Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

BANK OF THE PHILIPPINE ISLANDS, Petitioner,	**G.R. No. 169407**
	Present:
- *versus* -	SERENO, *CJ.*, Chairperson, LEONARDO-DE CASTRO, BERSAMIN, PEREZ, and PERLAS-BERNABE, *JJ.*
	Promulgated:
AMADOR DOMINGO, Respondent.	MAR 2 5 2015

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DECISION

LEONARDO-DE CASTRO, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, filed by petitioner Bank of the Philippine Islands (BPI), seeking the reversal and setting aside of the Decision[1] dated July 11, 2005 and Resolution[2] dated August 19, 2005 of the Court of Appeals in CA-G.R. SP No. 88836.

The Petition arose from the following facts:

On September 27, 1993, respondent Amador Domingo (Amador) and his wife, the late Mercy Maryden Domingo (Mercy),[3] (collectively referred to as the spouses Domingo) executed a Promissory Note[4] in favor of Makati Auto Center, Inc. in the sum of ₱629,856.00, payable in 48 successive monthly installments in the amount of ₱13,122.00 each. They simultaneously executed a Deed of Chattel Mortgage[5] over a 1993 Mazda 323 (subject vehicle) to secure the payment of their Promissory Note.

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1 *Rollo*, pp. 28-40; penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Rosmari D. Carandang and Monina Arevalo Zenarosa, concurring.
2 Id. at 42-43.
3 Died on November 27, 2003.
4 *Rollo*, p. 56.
5 Id. at 57-60.

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Makati Auto Center, Inc. then assigned, ceded, and transferred all its rights and interests over the said Promissory Note and chattel mortgage to Far East Bank and Trust Company (FEBTC).

On April 7, 2000, the Securities and Exchange Commission (SEC) approved and issued the Certificate of Filing of the Articles of Merger and Plan of Merger executed on January 20, 2000 by and between BPI, the surviving corporation, and FEBTC, the absorbed corporation. By virtue of said merger, all the assets and liabilities of FEBTC were transferred to and absorbed by BPI.[6]

The spouses Domingo defaulted when they failed to pay 21 monthly installments that had fallen due consecutively from January 15, 1996 to September 15, 1997. BPI, being the surviving corporation after the merger, demanded that the spouses Domingo pay the balance of the Promissory Note including accrued late payment charges/interests or to return the possession of the subject vehicle for the purpose of foreclosure in accordance with the undertaking stated in the chattel mortgage. When the spouses Domingo still failed to comply with its demands, BPI filed on November 14, 2000 a Complaint[7] for Replevin and Damages (or in the alternative, for the collection of sum of money, interest and other charges, and attorney's fees) which was raffled to the Metropolitan Trial Court (MeTC) of Manila, Branch 9, and docketed as Civil Case No. 168949-CV. BPI included a John Doe as defendant because at the time of filing of the Complaint, BPI was already aware that the subject vehicle was in the possession of a third person but did not yet know the identity of said person.

In their Answer,[8] the spouses Domingo raised the following affirmative defenses:

> 4. [BPI] has no cause of action against the [spouses Domingo].
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> 5. The Honorable Court has no jurisdiction over this case,
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> 6. As per the allegations in the complaint, JOHN DOE is an indispensable party to this case so with his whereabouts unknown, service by publication should first be made before proceeding with the trial of this case;
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> 7. Defendant Maryden Domingo once obtained a car loan from Far East Bank and Trust Company but the car was later sold to Carmelita S. Gonzales with the bank's conformity and the buyer subsequently assumed payment of the balance of the mortgaged loan.

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6 Records, pp. 192-201.
7 Id. at 2-10.
8 Id. at 28-31.

During trial, the prosecution presented as witness Vicente Magpusao, a former employee of FEBTC and now an Account Analyst of BPI. His testimony was summed up by the MeTC as follows:

> Vicente Magpusao, [BPI's] Account Analyst and formerly connected with Far East Bank and Trust Company testified that on September 27, 1993, [the spouses Domingo] for consideration executed and delivered to Makati Auto Center, Inc. a Promissory Note in the sum of □629,856.00 payable in monthly installments in accordance with the schedule of payment indicated in said Promissory Note. In order to secure the payment of the obligation, the [spouses Domingo] executed in favor of said Makati Auto Center, Inc. on the same date a Chattel Mortgage over one (1) unit of 1993 Mazda (323) with Motor No. B6-270146 and with Serial No. BG1062M9100287. With notice to [the spouses Domingo], said Makati Auto Center, Inc. assigned to Far East Bank and Trust Co. the Chattel Mortgage as shown by the Deed of Assignment executed by [Makati Auto Center, Inc.]. Far East Bank and Trust Co. on the other hand, has been merged with and/or absorbed by herein plaintiff [BPI]. The [spouses Domingo] defaulted in complying with the terms and conditions of the Promissory Note with Chattel Mortgage by failing to pay twenty[-one] (21) successive installments which fell due on January 15, 1996 up to September 15, 1997. [BPI] sent a demand letter [to] defendant Mercy Domingo thru registered mail demanding payment of the whole balance of the Promissory Note plus the stipulated interest and other charges or return to [BPI] the possession of the above-described motor vehicle. There were some negotiations made by the [spouses Domingo] to their In-House Legal Assistant but the same did not materialize. Based on the Statement of Account dated October 31, 2000, [the spouses Domingo have] an outstanding balance of □275,562.00 exclusive of interest and other charges.
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> On cross-examination, the witness explained that the first time he came to handle [the spouses Domingo's] account was in 1997. Despite the fact that he was not yet employed with the bank in 1993, he knew exactly what happened in this particular transaction because of his experience in auto financing. He also has an access [to] the Promissory Note, Chattel Mortgage and other records of payment made by the bank. Based on the records, the [spouses Domingo] issued several postdated checks but not for the entire term. There were payments made from October 30, 199[3] up to September 14, 1994. He was not the one who received payments for the auto finance. If there were receipts issued, they will only ride for the account of Mrs. Domingo. He was not sure if these receipts are kept in the warehouse or probably disposed of by the bank since the transaction was made in 1997. They already have a computer records of all payments made by their client. Based on the subsidiary ledger, there were three (3) checks that bounced and these are payments from the new buyer. They only have one (1) photocopy of these checks in the amount of □325,431.60 while the other two (2) are missing. He was not aware who owns Cargo and Hardware Corporation but the check was issued by a certain Miss Gonzales. The witness further testified that anyone can pay the monthly amortization as long as the payment is for the account of Maryden Domingo. They cannot include Carmelita Gonzales as one of the defendants in this case because they don't have a document executed by the latter in behalf of Far East Bank and Trust Co. The bank did not approve the Deed of Sale with Assumption of Mortgage.

