Bank of the Philippine Islands vs. Spouses Reynaldo and Victoria Royeca
G.R. No. 176664, July 21, 2008
559 SCRA 207

FACTS:
On August 23, 1993, spouses Reynaldo and Victoria Royeca (respondents) executed and delivered to Toyota Shaw, Inc. a Promissory Note for P577,008.00 payable in 48 equal monthly installments. To secure the payment of said Promissory Note, respondents executed a Chattel Mortgage in favor of Toyota over a Toyota Corolla motor vehicle. Toyota, with notice to respondents, transferred all its rights, title, and interest in the Chattel Mortgage to Far East Bank and Trust Company (FEBTC) through a deed of assignment.

On May 20, 1997, the respondents delivered to the Auto Financing Department of FEBTC eight (8) postdated checks in different amounts totaling P97,281.78.

However, on March 14, 2000 FEBTC sent a formal demand to respondents asking for the payment of four (4) monthly amortizations covering the period from May 18, 1997 to August 18, 1997 but the respondents refused to pay on the ground that they had already paid their obligation to FEBTC. The respondents further claimed that they did not receive any notice from the drawee banks or from FEBTC that these checks were dishonored.

FEBTC was later on merged with and absorbed by BPI.

ISSUE:
Who has the burden of proving payment?

RULING:
In civil cases, the party, whether plaintiff or defendant, who asserts the affirmative of an issue has the onus to prove his assertion in order to obtain a favorable judgment. For the plaintiff, the burden to prove its positive assertions never parts. For the defendant, an affirmative defense is one which is not a denial of an essential ingredient in the plaintiff's cause of action, but one which, if established, will be a good defense - i.e. an "avoidance" of the claim. The party having the burden of proof must establish his case by a preponderance of evidence, or evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.

As a general rule, one who pleads payment has the burden of proving it. Even where the plaintiff must allege non-payment, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment. The debtor has the burden of showing with legal certainty that the obligation has been discharged by payment.

When the existence of a debt is fully established by the evidence contained in the record, the burden of proving that it has been extinguished by payment devolves upon the debtor who offers such a defense to the claim of the creditor. Where the debtor introduces some evidence of payment, the burden of going forward with the evidence - as distinct from the general burden of proof - shifts to the creditor, who is then under a duty of producing some evidence to show non-payment.

Payment must be made in legal tender
Settled is the rule that payment must be made in legal tender. A check is not legal tender and,

therefore, cannot constitute a valid tender of payment. Since a negotiable instrument is only a substitute for money and not money, the delivery of such an instrument does not, by itself, operate as payment. Mere delivery of checks does not discharge the obligation under a judgment. The obligation is not extinguished and remains suspended until the payment by commercial document is actually realized.

In this case, respondents failed to present sufficient proof of payment. Hence, it was no longer necessary for the petitioner to prove non-payment, particularly proof that the checks were dishonored. The burden of evidence is shifted only if the party upon whom it is lodged was able to adduce preponderant evidence to prove its claim.

Further, it should be noted that the petitioner, as payee, did not have a legal obligation to inform the respondents of the dishonor of the checks. A notice of dishonor is required only to preserve the right of the payee to recover on the check. It preserves the liability of the drawer and the indorsers on the check. Otherwise, if the payee fails to give notice to them, they are discharged from their liability thereon, and the payee is precluded from enforcing payment on the check. The respondents, therefore, cannot fault the petitioner for not notifying them of the non-payment of the checks because whatever rights were transgressed by such omission belonged only to the petitioner.

Promissory notes
The Court finds that the evidence at hand preponderates in favor of the petitioner. The petitioner's possession of the documents pertaining to the obligation strongly buttresses its claim that the obligation has not been extinguished. The creditor's possession of the evidence of debt is proof that the debt has not been discharged by payment. A promissory note in the hands of the creditor is a proof of indebtedness rather than proof of payment. In an action for replevin by a mortgagee, it is prima facie evidence that the promissory note has not been paid. Likewise, an uncanceled mortgage in the possession of the mortgagee gives rise to the presumption that the mortgage debt is unpaid.

