

## TWELFTH DIVISION

[ CA-G.R. CV. No. 95195, June 25, 2014 ]

**EQUITABLE SAVINGS BANK, PLAINTIFF-APPELLEE, VS.  
CAROLINE A. REMIGIO, ELIZABETH A. REMIGIO, CHRISTINE  
DUCOS AND JOHN DOE, DEFENDANTS-APPELLANTS.**

### DECISION

**ELBINIAS, J.:**

For disposition is an Appeal<sup>[1]</sup> filed under Rule 41 of the Rules of Court. The Appeal assails the Decision<sup>[2]</sup> dated June 5, 2009 of the Regional Trial Court ("lower court" for brevity) of Pasay City, Branch 112 in Civil Case No. 05-0914 for "RECOVERY OF POSSESSION WITH REPLEVIN WITH ALTERNATIVE PRAYER FOR SUM OF MONEY AND DAMAGES."<sup>[3]</sup> The Appeal also questions the lower court's Order<sup>[4]</sup> dated September 17, 2009, which denied defendants-appellants' eventual Motion for Reconsideration.<sup>[5]</sup>

The salient facts are those as stated in the lower court's assailed Decision<sup>[6]</sup> dated January 5, 2009, as follows:

**"This is an action for Recovery of Possession with Replevin filed by the plaintiff (*plaintiff-appellee Equitable here*) against the defendants and a certain John Doe/s (*defendants-appellants here*) whose real name and address is at present unknown to the plaintiff but is joined as a party defendant as he/she may be the person in whose possession the motor vehicle (*subject motor vehicle here*) subject of this suit may be found, more particularly described as follows:**

UNIT : ISUZU CROSSWIND WAGON XUV  
MODEL: 2004  
SERIAL: PABTBR54F32022979  
No  
MOTOR: BR6393  
No.  
COLOR : ALPHINE WHITE

Alleged in the **Complaint and testified to by the prosecution's witnesses** are the following facts: that **herein defendants have jointly obtained [a] loan and executed a Promissory Note on January 21, 2004, together with Chattel Mortgage on March 15, 2004, over the above-described motor vehicle, in the amount of P818,892.00, payable in monthly installment of P22,747.00. The defendant failed to pay several installments thereby making the remaining balance of P477,687.00 [due] and that despite receipt**

**of a Demand Letter, defendants failed to settle the unpaid balance, and (*sic*) foreclosed the Chattel Mortgage, prompting the plaintiff to file a complaint for the recovery of the motor vehicle pursuant to the mortgage contract, so that the proceed[s] thereof can be applied to defendants' unpaid balance. Consequently, the subject motor vehicle was seized from defendant, Christine Remigio-Ducos on October 20, 2005.**

Moreover, **plaintiff alleged that payments of the defendants were debited automatically against their deposit, however starting on January 2005, plaintiff bank could no longer debit the amortization due to insufficiency of fund of defendant's (*sic*) account, until May 2005.**

On the other hand, **defendants raised their defense, that their loan was updated and they never remiss[ed] in the payment of their amortization considering that they have an agreed payment through automatic debit against their savings account, as shown in their passbook xxx. The alleged non-payment of amortization was attributable to the neglect of the plaintiff bank, for failure to effect the auto-debit transaction. Alleged further, that the total amount deducted was already P361,151.24, when it should only deduct P353,344.00 or an excess of P7,807.25 plus numerous penalties for late payments of P27,644.00 xxx which supposedly should not be imposed considering that it is the obligation of plaintiff bank to effect the auto-debit payment.** Thus, plaintiff's claim has no basis considering that defendant's non-payment is its own neglect."<sup>[7]</sup> (*Emphasis supplied*)

On October 10, 2005, the lower court issued a Writ of Replevin<sup>[8]</sup> authorizing the lower court's Sheriff to take<sup>[9]</sup> the subject vehicle from defendants-appellants Caroline A. Remigio, Elizabeth A. Remigio, Christine Ducos, and John Doe ("defendants-appellants" for brevity). By virtue of the Writ<sup>[10]</sup>, the lower court's Sheriff seized the motor vehicle from defendant-appellant Caroline A. Remigio<sup>[11]</sup>.

On January 5, 2009, the lower court rendered the Decision<sup>[12]</sup> appealed from, which granted plaintiff-appellee Equitable Savings Bank's ("plaintiff-appellee Equitable" for brevity) Complaint<sup>[13]</sup> for "RECOVERY OF POSSESSION WITH REPLEVIN WITH ALTERNATIVE PRAYER FOR SUM OF MONEY AND DAMAGES" against defendants-appellants by "confirming [plaintiff-appellee Equitable's] right of possession over the subject motor vehicle."<sup>[14]</sup>

After defendants-appellants' Motion for Reconsideration<sup>[15]</sup> was denied by the lower court in its assailed Order<sup>[16]</sup> dated September 17, 2009, defendants-appellants filed the Appeal<sup>[17]</sup> at bench, praying that:

"Premises considered, it is respectfully prayed unto this Honorable Court of Appeals to grant the instant Appeal by:

1. reversing or setting aside the assailed Decision and finding the

plaintiff-appellee to have no cause of action against the defendants-appellants;

2. declaring the defendants-appellants to be free from default or delay in the performance of their obligation under the promissory note and chattel mortgage agreements;

3. declaring the defendants-appellants to be entitled to the refund comprising the over-payment and charges for 'late payments';

4. declaring the defendants-appellants entitled to award of damages and attorney's fees; and,

5. condemning the plaintiff-appellee to refund the total amount deducted from the savings account of the defendants representing the monthly amortizations from January 2004 to May 2005.