> Witness further testified that he found the photocopy of the Deed of Sale in the records of Maryden Domingo. The Promissory Note and Chattel Mortgage were executed by the defendants Maryden and Amador Domingo. There was no assumption of obligation of the [spouses Domingo]. Witness however admitted that Far East Bank did not turn over to [BPI] all the records pertaining to the account of the [spouses Domingo].[9] (Citations omitted.)

Amador himself testified for the defense. The MeTC provided the following summary of Amador's testimony:

> For his defense, defendant Amador Domingo testified that his wife and co-defendant Mercy Maryden Domingo died on November 27, 2003. He admitted that his wife bought a car and was mortgaged to Far East Bank and Trust Company. He identified the Chattel Mortgage and the Promissory Note he executed together with his wife. In connection with the execution of this Promissory Note, he recalled that his wife issued forty-eight (48) checks. The twelve (12) checks were cleared by the bank and his wife was able to obtain a discount for prompt payments up to October 1994. While they were still paying for the car, Carmelita Gonzales got interested to buy the car and is willing to assume the mortgage. After furnishing the bank [with] the Deed of Sale duly notarized, Carmelita Gonzales subsequently issued a check payable to Far East Bank and Trust Company and the remaining postdated checks were returned to them. Based on the application of payment prepared by [BPI's] witness, Carmelita Gonzales made payments from November 14, 1995 to December 1995. Aside from these payments on May 19, 1997, Carmelita Gonzales issued a check to Far East Bank in the amount of □385,431.60. In 1996, he received a phone call from a certain Marvin Orence asking for their assistance to locate the car which Carmelita Gonzales bought from them. His lawyer went to Land Transportation Office for assistance. From the time Ms. Gonzales started to pay, they never received any demand letter from Far East Bank. Thereafter, on February 29, 1997, they received a demand letter from Espino Law Office [on] behalf of [FEBTC]. His lawyer made a reply on March 31, 1997 stating therein that the motor vehicle for which the loan was obtained had been sold to Carmelita Gonzales as of July 5, 1994 with the knowledge and approval of their client. After three years, they received another demand letter dated October 31, 2000 from Labaguis Law Office. His lawyer made the same reply on March 7, 2000 and another letter on November 24, 2000.
>
> Witness further testified that this malicious complaint probably triggered the early demise of his wife who has a high blood pressure. His wife died of aneurism. As damages, he is asking for the amount of □200,000.00 as moral damages, □75,000.00 as attorney's fees and □5,000.00 appearance fee.
>
> On cross-examination, witness elaborates that when his wife presented to Far East Bank the Deed of Sale with Assumption of Mortgage, the bank made no objection and returned all their postdated checks. His wife was the one who deal[t] with Carmelita Gonzales but he always provide[d] assistance with respect to paper works. Aside from the

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9 *Rollo*, pp. 67-68.

> aforesaid Deed of Sale, there is no other document which shows the conformity of the bank. They were only verbally assured by Mr. Orence that their papers are in order.[10]

On June 10, 2004, the MeTC rendered a Decision in favor of BPI as the bank was able to establish by preponderance of evidence a valid cause of action against the spouses Domingo. According to the MeTC, novation is never presumed and must be clearly shown by express agreement or by acts of equal import. To effect a subjective novation by a change in the person of the debtor, it is necessary that the old debtor be released expressly from the obligation and the third person or new debtor assumes his place. Without such release, there is no novation and the third person who assumes the debtor's obligation merely becomes a co-debtor or surety. The MeTC found Amador's bare testimony as insufficient evidence to prove that he and his wife Mercy had been expressly released from their obligations and that Carmelita Gonzales (Carmelita) assumed their place as the new debtor within the context of subjective novation; and if at all, Carmelita only became the spouses Domingo's co-debtor or surety. While finding that BPI was entitled to the reliefs prayed for, the MeTC made no adjudication as to the entitlement of the bank to the Writ of Replevin, and instead awarded monetary reliefs as were just and equitable. The dispositive portion of the MeTC decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of [BPI], ordering defendant Amador Domingo:
>
> 1. To pay [BPI] the sum of ₱275,562.00 plus interest thereon at the rate of 36% per annum from November 15, 2000 until fully paid;
>
> 2. To pay [BPI] the sum equivalent to 25% of the total amount due as atorney's fees; and
>
> 3. To pay the costs of suit.[11]

Acting on Amador's Motion for Reconsideration, the MeTC issued an Order[12] dated September 6, 2004 affirming its earlier judgment but reducing the attorney's fees awarded, thus:

> WHEREFORE, premises considered the Decision of this Court dated June 10, 2014 stands, subject to the modification that the attorney's fees of twenty-five percent (25%) is ordered reduced to ten percent (10%) of the total amount due.[13]

Dissatisfied, Amador appealed his case before the Regional Trial Court (RTC) of Manila, Branch 26, wherein it was docketed as Civil Case No. 04-111100. In its Decision dated February 10, 2005, the RTC held that