Laches
The Court does not agree with the respondents position that the petitioner's claim is barred by laches since it has been three years since the checks were issued. Laches is a recourse in equity. Equity, however, is applied only in the absence, never in contravention, of statutory law. Thus, laches cannot, as a rule, abate a collection suit filed within the prescriptive period mandated by the New Civil Code. The petitioner's action was filed within the ten-year prescriptive period provided under Article 1144 of the New Civil Code. Hence, there is no room for the application of laches.

Banking
Respondents have consistently raised -- that they were not notified of the non-payment of the checks. Reasonable banking practice and prudence dictates that, when a check given to a creditor bank in payment of an obligation is dishonored, the bank should immediately return it to the debtor and demand its replacement or payment lest it causes any prejudice to the drawer.

581 Phil. 188

THIRD DIVISION

[G.R. No. 176664, July 21, 2008]

BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. SPOUSES REYNALDO AND VICTORIA ROYECA, RESPONDENTS.

D E C I S I O N

NACHURA, J.:

Bank of the Philippine Islands (BPI) seeks a review of the Court of Appeals (CA) Decision[1] dated July 12, 2006, and Resolution[2] dated February 13, 2007, which dismissed its complaint for replevin and damages and granted the respondents' counterclaim for damages.

The case stems from the following undisputed facts:

On August 23, 1993, spouses Reynaldo and Victoria Royeca (respondents) executed and delivered to Toyota Shaw, Inc. a Promissory Note[3] for P577,008.00 payable in 48 equal monthly installments of P12,021.00, with a maturity date of August 18, 1997. The Promissory Note provides for a penalty of 3% for every month or fraction of a month that an installment remains unpaid.

To secure the payment of said Promissory Note, respondents executed a Chattel Mortgage[4] in favor of Toyota over a certain motor vehicle, more particularly described as follows:

Make and Type	1993 Toyota Corolla 1.3 XL
Motor No.	2E-2649879
Serial No.	EE100-9512571
Color	D.B. Gray Met.

Toyota, with notice to respondents, executed a Deed of Assignment[5] transferring all its rights, title, and interest in the Chattel Mortgage to Far East Bank and Trust Company (FEBTC).

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[1] Penned by Associate Justice Eliezer R. de los Santos, with Associate Justices Fernanda Lampas-Peralta and Myrna Dimaranan Vidal concurring; rollo, pp. 25-31.
[2] Rollo, p. 33.
[3] Id. at 37.
[4] Id. at 42-45.
[5] Id. at 39.

Claiming that the respondents failed to pay four (4) monthly amortizations covering the period from May 18, 1997 to August 18, 1997, FEBTC sent a formal demand to respondents on March 14, 2000 asking for the payment thereof, plus penalty. [6] The respondents refused to pay on the ground that they had already paid their obligation to FEBTC.

On April 19, 2000, FEBTC filed a Complaint for Replevin and Damages against the respondents with the Metropolitan Trial Court (MeTC) of Manila praying for the delivery of the vehicle, with an alternative prayer for the payment of P48,084.00 plus interest and/or late payment charges at the rate of 36% per annum from May 18, 1997 until fully paid. The complaint likewise prayed for the payment of P24,462.73 as attorney's fees, liquidated damages, bonding fees and other expenses incurred in the seizure of the vehicle. The complaint was later amended to substitute BPI as plaintiff when it merged with and absorbed FEBTC. [7]

In their Answer, respondents alleged that on May 20, 1997, they delivered to the Auto Financing Department of FEBTC eight (8) postdated checks in different amounts totaling P97,281.78. The Acknowledgment Receipt, [8] which they attached to the Answer, showed that FEBTC received the following checks:

DATE	BANK	CHECK NO.	AMOUNT
26 May 97	Landbank	#610945	P13,824.15
6 June 97	Head Office	#610946	12,381.63
30 May 97	FEBTC	#17A00-11550P	12,021.00
15 June 97	Shaw Blvd.	#17A00-11549P	12,021.00
30 June 97	"	#17A00-11551P	12,021.00
18 June 97	Landbank	#610947	11,671.00
18 July 97	Head Office	#610948	11,671.00
18 August 97		#610949	11,671.00

