

BPI CREDIT CORPORATION (FORMERLY FILINVEST CREDIT CORPORATION), PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND DOMINADOR CABACUNGAN, RESPONDENTS.

G.R. No. 96755. December 04, 1991

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

From the judgment of the Court of Appeals in C.A.-G.R. CV No. 15036[1] promulgated on 7 January 1991 affirming in toto the decision in Civil Case No. XX-29 of Branch 20 (Cauayan, Isabela) of the Regional Trial Court, Second Judicial Region, dated 28 April 1987, the dispositive portion of which reads:

x x x

"WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and against the defendant Filinvest Credit Corporation, ordering said defendant: (1) to pay or return to the plaintiff Dominador Cabacungan P44,914.00 representing the amount said plaintiff paid to defendant plus legal interest from September 12, 1983, up to and until the full amount is fully paid; (2) to pay to the plaintiff Dominador Cabacungan P15,000.00 moral damages, P10,000.00 exemplary damages and P10,000.00 attorney's fees.

All the other defendants are absolved of any liability for the reason that they acted for and in behalf of their employer, Filinvest Credit Corporation."

x x x

petitioner Filinvest Credit Corporation (now BPI Credit Corporation, but hereinafter referred to as Filinvest) filed on 25 February 1991 this petition for review by certiorari under Rule 45 of the Rules of Court.

The factual and procedural antecedents are summarized in the challenged Decision of the Court of Appeals, to wit:

x x x

"In March, 1982, plaintiff-appellee Dominador Cabacungan (Cabacungan, hereafter) purchased on installment basis from B.M. Domingo Motor Sales, Inc. (BMD, Inc.) a brand new Isuzu KBD 26 pick-up vehicle with Plate Number BAH 401 with the purpose in mind to use it in his furniture business. The price of the sale was One Hundred Twenty Eight Thousand Seven Hundred Sixty Five Pesos P128,765.00 (Exh. "E") of which an initial downpayment of P24,797.00 was paid to BMD, Inc. and the balance of P103,968.00 was to be paid in 36 consecutive monthly installments of P2,888.00 beginning April 19, 1982 to end by March 19, 1985. A P75.00 discount is allowed the buyer for every installment paid on or before its due date but a 2% penalty charge per month shall be added on each unpaid installment from the date of its maturity.

Aside from the promissory note (Exh. "I"), the buyer executed a Deed of Chattel Mortgage with the purchased vehicle as security (Exh. "2"). In a Deed of Assignment, BMD, Inc. assigned to defendant/appellant Filinvest Credit Corporation (Filinvest, for brevity) its rights, title and interest in the aforesaid Chattel Mortgage and

Promissory Note.

As the trial court found, from April 19, 1982 to August 19, 1983, Cabacungan made installment payments as follows:

Date of Payment

Amt. Paid

P75.00 Discount for Prompt/payment Amt. due:

Surcharge of 2% for late payments

Excess payments

P2,813.00

April 19, 1982

P2,813.00

-

-

-

May 19, 1982

2,813.00

-

-

-

June 1982

None

*

*

*

July 20, 1982

2,888.00

-

-

-

Aug. 30, 1982

3,000.00

-

57.76

54.24

Sept. 28, 1982

3,000.00

-

57.76

54.25

Oct. 16, 1982

3,000.00

2,813.00

-

187.00

Nov. 19, 1982

3,000.00

2,813.00

-

187.00

Dec. 20, 1982

3,000.00

-

-

112.00

Jan. 15, 1983

2,980.00

2,813.00

-

167.00

Feb. 1983

None

*

*

*

March 16, 1983

3,000.00

2,813.00

-

187.00

April 15, 1983

3,000.00

2,813.00

-

187.00

April 20, 1983

20.00

-

-

-

May 12, 1983

3,000.00

2,813.00

-

187.00

June 20, 1983

3,000.00

-

-

112.00

July 15, 1983

3,000.00

2,813.00

-

187.00

Aug. 19, 1983

3,400.00

2,813.00

-

587.00

TOTAL

44,914.00

P 2,208.48

NOTE: Table based on Exh. A, A-1 to A-18

Surcharge computed as follows:

$P2,888.00 \times 02 = 57.76$

Amount due for late payments: P2,945.76

Payments of the installments were made in Land Bank checks except for one instance when the amount of P20.00 was paid in cash and Filinvest issued the corresponding receipts per Exhibits A-1 to A-14. The payments for the months of April 19 and May 19, 1982 (Exh. A-17 and A-18) were remitted by BMD, Inc. to Filinvest on April 26, 1982 and May 20, 1982, respectively.

