 81258 reinstating the court *a quo's* Decision dated August 28, 2003 in Civil Case No. 98-0156 are hereby **AFFIRMED** with the **MODIFICATIONS:** (*a*) directing petitioner Norlinda S. Marilag to return to respondent Marcelino B. Martinez the latter's excess payments in the total amount of ₱134,400.00, plus legal interest at the rate of 6% p.a. from the filing of the Answer on August 6, 1998 until full satisfaction; and (*b*) deleting the award of attorney's fees.

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(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.

64 In *S.C. Megaworld Construction and Development Corporation v. Parada*, supra note 41 at 611-612, the Court held:

> The rule is settled that the trial court must state the factual, legal or equitable justification for its award of attorney's fees. Indeed, the matter of attorney's fees cannot be stated only in the dispositive portion, but the reasons must be stated in the body of the court's decision. This failure or oversight of the trial court cannot even be supplied by the CA. As concisely explained in *Frias v. San Diego-Sison*:
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> > Article 2208 of the New Civil Code enumerates the instances where such may be awarded and, in all cases, it must be reasonable, just and equitable if the same were to be granted. Attorney's fees as part of damages are not meant to enrich the winning party at the expense of the losing litigant. They are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate. The award of attorney's fees is the exception rather than the general rule. As such, it is necessary for the trial court to make findings of facts and law that would bring the case within the exception and justify the grant of such award. The matter of attorney's fees cannot be mentioned only in the dispositive portion of the decision. They must be clearly explained and justified by the trial court in the body of its decision. **On appeal, the CA is precluded from supplementing the bases for awarding attorney's fees when the trial court failed to discuss in its Decision the reasons for awarding the same**. Consequently, the award of attorney's fees should be deleted. (Emphases supplied)

65 *Villareal v. Ramirez*, 453 Phil. 999, 1012 (2003).

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice
Acting Chairperson

JOSE PORTUGAL PEREZ
Associate Justice

MARVIC M. V. F. LEONEN
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.

LUCAS P. BERSAMIN
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Acting 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.

ANTONIO T. CARPIO
Acting Chief Justice