The respondents further averred that they did not receive any notice from the drawee banks or from FEBTC that these checks were dishonored. They explained that, considering this and the fact that the checks were issued three years ago, they believed in good faith that their obligation had already been fully paid. They alleged that the complaint is frivolous and plainly vexatious. They then prayed that they be awarded moral and exemplary damages, attorney's fees and costs of suit. [9]

During trial, Mr. Vicente Magpusao testified that he had been connected with FEBTC since 1994 and had assumed the position of Account Analyst since its merger with BPI. He admitted that they had, in fact, received the eight checks from the respondents. However, two of these checks (Landbank Check No. 0610947 and FEBTC Check No. 17A00-11551P) amounting to P23,692.00 were dishonored. He recalled that the remaining two checks were not deposited anymore due to the previous dishonor of the two checks. He said that after deducting these payments, the total outstanding balance of the obligation was

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6 Id. at 58.
7 Id. at 46-49.
8 Id. at 56.
9 Id. at 53.

P48,084.00, which represented the last four monthly installments.

On February 23, 2005, the MeTC dismissed the case and granted the respondents' counterclaim for damages, thus:

> WHEREFORE, judgment is hereby rendered dismissing the complaint for lack of cause of action, and on the counterclaim, plaintiff is ordered to indemnify the defendants as follows:
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> a) The sum of PhP30,000.00 as and by way of moral damages;
>
> b) The sum of PhP30,000.00 as and by way of exemplary damages;
>
> c) The sum of PhP20,000.00 as and by way of attorney's fees; and
>
> d) To pay the costs of the suit.
>
> SO ORDERED. [10]

On appeal, the Regional Trial Court (RTC) set aside the MeTC Decision and ordered the respondents to pay the amount claimed by the petitioner. The dispositive portion of its Decision[11] dated August 11, 2005 reads:

> WHEREFORE, premises considered, the Decision of the Metropolitan Trial Court, Branch 9 dated February 23, 2005 is REVERSED and a new one entered directing the defendants-appellees to pay the plaintiff-appellant, jointly and severally,
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> 1. The sum of P48,084.00 plus interest and/or late payment charges thereon at the rate of 36% per annum from May 18, 1997 until fully paid;
> 2. The sum of P10,000.00 as attorney's fees; and
> 3. The costs of suit.
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> SO ORDERED. [12]

The RTC denied the respondents' motion for reconsideration. [13]

The respondents elevated the case to the Court of Appeals (CA) through a petition for review. They succeeded in obtaining a favorable judgment when the CA set aside the RTC's Decision and reinstated the MeTC's Decision on July 12, 2006. [14] On February 13, 2007, the CA denied the petitioner's motion for reconsideration. [15]

The issues submitted for resolution in this petition for review are as follows:

I. WHETHER OR NOT RESPONDENTS WERE ABLE TO PROVE FULL PAYMENT OF THEIR OBLIGATION AS ONE OF THEIR AFFIRMATIVE DEFENSES.

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[10] Id at 62-63.
[11] Id. at 64-73.
[12] Id. at 73.
[13] Id. at 11.
[14] Id. at 31.
[15] Id. at 33.

II. WHETHER OR NOT TENDER OF CHECKS CONSTITUTES PAYMENT.

III. WHETHER OR NOT RESPONDENTS ARE ENTITLED TO MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES. [16]

The petitioner insists that the respondents did not sufficiently prove the alleged payment. It avers that, under the law and existing jurisprudence, delivery of checks does not constitute payment. It points out that this principle stands despite the fact that there was no notice of dishonor of the two checks and the demand to pay was made three years after default.

On the other hand, the respondents postulate that they have established payment of the amount being claimed by the petitioner and, unless the petitioner proves that the checks have been dishonored, they should not be made liable to pay the obligation again. [17]

The petition is partly meritorious.