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10 Id. at 69-70.
11 Id. at 71.
12 Id. at 81-82.
13 Id. at 82.

in novation, consent of the creditor to the substitution of the debtor need not be by express agreement, it can be merely implied. The consent is not required to be in any specific or particular form; the only requirement being that it must be given by the creditor in one way or another. To the RTC, the following circumstances demonstrated the implied consent of BPI to the novation: (1) BPI had knowledge of the Deed of Sale and Assumption of Mortgage executed between Mercy and Carmelita, but did not interpose any objection to the same; and (2) BPI (through FEBTC) returned the personal checks of the spouses Domingo and accepted the payments made by Carmelita. The RTC also noted that BPI made a demand for payment upon the spouses Domingo only after 30 months from the time Carmelita assumed payments for the installments due. The RTC reasoned that if the spouses Domingo truly remained as debtors, BPI would not have wasted time in demanding payments from them. Ultimately, the RTC decreed:

> WHEREFORE, premises considered, the judgment appealed from is hereby reversed. The complaint filed by [BPI] before [MeTC] Branch 9, Manila, is hereby DISMISSED and ordering [BPI] to pay defendant/appellant Amador Domingo the following, to wit:
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> a) One Hundred Thousand (₱100,000.00) Pesos as moral damages;
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> b) Fifty Thousand (₱50,000.00) Pesos as exemplary damages;
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> c) Fifty Thousand (₱50,000.00) Pesos as attorney's fees;
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> d) Twenty-Five Thousand (₱25,000.00) [Pesos] as litigation expenses;
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> e) Costs of this suit.[14]

Aggrieved by the foregoing RTC judgment, BPI filed a Petition for Review with the Court of Appeals, docketed as CA-G.R. SP No. 88836. The Court of Appeals promulgated its Decision on July 11, 2005, affirming the finding of the RTC that novation took place. The Court of Appeals, relying on the declaration in *Babst v. Court of Appeals*[15] that consent of the creditor to the substitution of debtors need not always be express and may be inferred from the acts of the creditor, ruled that:

> In this case, there is no doubt that FEBTC had the intention to release private respondent [Amador] and his wife from the obligation when the latter sold the subject vehicle to [Carmelita]. This intention can be inferred from the following acts of FEBTC: 1) it returned the postdated checks issued by private respondent [Amador's] wife in favor of FEBTC; 2) it accepted the payments made by [Carmelita]; 3) it did not interpose any objection despite knowledge of the existence of the Deed of Sale with Assumption of Mortgage; and 4) it did not demand payment from private respondent [Amador] and his wife for thirty (30) long months.

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14 Id. at 109-110.

15 403 Phil. 244, 260 (2001).

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As correctly found by the RTC, the testimony of private respondent [Amador] as regards the return of the said checks to them by FEBTC was not rebutted by petitioner BPI.

If indeed the said checks were not returned to private respondent [Amador's] wife, the least thing that petitioner BPI or FEBTC could have done was to deposit them. Should the checks thereafter bounce, then petitioner BPI or FEBTC could have filed a separate case against private respondent [Amador's] wife. This was never done by petitioner BPI or FEBTC. Hence, it is safe to conclude that the said checks were indeed returned to private respondent [Amador's] wife.[16]

The Court of Appeals rejected the other arguments of BPI:

Petitioner BPI further argues that as regards the payment made by the alleged new debtor, Carmelita Gonzales, it appears that the only payment made by her was a PNB Check No. 00190322 dated May 19, 1997 which was dishonored due to Account Closed.

Careful scrutiny of the records of the case reveals otherwise. As found by the MeTC in its decision dated June 10, 2004, Carmelita Gonzales made several payments on the said loan obligation, as testified to by witness Vicente Magpusao, petitioner BPI's Account Analyst, thus:

> x x x. Based on the subsidiary leger, (Exhibit "2"), there were three (3) checks that bounced and these are payments from the *new buyer*. They only have one (1) photocopy of these checks in the amount of ₱325,431.60 (Exhibit 4) while the other two are missing. He was not aware who owns Cargo and Hardware Corporation but the check was issued by a certain *Miss Gonzales*. x x x.

x x x x

Petitioner BPI further argues that it was not its obligation to interpose any objection to the Deed of Sale with Assumption of Mortgage. Rather it should be the vendee, [Carmelita], who should secure the approval and consent of petitioner BPI to the Deed of Sale.

This argument is untenable.

The Deed of Sale with Assumption of Mortgage between private respondent [Amador's] wife and [Carmelita] was executed way back on July 5, 1994. The check that was issued by [Carmelita] was dated May 19, 1997. The position of petitioner BPI is not possible because when the Deed of Sale with Assumption of Mortgage was executed and the said check was issued, private respondent [Amador's] wife and [Carmelita] were still dealing with FEBTC, considering the fact that the merger of petitioner BPI and FEBTC was formalized on April 10, 2000.

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16 *Rollo*, pp. 36-37.

> Nevertheless, FEBTC interposed no objection to the Deed of Sale with Assumption of Mortgage, hence, it consented to it.
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> From the foregoing, it is clear that novation took place so that private respondent Domingo is no longer the debtor of petitioner BPI.[17] (Citations omitted.)

The Court of Appeals, however, deleted the damages awarded to Amador for the following reasons:

> As to the second issue, petitioner BPI argues that the RTC awarded moral and exemplary damages and attorney's fees to respondent [Amador] only in the dispositive portion of the assailed decision without any basis in fact and in law.
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> This Court finds the argument tenable.
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> In the case of *Solid Homes, Inc. vs. Court of Appeals*, it was held that:
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> > "It is basic that the claim for actual, moral and punitive damages as well as exemplary damages and attorney's fees must each be independently identified and justified."
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> Furthermore, Section 14, paragraph 1 of Article VIII, of the 1987 Constitution lays down the standard in rendering decisions, to wit: it must be express therein clearly and distinctly the facts and law on which it is based.
>
> Perusal of the assailed decision reveals that the award of moral and exemplary damages as well as attorney's fees and litigation expenses were only touched in the dispositive portion, which is in clear disregard of the established rules laid down by the Constitution and existing jurisprudence. Therefore, their deletion is in order.
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> As regards the award of litigation expenses and costs of the suit, the same should also be deleted considering that "no premium should be placed on the right to litigate."[18] (Citations omitted.)