But Cabacungan failed to pay the installments for June, 1982 and February, 1983 and he had explained that he purposely withheld the payments for those months because he wanted a recomputation of the interests being collected from him considering that he had made a number of payments in excess of the stipulated installment. Cabacungan appeared to have been required by Filinvest to make payments in excess of the stipulated amount to cover the instances when the amortizations have not been paid. As the trial court found, Cabacungan had made excess payments totalling P2,208.48.

On September 13, 1983, after they delivered a piece of furniture to a customer in San Isidro, Isabela, Dominador Roduta and Ruben Cabacungan, the driver and helper, respectively, of Cabacungan were apprehended by the employees of Filinvest who also seized the pick-up vehicle. In the office of Filinvest at Santiago, Isabela, Cabacungan's driver and helper were issued a receipt by defendant Teddy Gaba (Exh. G) showing that the subject pick-up vehicle was surrendered to Filinvest purportedly pursuant to the Deed of Chattel Mortgage for Cabacungan's failure to pay overdue amortizations in the amount of P7,555.84.

When informed of the seizure of the vehicle, Cabacungan issued a check for P7,555.00 drawn on the Land

Bank which he tendered to defendant Gaba but the latter refused to accept the same. Cabacungan then deposited the check in the Pilipinas Saving Bank and brought the receipt of the deposit (Exh. A-16) to defendant Gaba who also refused to accept the receipt and demanded that the entire balance of the promissory note be made.

On September 14, 1983, Cabacungan filed a complaint for replevin before the court a quo alleging that appellant Filinvest took possession of the pick-up vehicle through force and intimidation without either a seizure order from the court or a petition for foreclosure of the chattel mortgage; that the return of the value of the said motor vehicle he (sic) made and that he be awarded moral damages and attorney's fees.

Cabacungan later amended his complaint to include his wife Teodora Cabacungan as party plaintiff and some personnel of Filinvest as defendants and increased the amounts pertaining to his claim for moral, exemplary and nominal damages and attorney's fees.

Filinvest in its Answer denied having seized the pick-up vehicle through force and intimidation and claimed having taken possession when it was voluntarily surrendered by Dominador Roduta and Ruben Cabacungan. Filinvest further alleged that Cabacungan violated the terms of the chattel mortgage deed and the promissory note he executed.

As affirmative defense, Filinvest contended that the venue is improperly laid since the Chattel Mortgage provides that venue of action shall be in the City of Manila or in Santiago, Isabela and not in Cauayan, Isabela where the complaint was filed; that Cabacungan has no cause of action having defaulted in the payment of two (2) monthly installments and the chattel mortgage provides that upon (sic) default of one installment will make the entire remaining amount due and demandable.

Plaintiff Teodora Cabacungan died in the course of the proceedings and in an amended complaint, her children were substituted in lieu of her.

In the pre-trial conference held on March 13, 1985, both parties agreed to litigate on the following issues: (1) Whether or not taking of the truck by defendant Filinvest was lawfully made; (2) Whether or not Cabacungan was in arrears in the payment of his obligations to the appellant; and (3) Whether or not damages were due from one to the other.”[2]

On 28 April 1987, the trial court rendered its decision, the dispositive portion of which was quoted earlier.