In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence, or evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto. [18] Thus, the party, whether plaintiff or defendant, who asserts the affirmative of an issue has the onus to prove his assertion in order to obtain a favorable judgment. For the plaintiff, the burden to prove its positive assertions never parts. For the defendant, an affirmative defense is one which is not a denial of an essential ingredient in the plaintiff's cause of action, but one which, if established, will be a good defense - *i.e.* an "avoidance" of the claim. [19]

In *Jimenez v. NLRC,* [20] cited by both the RTC and the CA, the Court elucidated on who, between the plaintiff and defendant, has the burden to prove the affirmative defense of payment:

> As a general rule, one who pleads payment has the burden of proving it. Even where the plaintiff must allege non-payment, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment. The debtor has the burden of showing with legal certainty that the obligation has been discharged by payment.
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> When the existence of a debt is fully established by the evidence contained in the record, the burden of proving that it has been extinguished by payment devolves upon the debtor who offers such a defense to the claim of the creditor. Where the debtor introduces some evidence of payment, the burden of going forward with the evidence - as distinct from the general burden of proof - shifts to the creditor, who is then under a duty of producing some evidence to show non-payment. [21]

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[16] Id. at 15.
[17] Id. at 124.
[18] Encinas v. National Bookstore, Inc., G.R. No. 162704,November 19, 2004, 443 SCRA 293, 302.
[19] DBP Pool of Accredited Insurance Companies v. Radio Mindanao Network, Inc., G.R. No. 147039, January 27, 2006, 480 SCRA 314, 322-323.
[20] 326 Phil. 89 (1996).
[21] Id. at 95.

In applying these principles, the CA and the RTC, however, arrived at different conclusions. While both agreed that the respondents had the burden of proof to establish payment, the two courts did not agree on whether the respondents were able to present sufficient evidence of payment -- enough to shift the burden of evidence to the petitioner. The RTC found that the respondents failed to discharge this burden because they did not introduce evidence of payment, considering that mere delivery of checks does not constitute payment. [22] On the other hand, the CA concluded that the respondents introduced sufficient evidence of payment, as opposed to the petitioner, which failed to produce evidence that the checks were in fact dishonored. It noted that the petitioner could have easily presented the dishonored checks or the advice of dishonor and required respondents to replace the dishonored checks but none was presented. Further, the CA remarked that it is absurd for a bank, such as petitioner, to demand payment of a failed amortization only after three years from the due date.

The divergence in this conflict of opinions can be narrowed down to the issue of whether the Acknowledgment Receipt was sufficient proof of payment. As correctly observed by the RTC, this is only proof that respondents delivered eight checks in payment of the amount due. Apparently, this will not suffice to establish actual payment.

Settled is the rule that payment must be made in legal tender. A check is not legal tender and, therefore, cannot constitute a valid tender of payment. [23] Since a negotiable instrument is only a substitute for money and not money, the delivery of such an instrument does not, by itself, operate as payment. Mere delivery of checks does not discharge the obligation under a judgment. The obligation is not extinguished and remains suspended until the payment by commercial document is actually realized. [24]

To establish their defense, the respondents therefore had to present proof, not only that they delivered the checks to the petitioner, but also that the checks were encashed. The respondents failed to do so. Had the checks been actually encashed, the respondents could have easily produced the cancelled checks as evidence to prove the same. Instead, they merely averred that they believed in good faith that the checks were encashed because they were not notified of the dishonor of the checks and three years had already lapsed since they issued the checks.

Because of this failure of the respondents to present sufficient proof of payment, it was no longer necessary for the petitioner to prove non-payment, particularly proof that the checks were dishonored. The burden of evidence is shifted only if the party upon whom it is lodged was able to adduce preponderant evidence to prove its claim. [25]

To stress, the obligation to prove that the checks were not dishonored, but were

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[22] Rollo, p. 72.
[23] Abalos v. Macatangay, Jr., G.R. No. 155043, September 30, 2004, 439 SCRA 649, 659.
[24] Philippine Airlines, Inc. v. Court of Appeals, G.R. No. 49188, January 30, 1990, 181 SCRA 557, 568.
[25] Asian Transmission Corporation v. Canlubang Sugar Estates, 457 Phil. 260, 290 (2003).

in fact encashed, fell upon the respondents who would benefit from such fact. That payment was effected through the eight checks was the respondents' affirmative allegation that they had to establish with legal certainty. If the petitioner were seeking to enforce liability upon the check, the burden to prove that a notice of dishonor was properly given would have devolved upon it. [26] The fact is that the petitioner's cause of action was based on the original obligation as evidenced by the Promissory Note and the Chattel Mortgage, and not on the checks issued in payment thereof.