The Court of Appeals ultimately adjudged:

> **WHEREFORE**, premises considered, the assailed decision dated February 10, 2005 of the Regional Trial Court, Branch 26, Manila in Civil Case No. 04-111100 is hereby **AFFIRMED** with **MODIFICATION** in that the award of moral and exemplary damages as well as attorney's fees, litigation expenses and costs of suit, is hereby deleted.[19]

In its Resolution dated August 19, 2005, the Court of Appeals denied the Motion for Partial Reconsideration of BPI.

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17 Id. at 37-38.
18 Id. at 38-39.
19 Id. at 276.

BPI comes to this Court via the present Petition for Review/Appeal by *Certiorari* raising the sole issue of whether or not there had been a novation of the loan obligation with chattel mortgage of the spouses Domingo to BPI so that the spouses Domingo were released from said obligation and Carmelita was substituted as debtor.

The Court answers in the negative and grants the Petition.

In *De Cortes v. Venturanza*,[20] the Court discussed some principles and jurisprudence underlying the concept and nature of novation as a mode of extinguishing obligations:

> According to Manresa, novation is the extinguishment of an obligation by the substitution or change of the obligation by a subsequent one which extinguishes or modifies the first, either by changing the object or principal conditions, or by substituting the person of the debtor, or by subrogating a third person to the rights of the creditor (8 Manresa 428, cited in IV Civil Code of the Philippines by Tolentino 1962 ed., p. 352). Unlike other modes of extinction of obligations, novation is a juridical act with a dual function – it extinguishes an obligation and creates a new one in lieu of the old.
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> Article 1293 of the New Civil Code provides:
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> > "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*." (emphasis supplied)
>
> Under this provision, there are two forms of novation by substituting the person of the debtor, and they are: (1) *expromision* and (2) *delegacion*. In the former, the initiative for the change does not come from the debtor and may even be made without his knowledge, since it consists in a third person assuming the obligation. As such, it logically requires the consent of the third person and the creditor. **In the latter, the debtor offers and the creditor accepts a third person who consents to the substitution and assumes the obligation, so that the intervention and the consent of these three persons are necessary** (8 Manresa 436-437, cited in IV Civil Code of the Philippines by Tolentino, 1962 ed., p. 360). **In these two modes of substitution, the consent of the creditor is an indispensable requirement** (*Garcia vs. Khu Yek Chiong*, 65 Phil. 466, 468). (Emphases supplied.)

The Court also emphasized in *De Cortes* the indispensability of the creditor's consent to the novation, whether *expromision* or *delegacion*, given that the "[s]ubstitution of one debtor for another may delay or prevent the fulfillment of the obligation by reason of the financial inability or insolvency of the new debtor; hence, the creditor should agree to accept the substitution in order that it may be binding on him."[21]

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20 170 Phil. 55, 68-69 (1977).

21 Id. at 70.

Both the RTC and the Court of Appeals found that there was novation by *delegacion* in the case at bar. The Deed of Sale with Assumption of Mortgage was executed between Mercy (representing herself and her husband Amador) and Carmelita, thus, their consent to the substitution as debtors and third person, respectively, are deemed undisputed. It is the existence of the consent of BPI (or its absorbed corporation FEBTC) as creditor that is being challenged herein.

As a general rule, since novation implies a waiver of the right the creditor had before the novation, such waiver must be express.[22] The Court explained the rationale for the rule in *Testate Estate of Lazaro Mota v. Serra*[23]:

> It should be noted that in order to give novation its legal effect, the law requires that the creditor should consent to the substitution of a new debtor. This consent must be given expressly for the reason that, since novation extinguishes the personality of the first debtor who is to be substituted by a new one, it implies on the part of the creditor a waiver of the right that he had before the novation, which waiver must be express under the principle that *renuntiatio non praesumitor*, recognized by the law in declaring that a waiver of right may not be performed unless the will to waive is indisputably shown by him who holds the right.

However, in *Asia Banking Corporation v. Elser*,[24] the Court qualified thus:

> The aforecited article 1205 [now 1293] of the Civil Code does not state that the creditor's consent to the substitution of the new debtor for the old be express, or given at the time of the substitution, and the Supreme Court of Spain, in its judgment of June 16, 1908, construing said article, laid down the doctrine that "article 1205 of the Civil Code does not mean or require that the creditor's consent to the change of debtors must be given simultaneously with the debtor's consent to the substitution; its evident purpose being to preserve the creditor's full right, it is sufficient that the latter's consent be given at any time and in any form whatever, while the agreement of the debtors subsists." The same rule is stated in the *Enciclopedia Jurídica Española*, volume 23, page 503, which reads: "The rule that this kind of novation, like all others, must be express, is not absolute; for the existence of the consent may well be inferred from the acts of the creditor, since volition may as well be expressed by deeds as by words." The understanding between Henry W. Elser and the principal director of Yangco, Rosenstock & Co., Inc., with respect to Luis R. Yangco's stock in said corporation, and the acts of the board of directors after Henry W. Elser had acquired said shares, in substituting the latter for Luis R. Yangco, are a clear and unmistakable expression of its consent. When this court said in the case of Estate of Mota vs. Serra (47 Phil., 464), that the creditor's express consent is necessary in order that there may be a novation of a contract by the substitution of debtors, it did not wish to convey the impression that the word "express" was to be given an

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22 *Japan Airlines v. Simangan*, 575 Phil. 359, 374 (2008).
23 47 Phil. 464, 469-470 (1925).
24 54 Phil. 994, 1004-1005 (1929).