Filinvest appealed from the decision to the respondent Court of Appeals, which docketed the case as C.A.-G.R. CV No. 15036, and urged it to reverse the decision because the trial court erred in: (a) granting the reliefs prayed for in the complaint but remaining silent on the counter-claim, (b) awarding unwarranted damages to plaintiff, which are not supported by the evidence and applicable laws and jurisprudence, (c) making conclusions not substantiated by facts as established by evidence, and (d) rendering a judgment which is not in accord with the law and applicable decisions of this Court.

In the instant case, Filinvest urges Us to overturn the Court of Appeals' decision because it is grounded on speculation, surmises and conjectures:

- as when it held that the account on the NOTE was not delinquent even as an admission of delinquency is extant in the Answer and amply proven by the evidence.
- as when the Honorable Court of Appeals awarded enormous actual damages not established by evidence.
- as when it ignored the contractual stipulations voluntarily entered into per the promissory note made out by Cabacungan."

it made mistaken inferences from the documents presented by Cabacungan and misapprehended the facts. In

support thereof, Filinvest argues that Cabacungan's account was in arrears; written and verbal demands were made upon Cabacungan; there was no unlawful taking of the mortgaged property; a contract of adhesion is valid; Cabacungan did not pay the additional docket fees on the claim for damages in his amended complaint, hence the trial court did not acquire jurisdiction over the case; the premises for the award of damages are erroneous and Cabacungan is not entitled to the damages; and that the decision violates Section 9, Rule 60 of the Rules of Court.[3]

In his Comment filed by mail on 4 April 1991[4] in compliance with this Court's resolution of 6 March 1991, private respondent Cabacungan denies the allegations in the petition.

We gave due course to the petition and required both parties to submit simultaneously their respective Memoranda[5] which Filinvest complied with on 17 June 1991[6] and the private respondent on 20 July 1991.[7]

After a careful scrutiny and analysis of the issues and the amplified arguments adduced by the parties in their Memoranda, this Court finds that the principal issues raised are unquestionably directed to the findings of facts of respondent Court of Appeals.

It must be stressed that, as shown in the foregoing summary of facts, the parties agreed during the pre-trial conference to litigate on three (3) issues only: (1) whether or not the taking of the truck by Filinvest was lawfully made; (2) whether or not Cabacungan was in arrears in the payment of his obligations to Filinvest; and, (3) whether or not damages were due from one to the other. The parties are bound by, and the issues presented here must be resolved vis-a-vis, such agreement. We cannot allow the parties to run wild, and confuse the issues for their own benefit.

Settled is the rule that only questions of law may be raised in a petition for certiorari under Rule 45 of the Rules of Court. The jurisdiction of this Court in cases brought to it from the Court of Appeals is limited to reviewing and revising errors of law imputed to it, its findings of fact being conclusive. It is not the function of this Court to analyze or weigh such evidence all over again, its jurisdiction being limited to reviewing errors of law that might have been committed by the lower court. Barring, therefore, a showing that the findings complained of are totally devoid of support in the record, or that they are so glaringly erroneous as to constitute serious abuse of discretion, they must stand.[8]

There are, however, exceptions to this rule, namely:

(1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) When there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of facts are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) When the findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (10) When the finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.[9]

There is no doubt that Filinvest has carefully crafted its petition in an attempt to bring it within the exceptions. Unfortunately, We are not persuaded.

The findings of fact of both the trial court and the Court of Appeals on the illegal taking of the vehicle, the non-delinquency of the account of private respondent, and on damages, are sufficiently supported by the evidence. As to the first, the Court of Appeals stated:

x x x

"As the lower court correctly held, Filinvest did not have the right to take possession of the subject pick-up vehicle as it did not make any demand to Cabacungan to surrender the same prior to the said seizure. The pertinent provision of the Deed of Chattel Mortgage (Exhs. 2, 2-A) on this point, reads:

'The MORTGAGOR further agrees that in default of payment of any installment or any part thereof or interest thereon as and when the same shall become due and payable, the mortgaged property/ies shall be delivered on demand to the MORTGAGEE in Manila, or as designated by the MORTGAGEE at any address stated in the demand, free of all charges and should the MORTGAGOR not deliver the said property/ies the MORTGAGEE shall have the right to get the said property/ies wherever it/they may be found and have the same brought to the City of Manila, and the expenses of locating and bringing said mortgaged property/ies to the City of Manila shall be for the account of the MORTGAGOR and shall form part of the following remedies: (a) Sale by the MORTGAGOR or his assigns to himself, (b) Cancellation of the contract of sale with the MORTGAGOR; (c) Extra-judicial foreclosure; (d) Judicial foreclosure; and (e) Ordinary civil action to exact fulfillment of the mortgage contract. Whichever remedy is elected by the MORTGAGEE, the MORTGAGOR expressly waives any and all amounts on the principal and interests already paid by him.'

Filinvest should first make a demand on Cabacungan to deliver or surrender the subject vehicle to its branch office in Santiago, Isabela and only if he shall have failed to comply with such demand may it seize the vehicle wherever it may be found.

No demand was made whatsoever by Filinvest to Cabacungan for the return to it of the pick-up vehicle. Instead, employees of Filinvest, upon seeing the vehicle on the highway at San Isidro, seized it from the driver Dominador Roduta and helper Ruben Cabacungan.

Appellant's contention that a verbal demand was made to Ruben Cabacungan and that the letters Exhs. X and Y were made, did not constitute the proper demand. Ruben Cabacungan is a mere employee of the appellee and his having signed the surrender paper purportedly in behalf of the appellee, without the latter's authority or consent cannot bind the appellee. The Chattel Mortgage deed very clearly provides that demand for the surrender of the vehicle should be made to the mortgagor himself, in this case, appellee Cabacungan. That Ruben Cabacungan is a nephew of the appellee cannot by that relationship prove any agency or authority to represent him.

Exhs. X and Y are mere demands to pay overdue installments for October and November, 1982 (Exh. X) and for May and June, 1983 (Exh. Y). A written demand to deliver the mortgaged property is required and not a written demand to pay certain overdue amortizations. Furthermore, what were supposed to be overdue accounts have been paid for by the appellee as evidenced by Exhs. A-11, A-10 and A-4, A-3."

x x x

It is not disputed that upon the default by a mortgagor in his obligations, the mortgagee has the right to the possession of the property mortgaged preparatory to its selling in a public auction. Section 14 of the Chattel Mortgage Law[10] provides, inter alia, that the "mortgagee, his executor, administrator, or assign, may, after thirty days from the time of condition broken, cause the mortgaged property, or any part thereof, to be sold at public auction ..." In the early case of *Bachrach Motor Co. vs. Summers*,[11] this Court held this right to be unquestionable; however, if "the debtor refuses to yield up the property, the creditor must institute an action, either to effect a judicial foreclosure directly, or to secure possession as a preliminary to the sale contemplated. x x x He cannot lawfully take the property by force against the will of the debtor. x x x In the article on Chattel Mortgages, in *Corpus Juris*, the following statement of the law on the same point is made: 'The only restriction on the mode by which the mortgagee shall secure possession of the mortgaged property after breach of condition is

that he must act in an orderly manner and without creating a breach of the peace, subjecting himself to an action for trespass'." [12]

The law does not allow the creditor himself to possess the mortgaged property through violence and against the will of the debtor because the creditor's right of possession is conditioned upon the fact of default, and the existence of this fact may naturally be the subject of controversy. The debtor, for instance, may claim in good faith, and rightly or wrongly, that the debt is paid, or that for some other reason the alleged default is nonexistent. [13]

Besides, the Deed of Chattel Mortgage in this case, which has the force of law between the contracting parties and which they must comply with in good faith, [14] clearly provides that the mortgaged property shall be delivered only upon demand from the mortgagor. Filinvest was bound to comply with it and cannot substitute demand and voluntary delivery with unilateral illegal seizure. Cabacungan was not even given the opportunity to contest the taking as the vehicle was seized from his nephew. That the former did not agree to the taking is borne out by the fact that he presented a check in the amount of P7,555.00 the day after the seizure, as payment for missed installments. In short, it is obvious that Filinvest took the law into its own hands in obtaining possession of the vehicle and made a mockery of the judicial process when it kept the vehicle away from the reach of the writ of replevin. We note in the decision of the trial court that the writ of replevin was not implemented because the vehicle disappeared from Filinvest's stockyard. [15]