Further, it should be noted that the petitioner, as payee, did not have a legal obligation to inform the respondents of the dishonor of the checks. A notice of dishonor is required only to preserve the right of the payee to recover on the check. It preserves the liability of the drawer and the indorsers on the check. Otherwise, if the payee fails to give notice to them, they are discharged from their liability thereon, and the payee is precluded from enforcing payment on the check. The respondents, therefore, cannot fault the petitioner for not notifying them of the non-payment of the checks because whatever rights were transgressed by such omission belonged only to the petitioner.

In all, we find that the evidence at hand preponderates in favor of the petitioner. The petitioner's possession of the documents pertaining to the obligation strongly buttresses its claim that the obligation has not been extinguished. The creditor's possession of the evidence of debt is proof that the debt has not been discharged by payment. [27] A promissory note in the hands of the creditor is a proof of indebtedness rather than proof of payment. [28] In an action for replevin by a mortgagee, it is *prima facie* evidence that the promissory note has not been paid. [29] Likewise, an uncanceled mortgage in the possession of the mortgagee gives rise to the presumption that the mortgage debt is unpaid. [30]

Finally, the respondents posit that the petitioner's claim is barred by laches since it has been three years since the checks were issued. We do not agree. Laches is a recourse in equity. Equity, however, is applied only in the absence, never in contravention, of statutory law. Thus, laches cannot, as a rule, abate a collection suit filed within the prescriptive period mandated by the New Civil Code. [31] The petitioner's action was filed within the ten-year prescriptive period provided under Article 1144 of the New Civil Code. Hence, there is no room for the application of laches.

Nonetheless, the Court cannot ignore what the respondents have consistently raised -- that they were not notified of the non-payment of the checks. Reasonable banking practice and prudence dictates that, when a check given to a creditor bank in payment of an obligation is dishonored, the bank should immediately return it to the debtor and demand its replacement or payment lest it causes any prejudice to the drawer. In light of this and the fact that the obligation has been partially paid, we deem it just and equitable to reduce the

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[26] See Negotiable Instruments Law, Sec. 89.
[27] Redmond v. Hughes, 135 N.Y.S. 843, 151 App. Div. 99 (1912).
[28] Biala v. Court of Appeals, G.R. No. 43503, October 31, 1990, 191 SCRA 50, 59.
[29] Heagney v. J. I. Case Threshing Mach. Co., 99 N.W. 260 (1904).
[30] Guerin v. Cassidy, 38 NJ Super 454, 119 A2d 780 (1956); Beattie v. Meeker, 149 N.Y.S. 453 (1914).
[31] Agra v. Philippine National Bank, 368 Phil. 829 (1999).

3% per month penalty charge as stipulated in the Promissory Note to 12% per annum. [32] Although a court is not at liberty to ignore the freedom of the parties to agree on such terms and conditions as they see fit, as long as they contravene no law, morals, good customs, public order or public policy, a stipulated penalty, nevertheless, may be equitably reduced by the courts if it is iniquitous or unconscionable, or if the principal obligation has been partly or irregularly complied with. [33]

WHEREFORE, premises considered, the petition is **PARTIALLY GRANTED**. The Court of Appeals Decision dated July 12, 2006, and Resolution dated February 13, 2007, are **REVERSED** and **SET ASIDE**. The Decision of the Regional Trial Court, dated August 11, 2005, is **REINSTATED** with the **MODIFICATION** that respondents are ordered to deliver the possession of the subject vehicle, or in the alternative, pay the petitioner P48,084.00 plus late penalty charges/interest thereon at the rate of 12% per annum from May 18, 1997 until fully paid.

SO ORDERED.

Quisumbing, (Chairperson), Ynares-Santiago, Austria-Martinez, and *Reyes, JJ.,* concur.

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* In lieu of Associate Justice Minita V. Chico-Nazario, per Special Order No. 508 dated June 25, 2008.

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[32] Article 1229 of the Civil Code authorizes the judge to equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor.

[33] Ligutan v. Court of Appeals, 427 Phil. 42, 51 (2002).