> unqualified meaning, as indicated in the authorities or cases, both Spanish and American, cited in said decision.

Hence, based on the aforequoted ruling in *Asia Banking*, the existence of the creditor's consent may also be inferred from the creditor's acts, but such acts still need to be "a clear and unmistakable expression of [the creditor's] consent."[25]

In *Ajax Marketing and Development Corporation v. Court of Appeals*,[26] the Court further clarified that:

> The well settled rule is that novation is never presumed. Novation will not be allowed unless it is clearly shown by express agreement, or by acts of equal import. Thus, to effect an objective novation it is imperative that the new obligation expressly declare that the old obligation is thereby extinguished, or that the new obligation be on every point incompatible with the new one. In the same vein, to effect a subjective novation by a change in the person of the debtor it is necessary that the old debtor be released expressly from the obligation, and the third person or new debtor assumes his place in the relation. There is no novation without such release as the third person who has assumed the debtor's obligation becomes merely a co-debtor or surety. (Citations omitted.)

The determination of the existence of the consent of BPI to the substitution of debtors, in accordance with the standards set in the preceding jurisprudence, is a question of fact because it requires the Court to review the evidence on record. It is an established rule that the jurisdiction of the Court in cases brought before it from the Court of Appeals via a petition for review on *certiorari* under Rule 45 of the Rules of Court is generally limited to reviewing errors of law as the former is not a trier of facts. Thus, the findings of fact of the Court of Appeals are conclusive and binding upon the Court in the latter's exercise of its power to review for it is not the function of the Court to analyze or weigh evidence all over again.[27] However, several of the recognized exceptions[28] to this rule are present in the instant case that justify a factual review, *i.e.*, the inference is manifestly mistaken, the judgment is based on misapprehension of facts, and the findings of the Court of Appeals and the RTC are contrary to those of the MeTC.

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25 Id. at 1005.

26 G.R. No. 118585, September 14, 1995, 248 SCRA 222, 227.

27 *Surigao Del Norte Electric Cooperative, Inc. v. Escalante*, G.R. No. 187722, June 10, 2013, 698 SCRA 103, 115.

28 Among the recognized exceptions are: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties. (*Asian Terminals, Inc. v. Simon Enterprises, Inc*., G.R. No. 177116, February 27, 2013, 692 SCRA 87, 96-97.)

The burden of establishing a novation is on the party who asserts its existence.[29] Contrary to the findings of the Court of Appeals and the RTC, Amador failed to discharge such burden as he was unable to present proof of the clear and unmistakable consent of BPI to the substitution of debtors.

Irrefragably, there is no express consent of BPI to the substitution of debtors. The Court of Appeals and the RTC inferred the consent of BPI from the following facts: (1) BPI had a copy of the Deed of Sale and Assumption of Mortgage executed between Mercy and Carmelita in its file, indicating its knowledge of said agreement, and still it did not interpose any objection to the same; (2) BPI (through FEBTC) returned the spouses Domingo's checks and accepted Carmelita's payments; and (3) BPI did not demand any payment from the spouses Domingo not until 30 months after Carmelita assumed the payment of balance on the Promissory Note.

The Court disagrees with the inferences made by the Court of Appeals and the RTC.

First, that BPI (or FEBTC) had a copy of the Deed of Sale and Assumption of Mortgage executed between Mercy and Carmelita in its file does not mean that it had consented to the same. The very Deed itself states:

> That the VENDEE [Carmelita] assumes as he/she had assumed to pay the aforecited mortgage in accordance with the original terms and conditions of said mortgage, and the parties hereto [Mercy and Carmelita] have agreed to seek the conformity of the MORTGAGEE [FEBTC].[30]

This brings the Court back to the original question of whether there is proof of the conformity of BPI.

The Court notes that the documents of BPI concerning the car loan and chattel mortgage are still in the name of the spouses Domingo. No new promissory note or chattel mortgage had been executed between BPI (or FEBTC) and Carmelita. Even the account itself is still in the names of the spouses Domingo.

The absence of objection on the part of BPI (or FEBTC) cannot be presumed as consent. Jurisprudence requires presentation of proof of consent, not mere absence of objection. Amador cannot rely on *Babst* which involved a different factual milieu. Relevant portions of the Court's ruling in *Babst* are reproduced below:

> In the case at bar, Babst, MULTI and ELISCON all maintain that due to the failure of BPI to register its objection to the take-over by DBP of ELISCON's assets, at the creditors' meeting held in June 1981 and

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29 *Netterstorm v. Gallistel* (110 Ill. App., 352) cited in *Martinez v. Cavives*, 25 Phil. 581, 587 (1913), and *Testate Estate of Lazaro Mota v. Serra*, supra note 23 at 478.

30 Records, p. 240.

> thereafter, it is deemed to have consented to the substitution of DBP for ELISCON as debtor.
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> We find merit in the argument. Indeed, there exist clear indications that BPI was aware of the assumption by DBP of the obligations of ELISCON. In fact, BPI admits that —
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> > "[T]he Development Bank of the Philippines (DBP), for a time, had proposed a formula for the settlement of Eliscon's past obligations to its creditors, including the plaintiff [BPI], but the formula was expressly rejected by the plaintiff as not acceptable (long before the filing of the complaint at bar)."
>
> The Court of Appeals held that even if the account officer who attended the June 1981 creditors' meeting had expressed consent to the assumption by DBP of ELISCON's debts, such consent would not bind BPI for lack of a specific authority therefor. In its petition, ELISCON counters that the mere presence of the account officer at the meeting necessarily meant that he was authorized to represent BPI in that creditors' meeting. Moreover, BPI did not object to the substitution of debtors, although it objected to the payment formula submitted by DBP.
>
> Indeed, the authority granted by BPI to its account officer to attend the creditors' meeting was an authority to represent the bank, such that when he failed to object to the substitution of debtors, he did so on behalf of and for the bank. Even granting arguendo that the said account officer was not so empowered, BPI could have subsequently registered its objection to the substitution, especially after it had already learned that DBP had taken over the assets and assumed the liabilities of ELISCON. Its failure to do so can only mean an acquiescence in the assumption by DBP of ELISCON's obligations. As repeatedly pointed out by ELISCON and MULTI, BPI's objection was to the proposed payment formula, not to the substitution itself.[31]