As to the non-payment of the installments for June 1982 and February 1983, the trial court found that Cabacungan had an excuse therefor. He requested Filinvest to recompute the interests. If Filinvest deemed the excuse unfounded, its conduct in accepting payments for succeeding installments and the absence of a formal written demand therefor could hardly be reconciled with the former. Besides, such delinquency is immaterial to the issue of the legality of the taking of the vehicle. While Filinvest may have all the right in the world to foreclose the mortgage, that right did not grant it untrammelled license to intercept the property subject of the mortgage and seize it wherever it may be found, in a manner contrary to the stipulations set forth in the Chattel Mortgage contract.

Anent the damages granted, We find the award to be supported by the evidence.

Three (3) remaining issues involve questions of law: (a) the validity or propriety of the order directing Filinvest to return to Cabacungan the sum of P44,194.00, which represents the installment payments made before the seizure of the vehicle, which Filinvest claims to be a violation of Section 9, Rule 60 of the Rules of Court, (b) the non-payment of docket fees on the increased amount of damages claimed in the amended complaint, and (c) the issue of whether the chattel mortgage is a contract of adhesion.

There is merit in the first.

The complaint before the trial court is for replevin with a prayer for damages. A writ of replevin was in fact issued, but unfortunately the vehicle disappeared from the stockyard of petitioner. The records do not disclose that: (a) the vehicle was subsequently recovered and its possession restored to Cabacungan because of the writ, and (b) Filinvest subsequently foreclosed the chattel mortgage. It is, therefore, reasonable to assume that the writ of replevin was never implemented, Filinvest did not foreclose the mortgage, and that the latter has the vehicle in its possession and control.

In a replevin case, the Rules of Court expressly provides that:

"After a trial of the issues the court shall find in whom is the right of possession and the value of the property and shall render judgment in the alternative for the delivery thereof to the party entitled to the same, or for the

value in case delivery cannot be made, and also for such damages as either party may prove, and for costs." [16]

There can be no question that although he had not yet fully paid its purchase price, Cabacungan became the owner of the vehicle, otherwise the seller would not have accepted it in mortgage. He was entitled to its possession and use until appropriate lawful proceedings would have been taken by Filinvest to obtain possession of the vehicle preliminary to foreclosure of the mortgage. Absent such proceedings, as in this case, Cabacungan was entitled to recover its possession. But the writ of replevin could not be and was not in fact implemented for the reason already adverted to. The conclusion is thus inescapable that return of the vehicle was rendered impossible by Filinvest. So, from 12 September 1983 up to at least 28 April 1987, when the trial court rendered its decision, and even up to the present -- or for at most a little over eight (8) years -- Cabacungan was effectively deprived of the possession and use of the vehicle. Undoubtedly, whether it is being used or just kept idle somewhere by Filinvest, its value has significantly been reduced. It is obvious that Cabacungan had abandoned any claim for its recovery and for the restoration of its possession to him. He did not appeal from the decision which was silent on that point. Considering the lapse of more than eight (8) years since the illegal seizure of the vehicle, its possible deterioration and diminution in value as a result thereof, equity demands that Cabacungan should be paid its value, which is the second alternative provided for in Section 9, Rule 60 of the Rules of Court, and that he should not be held liable for the remaining unpaid installments on the promissory note.

Cabacungan explicitly admits in paragraph 8 of his Complaint: [17]

"8. That the value of the said motor vehicle as of September 12, 1983 is P62,255.55."

which Filinvest admits in paragraph 8 of its Answer. [18] The parties are bound by this valuation:

Accordingly, Filinvest must be ordered to pay this amount of P62,255.55 instead of the sum of P44,914.00.

And now to the issue concerning the docket fees.