Other reliefs that are deemed just and equitable under the circumstances are likewise prayed for.”<sup>[18]</sup>

Defendants-appellants raised the following assignment of errors:

#### “Assignment of Errors

1.1. The court a quo erred in declaring the defendants[-appellants] in default of their obligation beginning April, 2005 when the evidence shows that there was in fact an over-payment when the plaintiff[-appellee] made several auto-debit transactions against the defendants-appellants' savings account maintained with plaintiff[-appellee] for the payment of monthly amortizations.

1.2. The court a quo erred in ignoring defendants-appellants' defense that, assuming defendants-appellants had defaulted in paying the monthly amortization for the months of April, May and June, 2005, the plaintiff-appellee should have effected legal compensation by deducting from defendants[-appellants]' savings account the corresponding amounts.”<sup>[19]</sup>

Contrary to defendants-appellants' arguments in their *first assigned error*, defendants-appellants defaulted in the payment of their obligation.

On this matter, defendants-appellants had argued that:

**“6.1. The defendants had fully paid their monthly amortizations and were not in default.** This is proved by the following:

**6.1.1. It must be emphasized that the parties agreed on an auto-debit payment scheme whereby the Net Monthly Amortization (NMA) of Php 22,084.00 was payable every 21<sup>st</sup> day of the month.** xxx Pursuant thereto, the plaintiff-appellee effected the following auto-debit transactions as reflected in defendants' savings passbooks,

the summary of which are as follows:

Date of Deduction	Amount of Deduction	Credit in Defendants' Saving Account After Deduction
Feb. 2, 2004	22,084.00	3,806.00
March 29, 2004	22,084.00	20,806.00
April 2004	(No deduction made)	57,362.39
May 25, 2004	44,168.00	13,193.00
June 2004	(No deduction made)	26,812.67
July 12, 2004	24,193.73	24,662.94
August 2004	(No deduction made)	46,662.94
Sept. 8, 2004	46,661.00	0.94
Oct. 20, 2004	47,351.67	18,701.00
Nov. 2004	(No deduction made)	62,699.00
Dec. 2004	(No deduction made)	62,758.16
Jan. 7, 2005	48,554.85	14,203.31
Feb. 2005	(No deduction made)	28,155.31
March 2005	(No deduction made)	41,615.24
*April 2005	(No deduction made)	67,600.24
*May 27, 2005	91,988.00	199.24
*June 2005	(No deduction made)	22,323.13
July 2005	(No deduction made)	32,352.44
**August 2005	(No deduction made)	59,416.69
September 2005	(No deduction made)	78,184.64
October 2005	(No deduction made)	70,949.64
November 2005	(No deduction made)	91,949.64
TOTAL	PhP 361,151.25	

\* *Alleged unpaid months.*

\*\* *Plaintiff filed on August 10, 2005 the Complaint.*

6.1.2. Immediately, the Honorable Court will notice that since the beginning of the amortization period (February 2004) to May 2005 (or a total of 16 months), the plaintiff-appellee deducted a total of PhP 361,151.24 when it should have only deducted PhP 353,344.00 (P22,084 x 16 months), or an excess deduction of PhP 7,807.25.

6.1.3. Thus, **plaintiff's allegation of non-payment is negated by the**

**several auto-debit transactions it made as reflected in the savings passbooks of herein defendants-appellants. Plaintiff-appellee is even clearly liable for the refund of the excessive deductions it made."**<sup>[20]</sup> (*Emphasis supplied*)

Defeating defendants-appellants' allegations however, is that defendants-appellants failed to pay the monthly installment amount of Php 22,084.00 several times when such amount became due each time on November 21, 2004, January 21, 2005, May 21, 2005, and June 21, 2005. Plaintiff-appellee Equitable could not cause installment payments on such months to be debited from defendants-appellants' savings account because defendants-appellants' balance was insufficient. The balance being insufficient was displayed in the Passbook<sup>[21]</sup> under the name of defendant-appellant Christine Ducos ("defendant-appellant Ducos" for brevity).<sup>[22]</sup> The insufficiency of defendants-appellants' balance was even admitted to by defendant-appellant Ducos in her testimony.<sup>[23]</sup> She had testified as follows:

"ATTY. POLISTICO TO COURT:

[Q : ] The passbook will show your Honor for the month of November the balance was not sufficient to pay the amortization, what was the debit of the bank? That is why I am asking you, how much is the outstanding balance on your passbook on November (2004), will you please state?

A : **P18,699.00, sir.**

ATTY. POLISTICO TO WITNESS:

Q : And you are supposed to pay how much again?

A : P22,084.00, sir.

XXX

**Q : You were not able to pay your November 2004 installment [o]n its due date on November 21, 2004 because you have not enough sufficient funds, is that correct?**

A : **Yes, sir.**

XXX

Q : For January installment, how much was the remaining balance on January 11, 2005?

A : **P6,157.31, sir.**

**Q : Do you have P6,000.00 plus or more [i]n the bank and you are supposed to pay your monthly installment, did you have enough funds for the bank debited your installment payments?**

A : **No, sir.**