In *Babst*, there was a clear opportunity for BPI, as creditor therein, to object to the substitution of debtors given that its representative attended a creditor's meeting, during which, said representative already objected to the proposed payment formula made by DBP, as the new debtor. Hence, the silence of BPI during the same meeting as to the matter of substitution of debtors could already be interpreted as its acquiescence to the same. In contrast, there was no clear opportunity for BPI (or FEBTC) to have expressed its objection to the substitution of debtors in the case at bar.

Second, the consent of BPI to the substitution of debtors cannot be deduced from its acceptance of payments from Carmelita, absent proof of its clear and unmistakable consent to release the spouses Domingo from their obligation. Since the spouses Domingo remained as debtors of BPI, together with Carmelita, the fact that BPI demanded payment from the spouses Domingo 30 months after accepting payment from Carmelita is insignificant.

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[31] *Babst v. Court of Appeals*, supra note 15 at 260-261.

The acceptance by a creditor of payments from a third person, who has assumed the obligation, will result merely to the addition of debtors and not novation. The creditor may therefore enforce the obligation against both debtors.[32] As the Court pronounced in *Magdalena Estates, Inc. v. Rodriguez*,[33] "[t]he mere fact that the creditor receives a guaranty or accepts payments from a third person who has agreed to assume the obligation, when there is no agreement that the first debtor shall be released from responsibility, does not constitute a novation, and the creditor can still enforce the obligation against the original debtor." The Court reiterated in *Quinto v. People*[34] that "[n]ot too uncommon is when a stranger to a contract agrees to assume an obligation; and while this may have the effect of adding to the number of persons liable, it does not necessarily imply the extinguishment of the liability of the first debtor. Neither would the fact alone that the creditor receives guaranty or accepts payments from a third person who has agreed to assume the obligation, constitute an extinctive novation absent an agreement that the first debtor shall be released from responsibility."

Absent proof that BPI gave its clear and unmistakable consent to release the spouses Domingo from the obligation to pay the car loan, Carmelita is simply considered an additional debtor. Consequently, BPI can still enforce the obligation against the spouses Domingo even 30 months after it had started accepting payments from Carmelita.

And third, there is no sufficient or competent evidence to establish the return of the checks to the spouses Domingo and the assurance made by FEBTC that the spouses Domingo were already released from their obligation.

During his direct examination, Amador testified as follows:

Atty. Rivera:

1. Q. Do you remember who was this person who became interested to buy this car?
   A. Carmelita S. Gonzales, Sir.

2. Q. What did you tell Mrs. Gonzales when she expressed interest in buying this car, this Mazda vehicle?
   A. We told her that the car was mortgaged and she told us that she is willing to assume the mortgage, Sir.

3. Q. With that willingness, what happened next on the part of Mrs. Gonzales to assume the mortgage?

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32 *Servicewide Specialists, Inc. v. Intermediate Appellate Court*, 255 Phil. 787, 800 (1989).
33 125 Phil. 151, 157 (1966).
34 365 Phil. 259, 269 (1999).

A. My wife and Mrs. Gonzales went to Far East Bank and Trust Company and she informed the bank that somebody is interested in buying the car and assume the mortgage and the bank informed her that the bank is agreeable and with no objection.

Atty. Ganitano: Objection, your Honor. May we object to the answer of the witness, it would be hearsay. The witness testified that it was his wife and the would-be buyer who went to the bank.

Atty. Rivera: Then, we are just offering it as part of the narration not necessarily to prove the truth of the statement, your Honor.

Court: The witness may continue.

Atty. Rivera: So, after that meeting with the bank occurred, what happened next in connection with this intention of Mrs. Gonzales to purchase the car?

Witness: After furnishing the bank with the Deed of Absolute Sale duly notarized, [Ms.] Carmelita Gonzales subsequently issued a check payable to Far East Bank and Trust Company, Sir.

Atty. Rivera:

1. Q. How about the postdated checks that your wife issued to Far East Bank and Trust Company?
   A. The remaining postdated checks were returned to us, Sir.

2. Q. Do you remember what were those postdated checks that were returned by the bank?
   A. Those were the checks we issued in advance, Sir.

3. Q. What were the dates of these checks?
   A. October 30, 1994 to 1997, Sir.

x x x x

Atty. Rivera:

1. Q. Aside from this evidence that you have enumerated, were you able to talk to any representative from Far East Bank relative to the approval of the change in the personality of the debtor from your wife to…
   A. As I remember, sometime in 1996, I received a call from a certain Marvin Orence asking for our assistance to locate the car that Mrs. Carmelita Gonzales bought from us and informed us that we have nothing to worry except that we provide them assistance to locate the car and I informed our lawyer, Atty. Rivera, about this and Atty. Rivera

went to the Land Transportation Office for assistance.[35]

Amador continued to testify on cross-examination, thus:

CROSS EXAMINATION BY ATTY. GANITANO

1. Q. You testified that out of the 48 checks you paid to Far East Bank & Trust Company, only 12 checks were made good. What happened to the 36 checks?
   A. When my wife brought the transaction to Far East Bank and presented the Deed of Absolute Sale, the bank have no objection to the sale of the car and afterwards, the bank returned all the postdated checks prepared by my wife that was in the possession of the bank, Sir.

1. Q. Do you have with you those 36 checks that were allegedly returned by Far East Bank?
   A. These checks have already been discarded, Sir.