Filinvest claims that Cabacungan should not be allowed to recover damages because he failed to pay the corresponding docket fees based on the P960,000.00 damages prayed for in the amended complaint. Respondent court, however, citing *Magaspi vs. Ramolete*, [19] maintains that the trial court had jurisdiction over the claim despite the insufficiency of the docket fees paid.

The respondent court is correct. The decision in *Magaspi* was promulgated on 20 July 1982 and was the controlling law at the time the original and amended complaints were filed by Cabacungan; the case was decided by the trial court on 28 April 1987.

Magaspi involved a complaint for recovery of ownership and possession of a parcel of land, with claims for P500,000.00 as moral damages, P500,000.00 as exemplary damages and P250,000.00 as attorney's fees. The docket fee paid was based on the assessed value of the property alone. On motion of two (2) of the defendants to compel the plaintiffs to pay the correct docket fees on the basis of the sum total of the value of the property, the rentals claimed and the damages and the attorney's fees asked, the court, through then Judge Canonoy, directed the plaintiffs to pay the additional docket fee of P3,104.00. The complaint was in the meanwhile amended; however, in their prayer, plaintiffs did not specify anymore the amounts of the said damages but left it to the determination of the court and reduced the claim for attorney's fees to P100,000.00. Judge Canonoy admitted the amended complaint. Plaintiffs, nevertheless, did not comply with the order for the payment of the additional docket fee, forcing defendants to file a motion to require the former to pay it within seven (7) days which plaintiffs in turn opposed in view of the amended complaint. Acting on this motion, the court, through a new judge, Judge Ramolete, ruled that in view of the insufficient docket fee paid, the original complaint was not deemed registered or docketed; it follows then that there being nothing to amend, the amended complaint cannot

be deemed to have been filed and admitted. Plaintiffs assailed this order and on a petition for certiorari filed with this Court, We held that, considering the honest difference of opinion as to the correct amount to be paid, the case below was properly docketed upon the payment of P60.00 although said amount is insufficient. The trial court had acquired jurisdiction over the case and the proceedings thereafter were proper and regular. However, the plaintiffs were required to pay the additional docket fee based on the amended complaint.

The instant case is for replevin and for purposes of determining the jurisdiction of the court, the value of the personal property involved is controlling; the damages and attorney's fees claimed are merely incidental. Accordingly, following the rule in *Magaspi*, the court had validly acquired jurisdiction on the basis of the original complaint; the increase in the amount of the damages claimed did not affect it, although *Cabacungan* still has to pay the deficiency in docket fees based on the amended complaint.

It must, however, be stressed here that the subsequent ruling of this Court in *Manchester Development Corp. vs. Court of Appeals*,^[20] promulgated barely nine (9) days after the court below decided the instant case, partly modified the *Magaspi* ruling. Nevertheless, justice and equity would not warrant the application of *Manchester* in this case. Besides, *Manchester* was later modified in *Sun Insurance Office. Ltd. vs. Asuncion*,^[21] wherein We made the following clarificatory rules:

- "1. It is not simply the filing of the complaint or appropriate initiatory pleading, but the payment of the prescribed docket fee, that vests a trial court with jurisdiction over the subject matter or nature of the action. Where the filing of the initiatory pleading is not accompanied by payment of the docket fee, the court may allow payment of the fee within a reasonable time but in no case beyond the applicable prescriptive or reglementary period.
2. The same rule applies to permissive counterclaims, third-party claims and similar pleadings, which shall not be considered filed until and unless the filing fee prescribed therefor is paid. The court may also allow payment of said fee within a reasonable time but also in no case beyond its applicable prescriptive or reglementary period.
3. Where the trial court acquires jurisdiction over a claim by the filing of the appropriate pleading and payment of the prescribed filing fee but, subsequently, the judgment awards a claim not specified in the pleading, or if specified the same has been left for determination by the court, the additional filing fee therefor shall constitute a lien on the judgment. It shall be the responsibility of the Clerk of Court or his duly authorized deputy to enforce said lien and assess and collect the additional fee."