2. Q. So, you cannot present those 36 checks anymore?
   A. No, Sir.

3. Q. Who was the alleged buyer of the mortgaged car again?

Witness: Carmelita S. Gonzales, Sir.

Atty. Ganitano:

1. Q. To whom did this Carmelita Gonzales transacted with respect to the sale of mortgaged vehicle?
   A. To my wife, Mercy Maryden Domingo, Sir.

2. Q. Not with you, Mr. Witness?
   A. Well, I always provide assistance to my wife with regards to paper works, Sir.

3. Q. When was this Deed of Sale executed, was it before when your wife and the buyer went to the bank or after they went to the bank?
   A. I think it was simultaneous, Sir.

4. Q. When you say "simultaneous", Mr. Witness, I'm showing to you this Deed of Sale with Assumption of Mortgage and you said it was with the conformity of the bank. Will you please tell us in this Deed of Sale with Assumption of Mortgage if you could find any entry which indicate that the bank agreed to the sale with assumption of mortgage?

Witness: None, Sir.

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[35] TSN, February 2, 2004, pp. 10-17.

Atty. Ganitano: Aside from this Deed of Sale with Assumption of Mortgage, do you have any document which shows that the bank indeed conformed to the sale of the mortgaged vehicle with assumption of mortgage?

Witness: We were verbally assured that our papers are in order, Sir.

Atty. Ganitano: So, there is no document, Mr. Witness, it was only made orally?

Witness: Yes, Sir, we were verbally assured that our papers are in order.

Atty. Ganitano:

1. Q. Were you present when your wife and the would-be buyer went to the bank?
   A. No, Sir.

2. Q. How did you know that there was an assurance from the bank?
   A. I received a phone call from Mr. Oronce. I asked about the transaction and he told me that there is nothing to worry because our documents or papers were in order, Sir.

3. Q. Do I get you right, Mr. Witness, that the confirmation was only through phone call?
   A. It was Mr. Oronce who called me, Sir.

4. Q. I'm just asking what was the means of communication, was it only thru phone call?

   A. Yes, Sir, thru phone call. I think twice or three times.

Atty. Rivera: We would like to manifest, your Honor, as early as 1997, just to stress this point, as early as March 1997, the name of Marvin Oronce…

Atty. Ganitano: The witness is under cross, your Honor.

Court: You just ask that in re-direct, counsel.

Atty. Rivera: Yes, you Honor.[36]

Amador admitted that it was his wife Mercy, together with Carmelita, who directly transacted with FEBTC regarding the sale of the subject vehicle to and assumption of mortgage by Carmelita. Amador had no personal knowledge of what had happened when Mercy and Carmelita went to the bank so his testimony on the matter was hearsay, which, if not excluded, deserves no credence.

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[36] Id. at 31-34.

The Court explained in *Da Jose v. Angeles*[37] that:

> Evidence is hearsay when its probative force depends on the competency and credibility of some persons other than the witness by whom it is sought to be produced. The exclusion of hearsay evidence is anchored on three reasons: (1) absence of cross-examination; (2) absence of demeanor evidence; and (3) absence of oath. Basic under the rules of evidence is that a witness can only testify on facts within his or her personal knowledge. This personal knowledge is a substantive prerequisite in accepting testimonial evidence establishing the truth of a disputed fact. x x x. (Citations omitted.)

The Court of Appeals and the RTC substantively based their finding that BPI (or FEBTC) consented to the substitution of debtors on the return of the checks to the spouses Domingo, but the proof of the issuance of the checks, their delivery to the bank, and the return of the checks flimsily consists of Amador's unsubstantiated testimony. Amador recounted that the postdated checks which he and Mercy executed in favor of FEBTC were returned to them, however, he failed to provide the details surrounding the return. Amador only stated that when Mercy provided FEBTC with a copy of the Deed of Sale and Assumption of Mortgage, the bank returned the checks to them "subsequently" or "afterwards." Amador did not say how the checks were returned and to whom. The checks were not presented during the trial since according to Amador, they were already "discarded," although once more, any other detail surrounding the discarding of the checks is sorely lacking. Aside from Amador's bare testimony, no other supporting evidence of the return of the checks to the spouses Domingo was submitted during trial. For the foregoing reasons, the Court accords little weight and credence to Amador's testimony on the return of the checks.

It is worthy to stress that Amador, as the party asserting novation, bears the burden of proving its existence. Amador cannot simply rely on the failure of BPI to produce the checks if these were not actually returned to the spouses Domingo. There is simply not enough evidence to establish the *prima facie* existence of novation to shift the burden of evidence to BPI to controvert the same.

The verbal assurances purportedly given by a Mr. Marvin Orence or Oronce (Orence/Oronce) of FEBTC to Amador over the telephone that the spouses Domingo's documents were in order do not constitute the clear and unmistakable consent of the bank to the substitution of debtors. Once again, except for Amador's bare testimony, there is no other evidence of such telephone conversations taking place and the subject of such telephone conversations. In addition, Mr. Orence/Oronce's identity, position at FEBTC, and authority to represent and bind the bank, were not even clearly established.

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37 G.R. No. 187899, October 23, 2013, 708 SCRA 506, 521.

The letter dated March 31, 1997 of Atty. Ricardo J.M. Rivera (Rivera), counsel for the spouses Domingo, addressed to Atty. Cresenciano L. Espino, counsel for FEBTC, does not serve as supporting evidence for Amador's testimony regarding the return of the checks and the verbal assurances given by Mr. Orence/Oronce. The contents of such letter are mere hearsay because the events stated therein did not personally happen to Atty. Rivera or in his presence, and he merely relied on what his clients, the spouses Domingo, told him.

The Court is therefore convinced that there is no novation by *delegacion* in this case and Amador remains a debtor of BPI. The Court reinstates the MeTC judgment ordering Amador to pay for the ₱275,562.00 balance on the Promissory Note, 10% attorney's fees, and costs of suit; but modifies the rate of interest imposed and the date when such interest began to run.

In *Ruiz v. Court of Appeals*,[38] the Court equitably reduced the interest rate of 3% per month or 36% per annum stipulated in the promissory notes therein to 1% per month or 12% per annum, based on the following ratiocination:

> We affirm the ruling of the appellate court, striking down as invalid the 10% compounded monthly interest, the 10% surcharge per month stipulated in the promissory notes dated May 23, 1995 and December 1, 1995, and the 1% compounded monthly interest stipulated in the promissory note dated April 21, 1995. The legal rate of interest of 12% per annum shall apply after the maturity dates of the notes until full payment of the entire amount due. Also, the only permissible rate of surcharge is 1% per month, without compounding. We also uphold the award of the appellate court of attorney's fees, the amount of which having been reasonably reduced from the stipulated 25% (in the March 22, 1995 promissory note) and 10% (in the other three promissory notes) of the entire amount due, to a fixed amount of ₱50,000.00. However, we equitably reduce the 3% per month or 36% per annum interest present in all four (4) promissory notes to 1% per month or 12% per annum interest.
>
> The foregoing rates of interests and surcharges are in accord with *Medel vs. Court of Appeals*, *Garcia vs. Court of Appeals*, *Bautista vs. Pilar Development Corporation*, and the recent case of *Spouses Solangon vs. Salazar*. This Court invalidated a stipulated 5.5% per month or 66% per annum interest on a ₱500,000.00 loan in *Medel* and a 6% per month or 72% per annum interest on a ₱60,000.00 loan in *Solangon* for being excessive, iniquitous, unconscionable and exorbitant. In both cases, we reduced the interest rate to 12% per annum. We held that while the Usury Law has been suspended by Central Bank Circular No. 905, s. 1982, effective on January 1, 1983, and parties to a loan agreement have been given wide latitude to agree on any interest rate, still stipulated interest rates are illegal if they are unconscionable. Nothing in the said circular grants lenders carte blanche authority to raise interest rates to levels which will either enslave their borrowers or lead to a hemorrhaging of their assets. On the other hand, in *Bautista vs. Pilar Development Corp.*, this

[38] 449 Phil. 419, 433-435 (2003).

> Court upheld the validity of a 21% per annum interest on a ₱142,326.43 loan, and in *Garcia vs. Court of Appeals*, sustained the agreement of the parties to a 24% per annum interest on an ₱8,649,250.00 loan. It is on the basis of these cases that we reduce the 36% per annum interest to 12%. An interest of 12% per annum is deemed fair and reasonable. While it is true that this Court invalidated a much higher interest rate of 66% per annum in *Medel* and 72% in *Solangon* it has sustained the validity of a much lower interest rate of 21% in *Bautista* and 24% in *Garcia*. We still find the 36% per annum interest rate in the case at bar to be substantially greater than those upheld by this Court in the two (2) aforecited cases. (Citations omitted.)

On the strength of the foregoing jurisprudence, the Court likewise finds the interest rate of 3% per month or 36% per annum stipulated in the Promissory Note herein for the balance of ₱275,562.00 as excessive, iniquitous, unconscionable, and exorbitant. Following the guidelines set forth in *Eastern Shipping Lines, Inc. v. Court of Appeals*[39] and *Nacar v. Gallery Frames*,[40] the Court imposes instead legal interest in the following rates: (1) legal interest of 12% per annum from date of extrajudicial demand on January 29, 1997 until June 30, 2013; and (2) legal interest of 6% per annum from July 1, 2013 until fully paid.

Incidentally, Amador passed away on June 5, 2010 during the pendency of the instant petition, and is survived by his children, namely: Joann D. Moya, Annabelle G. Domingo, Cristina G. Domingo, Amador G. Domingo, Jr., Gloria Maryden D. Macatangay, Dante Amador G. Domingo, Gregory Amador A. Domingo, and Ina Joy A. Domingo.[41] To prevent future litigation in the enforcement of the award, the Court clarifies that Amador's heirs are not personally responsible for the debts of their predecessor. The extent of liability of Amador's heirs to BPI is limited to the value of the estate which they inherited from Amador. In this jurisdiction, "it is the estate or mass of the property left by the decedent, instead of the heirs directly, that becomes vested and charged with his rights and obligations which survive after his death."[42] To rule otherwise would unduly deprive Amador's heirs of their properties.

WHEREFORE, in view of the foregoing, the Petition is **GRANTED**. The Decision dated July 11, 2005 and Resolution dated August 19, 2005 of the Court of Appeals in CA-G.R. SP No. 88836, affirming with modification the Decision dated February 10, 2005 of the RTC of Manila, Branch 26 in Civil Case No. 04-111100, is **REVERSED** and **SET ASIDE**. The Decision dated June 10, 2004 and Order dated September 6, 2004 of the MeTC of Manila, Branch 9 in Civil Case No. 168949-CV, is **REINSTATED** with **MODIFICATIONS**. The heirs of respondent Amador Domingo are **ORDERED** to pay petitioner Bank of the Philippine Islands the following:

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39 G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95-97.

40 G.R. No. 189871, August 13, 2013, 703 SCRA 439, 457-459.

41 Manifestation dated June 6, 2011 filed by Ricardo J. M. Rivera Law Office, Counsel for the Respondent Amador Domingo; *rollo*, pp. 218-219.

42 *Planters Development Bank v. Lopez*, G.R. No. 186332, October 23, 2013, 708 SCRA 481, 504.

(1) the ₱275,562.00 balance on the Promissory Note, plus legal interest of 12% from January 29, 1997 to June 30, 2013 and 6% from July 1, 2013 until fully paid; (2) attorney's fees of 10%; and (3) costs of suit. However, the liability of Amador Domingo's heirs is limited to the value of the inheritance they received from the deceased.

SO ORDERED.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

JOSE PORTUGAL PEREZ
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