Then in *Tacay, et al. vs. Regional Trial Court of Tagum, et al.*,^[22] We made further clarifications on the matter of the payment of the docket fee.

Finally, on the question of whether the Deed of Chattel Mortgage is a contract of adhesion, We uphold the respondent court's conclusion that it is such. In *Angeles vs. Calasanz*,^[23] We said, quoting *Sweet Lines vs. Teves*,^[24] that while generally, stipulations in a contract come about after deliberate drafting by the parties thereto, there are certain contracts almost all the provisions of which have been drafted only by one party, usually a corporation. Such contracts are called contracts of adhesion, because the only participation of the party is the affixing of his signature or his "adhesion" thereto. The deed of Chattel Mortgage entered into by the parties easily falls into this category as it is evident that its preparation was done solely by *Filinvest*. This being the case, the terms of such contract are to be construed strictly against the latter, the party which prepared it.^[25]

IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered modifying the challenged Decision and that of the trial court's. As modified the award of P44,914.00 to plaintiff *Cabacungan* is hereby SET ASIDE and in lieu thereof, *Filinvest* is hereby ORDERED to pay the sum of P62,255.55 representing the value of the motor

vehicle. In all other respects the Decision is AFFIRMED.

The Clerk of Court of the trial court is hereby ordered to reassess and determine the additional docket fees that should be paid by private respondent Cabacungan in Civil Case No. XX-29, taking into account the total amount sought in the original complaint and the amended complaint as determined from the allegations and the prayer thereof, and to require Cabacungan to pay the deficiency, if any, within ten (10) days following receipt of notice to that effect: provided; however, that should the latter fail to do so, the deficiency shall be considered a lien on the judgment in this case.

IT IS SO ORDERED.

Gutierrez, Jr., Bidin, and Romero, JJ., concur.

Fernan, C.J., on leave.

[1] Per Associate Justice Cezar D. Francisco, concurred in by Associate Justices Serafin E. Camilon and Venancio D. Aldecoa, Jr.; Rollo, 82.

[2] Rollo, 83-85.

[3] Rollo, 25, et seq.

[4] Rollo, 96.

[5] Resolution of 29 April 1991.

[6] Id., 103.

[7] Id., 142.

[8] Remalante vs. Tibe, et al., 158 SCRA 138, citing Chan vs. Court of Appeals, 33 SCRA 737; Tiongco vs. De la Merced, 58 SCRA 89; Corona vs. CA, 121 SCRA 865; Baniqued vs. CA, 127 SCRA 596; Sta. Ana, Jr. vs. Hernandez, 18 SCRA 973.

[9] Medina vs. Asistio, Jr., 191 SCRA 218. See also Joaquin vs. Navarro, 93 Phil. 257; Cruz vs. Sosing, G.R. No. 4875, 27 November 1953; Buyco vs. People, 95 Phil. 453; Evangelista vs. Alto Surety and Insurance Co., 103 Phil. 401; Casica vs. Villaseca, G.R. No. 9590, 30 April 1957 (unreported); Salazar vs. Gutierrez, 33 SCRA 242; Garcia vs. Court of Appeals, 33 SCRA 622; Sacay vs. Sandiganbayan, 142 SCRA 593.

[10] Act No. 1508, as amended.

[11] 42 Phil. 3. See also Papa vs. Banaag, 31 Aug. 1966, 17 SCRA 1083.

[12] Citing 11 C.J. 560; 5 R.C.L. 462.

[13] Bachrach case at p. 6.

[14] Article 1159, New Civil Code.

[15] Rollo, 73.

[16] Section 9, Rule 60.

[17] Rollo, 56; emphasis supplied.

[18] Id., 62.

[19] G.R. No. L-34840, 20 July 1982, 115 SCRA 193.

[20] 149 SCRA 562, 7 May 1987.

[21] 170 SCRA 274, 13 February 1989.

[22] 180 SCRA 433, 20 December 1989.

[23] 135 SCRA 323.

[24] 83 SCRA 361.

[25] Western Guaranty Corp. vs. Court of Appeals, 187 SCRA 652.

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